

Submission to the Education and Workforce Committee on the:

Employment Leave Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

14 April 2026

IN UNION, TOGETHER.
union.org.nz

This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

Table of Contents

1. Summary of Recommendations.....	3
2. Introduction.....	3
3. Purpose.....	4
4. Loss of time.....	5
5. Loss of pay.....	8
6. Casualisation.....	10
7. Multiple roles.....	11
8. Transitional provisions.....	12
9. Remediation.....	13
10. Poor piece of legislation.....	14
11. Conclusion.....	15

1. Summary of Recommendations

The CTU recommends that Government:

- 1.1. Withdraw the Employment Leave Bill.
- 1.2. Any future changes to the Holidays Act should be thoroughly consulted, use a full length Select Committee process, and take the Holidays Act Taskforce report as the starting point.

2. Introduction

- 2.1. The Employment Leave Bill is unworkable, will not achieve its objectives and will leave too many workers worse off, with lower incomes, in a cost-of-living crisis. It should be withdrawn and any future changes to the Holidays Act developed with more robust consultation.
- 2.2. The stated aims of the bill are to “establish a new framework that is simple and clear, and that provides certainty to employees and employers about their entitlements and obligations”. However, the bill in its current form will do neither of these things and will instead add complexity and cost and lead to increased litigation, while simultaneously reducing workers’ entitlements. The only winners from this bill will be payroll providers and employment lawyers.
- 2.3. The current Holidays Act has received significant attention since 2014 over widespread non-compliance by employers, but the criticisms need to be put in context.
- 2.4. Any issues with the current Act have been outlined by the tripartite Holidays Act Taskforce in the Issues Paper 2018¹. Some of the issues are straightforward non-compliance or a lack of understanding from employers. The other “challenge” with the Act is its reliance on good faith, which is the basis of our employment relations framework. Parts of the Act require the employer to communicate with their employees – which cannot easily be automated via payroll platforms. However, unions and

¹ [Holidays Act 2003 Review: Issues Paper](#)

employers can reach agreement on compliance with the Holidays Act, which does allow for greater automation.

- 2.5. The Holidays Act Taskforce reached agreement in its report over simplifications and improvements to the Act. The exploring of an hours-based accrual system was discontinued part way through as it appeared too difficult to not disentitle substantial numbers of workers compared to the current Act.
- 2.6. Some groups of workers will be affected disproportionately. Those who work part-time, those who have variable hours, those who work two or more jobs, and those whose work is less secure. Women, young people, Māori, Pasifika and migrant workers are all more likely to be in these kinds of “non-standard” employment arrangements and will therefore be disproportionately negatively affected by the bill. Those who have less to spare are the ones taking a pay cut under this bill.

3. Purpose

- 3.1. The proposed bill both replaces the purpose of the Act it will repeal and then fails to meet its own purpose in its construction.
- 3.2. The main change to the purpose of the Act, as reflected in the Bill, is the change to the section on annual leave, which changes from “the opportunity for rest and recreation” to “the opportunity to take paid time away from work”. This is a subtle but important change. The Employment Relations Authority and the Employment Court look to the purpose of an Act when interpreting it. “Rest and recreation” are fundamentally positive, they are good for individuals to have and promote work/life balance and mental health. “Paid time away from work” is much more neutral and what it drops is the timing component. Paid time away from work could be any time: it is neutral on what time of the day, or week, or year it occurs, and whether it is continuous or interrupted. Workers being able to take proper time off, at a time that suits their family, friends and recreational interests, is invaluable and this bill walks away from that.

- 3.3. Having stated the new purpose is to provide employees with paid time away from work, the construction of this bill then does the opposite. The introduction of a Leave Compensation Payment is the antithesis of paid leave as it is actually pay *instead of* paid leave.
- 3.4. Paying workers a Leave Compensation Payment, instead of having them accrue leave on all hours worked, will result in them having less paid time off work compared to both accruing annual leave on all hours worked, or under the current Act. This bill does not live up to its own stated purpose.

