

Departmental Disclosure Statement

Employment Leave Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 March 2026

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Part One: General Policy Statement

This Bill is an omnibus Bill that replaces the Holidays Act 2003 (the **current Act**) and makes related changes to other legislation. The single broad policy being implemented by the Bill is to establish a new framework for leave that is simple and clear, and that provides certainty to employees and employers about their entitlements and obligations.

Issues with the current Act have been a long-standing concern for employees, employers, and payroll providers. Many of its provisions are unclear, overly complex, difficult to apply for diverse working arrangements, or challenging to systematise in payroll systems. As a result, administrative burden and compliance costs are high, non-compliance is widespread and persistent, and employees are not always receiving their correct entitlements. Legislative change is considered the most effective way to achieve simplicity, clarity, and improved compliance.

Accordingly, the Bill introduces a range of changes relating to leave entitlements, taking leave, and payment for leave.

Leave entitlements

The Bill replaces the current leave entitlement model with a new framework that fundamentally changes how leave entitlements are determined, provided, and calculated.

The Bill introduces a distinction between different types of working hours, which underpins how leave is accrued and paid. The Bill defines the following 3 categories of hours:

- standard hours, which are the hours an employee is required to work under their employment agreement and for which the employer must pay the employee:
- additional hours, which are hours an employee works in excess of their standard hours if the employment agreement provides for additional payment:
- casual hours, which are hours worked by an employee whose employment agreement does not require their employer to offer any work and does not require them to accept any work offered. An employee with standard hours for a role cannot also have casual hours for that same role.

Key changes to leave entitlements include the following:

- Annual leave accrues at a minimum rate of 0.0769 hours per standard hour of work from the employee's first day of employment. Annual leave also accrues during periods of paid statutory leave, parental leave, volunteer leave, and jury service, but does not accrue during unpaid leave or periods where the employee receives compensation under the Accident Compensation Act 2001. Annual leave is recorded in hours and balances are not adjusted if the number of standard hours changes. Annual leave is taken in hours against the employee's standard hours.
- Sick leave accrues at a minimum rate of 0.0385 hours per standard hour of work, from the employee's first day of employment, up to a cap of 160 hours. Sick leave is taken in hours against standard hours and additional hours.
- Bereavement leave and family violence leave remain days-based entitlements but arise from the employee's first day of employment. Employees may take part-days of those entitlements.

- A new otherwise working day (an **OWD**) test applies to public holidays for employees who do not have days of work (or a pattern of days of work) specified in their employment agreement. Under this test, a day is treated as an OWD if the employee has worked (or was on paid or unpaid leave) on 50% or more of the same day of the week as the public holiday in the preceding 13 weeks.
- Alternative leave accrues at a rate of 1 hour's leave for every hour the employee works (or is on call and whose employment agreement provides that the employer may require them to work) on a public holiday that is an OWD. Alternative leave may be taken on any day the employee could have worked under their employment agreement, and may be cashed up at any time.

These changes seek to address ambiguity in the current Act and ensure that entitlements are calculated on a clear and consistent basis. They also aim to make the system simpler and easier to apply to varied working patterns, including part-time, variable, and shift-based arrangements. The intent is to enhance certainty and flexibility for employees and to enable employers to more accurately systematise entitlements, enhancing both simplicity and workability.

Leave payments

The Bill updates how employers are to pay employees for periods of leave. Key changes include the following:

- All leave taken under the Bill is paid at an hourly rate. For example, the hourly rate for an employee who is paid a salary is the amount payable for 1 standard hour's work and the hourly rate for an employee who is paid wages is the lowest hourly rate payable for the day on which the leave is taken. Fixed allowances (allowances that must be paid under the employment agreement and do not vary in value) are paid in full during periods of leave.
- Annual leave taken following periods of parental leave or volunteers leave is paid using the same method.
- A leave compensation payment (an **LCP**), set at 12.5% of an employee's ordinary hourly rate, is paid on all additional and casual hours worked instead of the employee accruing annual leave and sick leave on those hours.

Rather than performing multiple different calculations to determine the correct rate of payment, the same hourly leave pay rate is used for all types of leave. This will reduce complexity, support consistent application across different leave types, and improve clarity for both employees and employers. The intent of an LCP is to provide a simple payment mechanism, instead of providing annual leave or sick leave, and to avoid the challenge of applying complex accrual rules to irregular, unpredictable, or additional hours of work.

