

COUNCIL OF TRADE UNIONS RECOMMENDED BILL FOR GOVERNMENT

Holiday Leave Protection Bill

Government Bill

Explanatory note

This is an omnibus Bill that ensures that employees have time to recover payment for leave entitlements under the Holidays Act 2003.

General policy statement

The purpose of this Bill is to ensure that employees who have not been paid their legal entitlements under the Holidays Act 2003 are able to recover these payments. Currently, employees are losing both the opportunity and the evidence needed to recover holiday pay that they are legally owed because of statutory limitation periods and because the law only requires holiday and leave records to be kept for 6 years.

This Bill stops the clock by ensuring that employees will not lose the opportunity to recover holiday leave entitlements and requires employers to keep all extant wage and time records for six additional years from the date this Bill comes into force. This is further articulated in the purpose statement of the Bill.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 provides that the Act comes into force on the day after the date on which it receives Royal Assent.

Clause 3 is the purpose clause.

Clause 4 is the application clause and makes it clear that these changes apply to claims that are made from the day after the date that the Bill passes into law.

Clause 5 creates an exception to the general statutory limitation period by allowing enforcement of a claim for holiday and leave entitlement arrears that relate to a period commencing on or after six years earlier than the date that the Bill is passed into law. This is the “stop the clock” mechanism to ensure that employees have a fair period for seeking redress for these claims.

Clause 6 amends the Holidays Act 2003 to require all wage records to be kept for 12 years – this is an increase on the existing 6 years. It applies to information that was created up to 6 years before the Bill becomes law.

Clause 7 amends the Employment Relations Act 2000 to ensure that any claims for holiday pay or leave entitlement arrears within this time period are able to be enforced by a Labour Inspector, the Employment Relations Authority and the courts.

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Contents

		Page
1	Title	1
2	Commencement	1
3	Purpose	1
4	Application	1
5	Exclusion of the effect of the Limitation Act 2010 and any other limitations	1
6	Amendment to Holidays Act 2003	2
7	Amendments to the Employment Relations Act 2000	2

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Holiday Leave Protection Act 2016.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Purpose

The purpose of this Act is to:

- (a) Recognise that a number of employees and former employees have over an extended period had their entitlements to holiday pay and leave pay under the Holidays Act 2003 incorrectly calculated by their employers and are thus justly entitled to recover arrears of those payments;
- (b) Recognise that because of limitations imposed by law those employees and former employees may only claim arrears for the most recent 6 years of entitlements, and that with every day that passes they lose the ability to claim some of those arrears;
- (c) Recognise that this is an unfair state of affairs which should be remedied; and
- (d) Provide fair and just relief by preventing the gradual erosion, by passage of time, of those entitlements.

4 Application

This Act applies to all claims relating to the recovery of payment for holiday and leave arrear entitlements under the Holidays Act 2003 from the day after the date that this Act comes into force.

5 Exclusion of the effect of the Limitation Act 2010 and any other limitations

- (1) Notwithstanding anything to the contrary in the Limitation Act 2010, the Limitation Act 1950, the Employment Relations Act 2000, the Holidays Act 2003 or any other rule of law, a claim may be enforced for arrears in relation to an employee or former employee who has had their holidays and/or leave payment entitlements under the Holidays Act 2003 incorrectly calculated by their employer in the circumstances set out in subsection (3) of this section.
- (2) Subsection (1) applies to any person listed in section 74(1) of the Holidays Act 2003 who is able to enforce that Act, the Employment Relations Authority and the courts.

- (3) This exclusion applies to any claim for arrears that relate to any day or period commencing on or after six years before the day that this Act came into force.

6 Amendment to the Holidays Act 2003

- (1) The Holidays Act 2003 is amended as follows.

- (2) Replace section 81(4) with:

“(4) All information entered in the holiday and leave record must be kept for not less than 12 years after the date on which the information is entered.”

“(4A) To avoid doubt, subsection (4) applies to all information that was entered up to 6 years earlier than the day after the date that the Holiday Leave Protection Act 2016 came into force.”

7 Amendments to the Employment Relations Act 2000

- (1) The Employment Relations Act 2000 is amended as follows.

- (2) Amend section 142 by deleting “No” at the beginning of that section and replacing it with “Subject to the Holiday Leave Protection Act 2016, no”.

- (3) Amend section 224(4) by deleting “A” at the beginning of that subsection and replacing it with “Subject to the Holiday Leave Protection Act 2016, a”:

Changes Made Following Consultation 24-06-2016