4. Loss of time

- 4.1. The Employment Leave Bill will reduce the amount of paid time off that many workers are entitled to. While some workers will see no reduction, others will see a massive reduction and this reduction will fall inequitably.

Annual leave

- 4.2. Some possible examples are extreme. If we take a worker with low guaranteed hours of 8 per week, but who usually picks up additional shifts to average 32 hours over a four-day week, after working for a full year, they will have 32 hours of annual leave available. Enough to take 1 week off instead of 4 under the current Act. If this worker wanted to take days off, under the proposed Bill, they have enough leave for 4 days. Under the current Act, 1 day would represent $\frac{1}{4}$ of a week, so they could take 16 days off spread through the year.

Sick leave

- 4.3. The second example is workers who will receive less sick leave for working fewer than five days per week. This will disproportionately fall on women, who also take a disproportionate amount of sick leave to care for sick dependants. Having recently experienced a pandemic, we're all aware of how costly presenteeism can be, to both businesses and colleagues.

Mark works full time in a factory on a 4 on 3 off roster, doing 10hr shifts. Under the current act he receives 10 days sick leave per year. Under the proposed bill he will accrue 80 hours of sick leave, only enough for 8 days off, and he will lose 2 days sick leave per year after this bill is passed.

- 4.4. There is a real danger about the proposal to not accrue sick leave on additional (or casual) hours and instead receive a Leave Compensation Payment. The bill should provide adequate leave for sick or injured workers – but for those with low standard hours relative to the total hours they work, they will not accrue much sick leave compared to how often they work.

Mary works in retail, almost full time, she averages 35 hours per week but is only guaranteed 3 by her employer. In a year she will only accrue 6 hours, not enough to even take 1 paid day off sick.

- 4.5. This could leave some workers with near to full-time work, but very little sick leave. And then there will be pressure on them to not take unpaid sick leave. There is already a culture in employment where unpaid, or exhausted, sick leave is viewed differently to entitled and paid sick leave, and this is even reflected in case law. Proposed s 80 (2)(b) allows an employer to insist on proof of sickness or injury for every unpaid sick day if it is in the employment agreement.
- 4.6. Despite the Leave Compensation Payment, having paid sick leave available for when an employee is sick is critical to the calculus of whether an employee is too sick to work, and will actually call in sick. For the sick worker themselves, their colleagues, and in many roles the public, workers need enough paid sick leave to make the right decision.

Public holidays

- 4.7. The new Otherwise a Working Day (OWWD) test adds clarity, but the rest of the section stands to disentitle workers from public holidays and alternative leave. If a worker has few specified days, or just one, yet works other days of the week often, then they will miss out on all public holidays that do not fall on their contracted day, no matter how often they work on the day of the week each public holiday falls. Oddly, they would be better off without the day, or days, specified in their contract when it comes to public holidays, pitting job security against public holidays entitlements.

Shanna works in a busy cafe. She has contracted guaranteed hours to work 8 hours on Saturday. Most of the time she also picks up shifts on Friday, Sunday and Monday for about 30 hours a week. In 2026, she will work 7 public holidays and get 7 alternative holidays plus 3 paid unworked public holidays (ANZAC, Christmas and Boxing days). If the Employment Leave Bill is in force for 2027 she will work 9 public holidays and get 3 alternative holidays plus 1 paid unworked public holiday (Christmas), losing out on 6 paid days off under the new legislation.

- 4.8. The proposed bill creates an incentive for employers to structure their employment agreements to disentitle most (or in some years all) public holidays.
- 4.9. Changing from alternative days to alternative leave is a disentanglement and steps away from the concept of why alternative holidays are so important and currently measured in days. Public holidays are “days of national, religious or cultural significance”. Workers suffer significant loss if they have to work on these days and are currently compensated as such. Alternative holidays are earned in full days because working on a public holiday can cause that whole day to be lost for the worker, regardless of how many hours they work. It is the disruption to the worker’s life that the alternative holiday compensates for, the number of hours is less relevant. It is important to remember that if an employer does not want to bear the cost of a full alternative day for just a few hours work, they are free to

rearrange their business to avoid this.