Implementation

The majority of the Bill will commence 2 years after the Bill receives Royal assent. This lead-in period is intended to provide sufficient time for employers, payroll providers, and other stakeholders to update systems, processes, and employment agreements. However, commencement for the schooling sector will be 10 years after Royal assent or earlier by Order in Council.

The Bill includes transitional provisions to support the alignment of employment agreements with the new leave framework. The Bill also includes a process to create a remediation framework for employers to provide reasonable compensation to employees who have not received their correct entitlements under the current Act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>A Holidays Act Taskforce was established in 2018 to provide recommendations to the Government on options to improve the Holidays Act 2003. It published two reports:</p> <ul style="list-style-type: none"> • Holidays Act 2003 Review: Issues Paper, Holidays Act Taskforce, August 2018 – https://www.mbie.govt.nz/dmsdocument/4251-holidays-act-2003-review-issues-paper • Final Report, Holidays Act Taskforce, October 2019 – https://www.mbie.govt.nz/assets/holidays-act-taskforce-final-report.pdf <p>The Taskforce's work informed the development of policy proposals at the time. However, further policy work has been undertaken since the final report was published, and the current Bill does not fully reflect the Taskforce's recommendations. The reports remain relevant background material.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The following Regulatory Impact Statement was prepared for the key policy proposals contained in the Bill:</p> <ul style="list-style-type: none"> • Regulatory Impact Statement: Holidays Act Reform, Ministry of Business, Innovation and Employment, July 2025 – https://www.mbie.govt.nz/dmsdocument/31278-regulatory-impact-statement-holidays-act-reform-proactiverelease-pdf or https://www.regulation.govt.nz/our-work/regulatory-impact-statements/ <p>The following Regulatory Impact Statements were prepared for earlier considerations of policy proposals, some of which are included in the Bill:</p> <ul style="list-style-type: none"> • Regulatory Impact Statement: Holidays Act reform – Further Policy Decisions, Ministry of Business, Innovation and Employment, May 2024 – https://www.mbie.govt.nz/dmsdocument/28526-regulatory-impact-statement-holidays-act-reform-further-policy-decisions-proactiverelease-pdf or https://www.regulation.govt.nz/our-work/regulatory-impact-statements/ • Regulatory Impact Statement: Improving the Holidays Act 2003, Ministry of Business, Innovation and Employment, February 2019 – https://www.mbie.govt.nz/dmsdocument/13433-regulatory-impact-statement-improving-the-holidays-act-2003-proactiverelease-pdf or https://www.regulation.govt.nz/our-work/regulatory-impact-statements/ 	

2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The Regulatory Impact Statements did not meet the threshold for receiving an independent opinion on their quality from the Regulatory Impact Analysis Team based in the Ministry for Regulation (or Treasury, for earlier statements).</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
The features of Option Three in the July 2025 Regulatory Impact Statement (RIS) correspond reasonably well with the key policy features of this Bill. However, some elements of the policy were not covered in detail in the RIS. In particular, the design details of the remediation framework and the approach to supporting alignment of employment contracts with the new legislation were developed under delegated authority and were therefore exempt from RIS requirements.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
Further analysis on the costs of the proposed leave framework for public service departments was conducted to support the August 2025 <i>Reforming Employment Leave Legislation</i> Cabinet paper. https://www.mbie.govt.nz/dmsdocument/31191-reforming-employment-leave-legislation-proactiverelease-pdf	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The July 2025 Regulatory Impact Statement set out the size of the potential non-monetised costs and benefits on pages 25-26. The monetised costs and benefits could not be confidently quantified due to data limitations on the current use of leave entitlements and an inability to conduct payroll testing due to time constraints.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES

The potential costs and benefits of the policy are likely to be influenced by both the level of compliance with the new framework and the level of regulator effort to encourage or secure compliance.

The reforms are designed to simplify the leave system, reduce ambiguity, and make entitlements easier to calculate and administer. A simpler and more prescriptive framework is expected to reduce compliance costs for most employers and lower the likelihood of errors that lead to remediation processes. Greater clarity should also support the regulator in identifying non-compliance more efficiently and in focusing effort where it is most needed. The Labour Inspectorate will support compliance by combining education, stakeholder engagement, and targeted investigations, using channels such as direct engagement, online guidance, and social media campaigns to drive positive behaviour change and support the transition to the new leave system.