Dave has to come into the office on King's Birthday to get orders ready for the week. It only takes him 2 hours, but it means he can't make the fishing trip. He only receives 2 hours alternative leave.

Other

- 4.10. The non-accrual of annual leave while on ACC is another disenfranchisement that affects those already vulnerable. It is a regressive move compared to the status quo. If someone is off work injured for a few months, and then makes a recovery and returns to work, they will find that they don't have enough leave to take a full holiday with their family. This is a double injustice if the injury was caused by a workplace accident.

Sam is involved in a workplace accident and breaks his leg. He makes a full recovery, but it takes 3 months. He was planning a 4 week overseas trip with his family later in the year but now will have to shorten it to 3 weeks, or wait till next year.

- 4.11. Bereavement leave should not be able to be taken in part days. If this becomes possible, vulnerable workers will be pressured to take part days of bereavement leave instead of receiving their full entitlement. If a worker only wants to "pay their respects" and return to work on a given day, they can work that out with their employer.

5. Loss of pay

- 5.1. While this bill doesn't achieve its stated aim of simplicity, and does the opposite by increasing complexity, in attempting to do so the bill significantly reduces the amount of pay workers will receive for their leave in several ways. This is a transfer of wealth from workers to business owners and has serious equity issues in who will be affected the most.
- 5.2. Many workers will receive less pay than they currently do while they are on leave. This step down from their usual weekly earnings to less pay while on

holiday changes an implicit principle from the current Act: that people should be paid the same on leave as they would have been if they worked. This is for proper rest. For mental health and stress levels, being on leave should feel financially the same as working. Taking sick leave as an example, if a worker needs time off work due to sickness or injury they are paid at the lowest hourly rate under this bill. This may leave them short compared to what they would have earned had they worked. This may create stress during a time that they are trying to recover, lessening the effectiveness of the sick leave taken. It will also disincentivise people from taking sick leave when they need to, putting themselves and their colleagues at risk.

- 5.3. But the issue of leave pay is broader than that. The bill will see workers receive the lowest rate for the day, which can remove penal rates that have part of the shift attracting them, or acting up rates if part of the shift didn't include them, all allowances that aren't fixed are excluded, in addition to commission. While the effect on those on sick leave is mentioned above, this also applies to those on bereavement or domestic violence leave – they are getting a pay cut to go along with their other troubles.

Sue works nights in a rest home, which pays time and a half for nights, but the night shift rate starts a couple of hours after Sue's shift starts. If she needs to call in sick, she will only be paid 73% of a normal shift for her sick leave.

- 5.4. There is more than just taking the lowest hourly rate; other payments due under the employment agreement are also suspended for the period of leave (except allowances that are always paid). This bill proposes to interfere in millions of employment agreements that were negotiated on the principle that pay would not be reduced when an employee is on leave. While amendments to the Holidays Act and significant case law decisions have made adjustments to huge numbers of employment agreements, nothing as wholesale as this bill was contemplated by the employer and employee parties and they will have three years to

renegotiate their agreements against an Act that is so unwieldy, it is unlikely either party will understand it.

- 5.5. There are particular groups of workers who will be especially hard hit. A striking example is workers for whom their whole income arrives from commission. In this case, their usual pay is disregarded, and they are paid at only the minimum wage.

Abbey works in sales. Her pay is based on commission and she clears six figures annually. When she goes on annual leave, she drops to the minimum wage; less than half her usual income.

- 5.6. While the commencement date of the bill is two years after royal assent, if it is passed (which it should not be) it will be passed during a cost-of-living crisis. While some workers will be unaffected, a huge proportion of working New Zealanders will be receiving a pay cut, in a low growth, increasingly high inflation environment.

6. Casualisation

- 6.1. This bill makes several changes to the nature of casual employment, including incentivising it.
- 6.2. In the broader sense of casualisation, which includes fewer guaranteed hours as a proportion of total worked hours, this bill incentivises a move towards more casual employment. Despite the bill's aims of simplicity and clarity, it is so complex, and when introduced will have no case law behind it, the easiest way for an employer to ensure compliance and minimise litigation risk is to casualise their workforce and pay the Leave Compensation Payment. This approach has two further incentives: firstly, if workers have no or little paid leave balance available, then they will be available to work for more weeks of the year, and secondly, paying the Leave Compensation Payment on a weekly basis to workers prevents a leave liability from building up on the employer's books.

6.3. In addition to this, the disincentive for misusing casuals that is in the current Act, is not replicated in the bill. Under the current Act, an employer who mistakenly pays 8% to workers who are not casual (technically whose pattern of work is not so intermittent or irregular that it is impractical to provide annual leave) must also provide that worker with annual leave, which can become a significant risk if several workers have been employed for several years. This potential liability motivated employers to check that they had casual workers correctly classified and did not have permanent workers misclassified as casual. With this gone, there will be little cost to employers to treat a permanent worker like a casual, by mistake or intentionally.

7. Multiple roles

- 7.1. Multiple roles with same employer treated separately interferes in the employer's and the employee's current right to agree what best suits the parties in terms of timing and access to leave. It encourages the atomisation of the employment relationship, for unclear purposes. It will encourage the creation of artificially separate employment relationships, which will have downstream consequences for both parties when employment decisions must be applied to and justified to each employment agreement separately.
- 7.2. Proposed clause 17 will significantly disadvantage employers. Many firms rely on employees being adaptable as to the roles they can pick up to help an organisation function efficiently. Many roles are not formerly separated, do not have hours attached to them when concurrent with other roles, or are for a limited amount of time to cover absences. Clause 17 creates administrative difficulties for both the employer and employee in accounting for the accrual and taking of leave.
- 7.3. The lack of definition of "role" hints at the difficulties and potential litigation this clause will cause.
- 7.4. Proposed clause 17 overturns a long-held understanding that in order to "go on holiday" an employee needs a single leave balance and to be able to take leave from all their roles with an employer over the relevant leave

period. It encourages the atomisation of the employment relationship, for unclear purposes. It will encourage the creation of artificially separate employment relationships, which will have downstream consequences for both parties when employment decisions must be applied to and justified to each employment agreement separately.

- 7.5. The introduction of treating two roles with one employer as two separate employments looks like an attempt to overturn the ERA determination in *Lo v Health NZ* [2025] NZERA 604. In that case a doctor reduced their weekly hours in one role from full time to part time, to pick up an additional half-time role along the corridor in the same hospital. The total amount of hours per week remained substantially unchanged. When the employee wanted to take some leave (they had over 4 weeks of leave owing), the employer declared that they had insufficient leave accrued in the new role, and couldn't go on holiday. The ERA sensibly declared that the employee must be regarded as having one annual leave balance in order to meet the objectives of the Holidays Act – that is, to allow holidays.

8. Transitional provisions

- 8.1. The transitional provisions for converting leave balances from weeks or days to hours are complex and poorly written (it is unconventional to write algebra with more than one letter per variable; letters adjacent to each other imply multiplication). The current Act is designed so that the required calculations can be performed with a pen and paper if necessary. This bill will be stretching if that is possible. This will disadvantage small business owners who are less technologically savvy. Without professional support, at their own cost, many businesses will not be able to, or have confidence that they can, comply with the proposed Act. Many workers will not be able to follow the calculations or have the confidence that they have been converted correctly. There is a risk of widespread non-compliance and remediation and litigation.
- 8.2. If the time value of leave is converted correctly, then two further problems emerge.