However, the realisation of these benefits depends on effective transition. If employers do not apply the new framework correctly, the anticipated reductions in administrative burden, remediation costs, and compliance risk are unlikely to be fully achieved. Similarly, the level and nature of regulator effort, particularly in supporting payroll system compliance, will affect how quickly and consistently the system is established.

These matters, and their potential impact on costs and benefits, are considered in the July 2025 Regulatory Impact Statement (particularly pages 18–29).

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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All the proposals being introduced in the Bill have been assessed by the Ministry of Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade respectively against New Zealand's International Labour Organization (ILO) and international trade obligations.
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Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Business, Innovation and Employment assessed the consistency of the policy proposals with the principles of the Treaty of Waitangi. Te Puni Kōkiri was consulted as part of the policy development process.

The Ministry of Business, Innovation and Employment considers that the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi. However, comprehensive public consultation has not taken place to support this assessment.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice has undertaken an assessment of whether the Bill is consistent with the Bill of Rights Act 1990 and has provided advice to the Attorney-General. Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill includes offences and penalties to promote compliance with the legislation, deter harmful or unlawful conduct, and support effective enforcement of the regulatory regime.</p> <p><i>Penalties</i></p> <p>Matters relating to penalties are set out in clauses 140 to 143 of the Bill (“Part 3, Subpart 2 – Enforcement”). The Bill provides for penalties of up to \$10,000 for an individual and up to \$20,000 for a company or other body corporate. This carries over the existing penalty amounts from the Holidays Act 2003.</p> <p>Many of the penalty provisions listed in clause 140 of the Bill (“Penalties for non-compliance”) are carried over from the current Act. Some new penalty provisions have been added in relation to new obligations to ensure that penalties are consistent in nature to those in the current Act. Examples of the matters covered by the penalty provisions include failure to:</p> <ul style="list-style-type: none"> • correctly provide minimum leave entitlements • enable the taking of leave in accordance with the legislative requirements • follow the correct processes for cashing up leave • follow the rules for having annual closedowns • correctly provide entitlements related to worked and non-worked public holidays • keep and provide access to an employee’s leave record. <p><i>Infringement offences</i></p> <p>Clause 174 of the Bill (“Section 235A amended (Interpretation)”) amends the list of infringement offences in section 235A of the Employment Relations Act 2000 (the ERA). These infringement offences carry a fee of \$1,000.</p> <p>Failure to comply with the leave record requirements in the current Act is currently listed as an infringement offence in the ERA. The Bill carries over this existing infringement offence.</p> <p>The Bill introduces a new infringement offence for failure to provide employees with a pay statement for each pay period (new clause 130A of the ERA). It also introduces new infringement offences in relation to employers’ liabilities if the Leave Compensation Payment (LCP) is not paid to an employee who is entitled to it, if annual and sick leave is accrued when an employee is entitled to receive LCP instead, and if LCP is paid when an employee is entitled to accrue annual or sick leave instead (clauses 130-132 of the Bill, “Employer must pay LCP to LCP employee”).</p> <p><i>Remediation methodology</i></p> <p>The remediation methodology prevents employees (whose employers elect to use the remediation approach) from pursuing some legal claims under the Holidays Act 2003. Specifically, it prevents new claims and stops the progress of some claims already made in the Employment Relations Authority or Employment Court. However, any appeals or claims that have progressed beyond the preliminary stages will continue. A permanent effect on claims (i.e., full and final settlement) would only occur when the employer completes the remediation methodology.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the policy development process, and on the Bill. The Offence and Penalty Vetting team noted that the penalties listed in the Bill are consistent with those in the Holidays Act 2003. The Bill of Rights Act team was also consulted on the draft Bill.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill retains the list of record-keeping requirements that exists under the current Act and includes additional requirements to support the new rules and calculations (clause 133, “Leave records: content”). It also retains and amends the requirements around who may request access to leave records, including family violence leave (clause 136, “Requests for access to leave records”), and for employers to retain leave and wage and time records for a period of 6 years (except during any Authority or Court proceedings, or if specified in a notice given by a Labour Inspector, where it must be kept longer).</p> <p>The Bill amends the ERA by adding new section 130A, which requires employers to provide a pay statement to each employee in every pay period (clause 170, “New section 130A and cross-heading inserted”).</p> <p>The Bill allows employers in restructuring situations involving the transfer of a business to agree to transfer employees’ annual and alternative leave entitlements to the new employer, rather than having to pay them out. To support the transfer of these leave entitlements, clause 166 of the Bill (“New sections 69OKA to 69OKE inserted”) inserts section 69OKB into the Employment Relations Act 2000, requiring the original employer to provide the new employer with the information needed to determine the employee’s leave entitlements (in accordance with the Privacy Act 2020).</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commissioner was consulted on the draft Bill. It did not raise any significant concerns from a privacy issues perspective.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The external consultation on the policy given effect by this Bill is summarised in the Regulatory Impact Statement on pages 11 and 12: https://www.mbie.govt.nz/dmsdocument/31278-regulatory-impact-statement-holidays-act-reform-proactiverelease-pdf</p> <p>In addition to this external consultation, a small group of payroll providers and legal experts were consulted on some draft provisions of the Bill in late 2025 and early 2026. The purpose was to seek feedback on the workability of a small number of provisions from a payroll system perspective and to make adjustments based on this feedback to improve workability.</p> <p>The Privacy Commissioner, Health NZ, and Education Payroll Limited were consulted on a draft of this Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill’s provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
Schedule 1, clause 24 (“Pre-commencement consultation: remediation process regulations”) treats consultation undertaken before commencement as satisfying the consultation requirements for regulations establishing the remediation process. This retrospective element is necessary to enable timely development of the estimation methodology without delaying implementation of the new Act.	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The Bill introduces new infringement offences for failing to provide pay statements to employees, or to a Labour Inspector upon request, and the incorrect provision of the Leave Compensation Payment (clause 174, “Section 235A amended (Interpretation)”).	
These infringement offences establish strict liability to promote compliance with core record-keeping and minimum entitlement provisions, ensuring employees receive their correct entitlements and enabling effective monitoring and enforcement by regulators. They are limited to clearly defined obligations and enforced through proportionate infringement penalties.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill creates and amends powers to make delegated legislation. These powers enable the making of regulations that support the implementation and operation of the new employment leave framework.</p> <p>First, the Bill provides a regulation-making power allowing the Act to be brought into force on different dates, by Order in Council, for employees of State schools who are paid through the Education Payroll Service (clause 4, "Application"). It is a limited commencement- setting power that affects only the timing of when the Act takes effect for this cohort. The education sector uses a centralised payroll system of significant scale and complexity and requires additional time to implement the technical and operational changes needed to transition to the new framework.</p> <p>Second, clause 152 ("Regulations") retains the regulation-making power that exists under the current Act for the Governor General, by Order in Council, to make regulations for: prescribing forms; prescribing procedures for proceedings under the Act; and, providing or anything incidental that is necessary for carrying out or giving full effect to the Act. These are standard, administrative regulation-making powers that support implementation. Operational matters such as forms, procedures, and incidental details are not appropriate for inclusion in primary legislation and require flexibility to be updated over time as practice develops.</p> <p>Third, clause 156 ("Regulations for remediation process") permits the Governor-General, by Order in Council on the recommendation of the Minister, to make regulations specifying a remediation process for the purposes of clause 155 ("Employer may elect to follow remediation process"). Further policy work and consultation is required to develop the detailed estimation methodology, and delegated legislation provides the time and flexibility to develop this approach.</p> <p>Standard safeguards will apply. Each regulation-making power is constrained to operational or commencement matters, requires Cabinet and/or Ministerial oversight, must be drafted by the Parliamentary Counsel Office, and is subject to Parliamentary scrutiny and disallowance, ensuring it is properly constrained and used appropriately.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill includes transitional provisions to support the alignment of contracts to the new leave framework (Schedule 1, clauses 4 to 6). A deadline is introduced, one year after commencement, for parties to reach agreement on contractual terms that are consistent with the framework of the new legislation (e.g., agreements that express annual leave in units of 'hours' rather than 'weeks'). This applies to employment agreements entered into before the commencement date. If no agreement is in place by that deadline, the minimum statutory terms would be deemed to override any contradictory terms in agreements.</p>	