- 8.3. First, workers in New Zealand may broadly be aware that on the commencement date their leave balances will be changing but also that the calculation for the value of their leave will be changing and that the value, or the payments they'll receive when they take leave, will be reduced, very significantly in some cases. This will effectively create a run on leave where workers scramble to have their leave balances used up while they are still of a higher monetary value.
- 8.4. Second, as companies convert their employees' leave from weeks and days to hours, they will also need to estimate the new value of their leave balance. For larger employers, this creates a potential problem. Large employers will have employee leave balances in the millions of dollars on their balance sheet as a liability, along with higher reporting obligations. It may be difficult to calculate what the value will be after the commencement of the proposed Act, as it is currently if accrued leave prior to the change in the Act retains its previous value or will be paid out on new values. If it is paid out at new values, this potentially creates a huge windfall gain for employers who face a reduced liability.
- 8.5. Casual workers who have a balance of sick leave on the commencement date will have that leave balanced zeroed. It is not clear what the rationale is for this – a group of workers just have several days' worth of paid leave entitlement taken off them.

9. Remediation

- 9.1. The alternative remediation process for outstanding holidays and holiday pay owed to workers cannot be assessed as it will sit in regulations that have not been written yet. However, the framework it is proposed to operate under is very concerning. The proposed remediation process will: (i) not require the worker's consent; (ii) extinguish some workers' ability to claim; (iii) 'permanently suspend' claims that are before the Authority.
- 9.2. This combination of effects could limit the Right to Justice under the New Zealand Bill of Rights Act, as highlighted in the Ministry of Justice's report to the Attorney-General. The report states that the remediation process "could limit s 27 (1) unless the prescribed process...also allows for the

observance of the principles of natural justice”. With no process to confirm that the Right to Justice won’t be limited, and with the experience of the Pay Equity claims getting extinguished, we have little faith that a huge number of New Zealand workers won’t have their Right to Justice limited.

10. Poor piece of legislation

- 10.1. This bill was clearly not ready to be released when it was. It features typographical errors, repeated paragraphs, incorrect references to other sections, and sloppy cut and pasting. It is not the job of submitters to point out errors in a bill but the high number of them show the process has been flawed.
- 10.2. The work on reforming the Holidays Act began in 2018. It produced a tripartite report in 2019 that had consensus from business, government and unions. It is unclear why that took so long to actualise into legislation but this current government’s drive to change the Holidays Act has drastically changed tack from the work being done on the reforms up to December 2024. As the Regulatory Impact Statement says, there has not been sufficient time for consultation on this, nor analysis of options by MBIE. The select committee process is also truncated.
- 10.3. We are left with a bill that is not fit for purpose. It is not simpler or clearer. It is longer – by 50 pages – is poorly organised, repetitive, in parts very prescriptive, but also vague. It will be confusing and difficult for employers to implement, and workers will not be able to verify if they have been given the correct leave or payment. It will be expensive to implement and will lead to more costly litigation.
- 10.4. The bill is attempting to solve a problem that is much smaller than the noise some groups are making. It is 12 years since the problems with Holidays Act non-compliance have been widely known. In that time, many employers have remediated their affected workers. Many payroll companies have developed payroll systems that make complying with the current Act much easier, and many employers are now doing fine. Some

have negotiated clauses with unions in collective agreements to clarify ambiguities or allow systemisation.²

- 10.5. These employers and payroll providers who have done the right thing, remediated and developed compliant systems, are now being asked to waste time and money on doing it all over again, at the same time as workers lose out on entitlements.

11. Conclusion

- 11.1. The Employment Leave Bill will not achieve its stated goals and will achieve the opposite, miring employers and employees in confusion and litigation while simultaneously stripping leave and holiday pay from workers, disproportionately from those in part-time or precarious employment.
- 11.2. The Employment Leave Bill is not a solution; it will be a rerun of the huge Holidays Act non-compliance and remediation problem that employers and employees have been grappling with for over a decade and have largely solved by now.
- 11.3. The bill incentivises a “race to the bottom” approach for less leave, lower pay on leave, more precarious employment and more casualisation.
- 11.4. Parts of the bill are simply unworkable.
- 11.5. The Employment Leave Bill should be withdrawn.

² For example, how a week is defined for the purposes of taking leave or when a day is an otherwise working day.