

10 January 2022

Right Honourable Michael Wood
Minister for Workplace Relations and Safety
Private Bag 18888
Parliament Buildings
Wellington 6160

Open Letter to Michael Wood Minister for Workplace Relations and Safety – PAYROLL MUST NOT BE USED TO FIX THE SHORTCOMINGS OF ANY NEW HOLIDAYS ACT

Dear Minister

In this latest open letter, I want to put on record the NZPPA's concerns about the lack of clear guidance coming out of the better rules approach for developing an updated Holidays Act and its impact on payroll processing.

One of the stated reasons for using the better rules approach is to ensure an updated Holidays Act is more workable and can be systemised into payroll software. In the recent online meeting and in the others previously undertaken as part of the better rules approach, your officials have not indicated what calculations, tests, and processes will need to be systemised in the software (if any). Stating this is to come and is part of the process provides no reassurance to employers or payroll that this will actually occur. This process should not dump its shortcomings on payroll to carry any new changes or fill the gaps that have not been considered in the better rules approach. I have repeatedly said this approach is unproven for legislation as complex as the Holidays Act. The risk to payroll and payroll processing is too great to just hope for the best.

The review group put forward the following new methodologies and tests to be included in an updated Act. This is what your officials have been putting forward in the better rules approach:

- New processes for determining how much leave entitlement an employee needs to use for a period of time away from work.
- A new test for determining an Otherwise Working Day.
- Revised tests for determining if an employee is eligible for leave.
- New processes for calculating payments for leave.
- A new test for when an employee may receive their annual holiday entitlement on a 'Pay-As-You-Go' basis.

Minister, you have promoted the point of the better rules approach and the recommendations from the Holidays Act review to create an Act that can be systemised into payroll software. That is not enough. You or your officials must come out now and confirm to what level the software will be

required to include any new changes to the Holidays Act. Will payroll providers decide what to have in their software, or will it be defined in the new legislation? And what tests and processes being promoted from the Holidays Act review and being worked through in the better rules approach will be required in payroll software or manually done by payroll practitioners? I am raising this as I have seen in the better rules approach comments made by your officials as they discuss aspects of the points above. The comments indicate they believe payroll practitioners will be undertaking tests, checks and processes. They even mentioned the use of Excel spreadsheets. This is totally unacceptable when we have been led to believe that these changes would be included in the software and not as additional activities that will affect payroll processing.

I have not seen any evidence that your better rules approach has considered the impact of additional tests, checks and processes on payroll and directly on payroll processing. If your officials had any real understanding of payroll processing, this would have been a top concern, but that is clearly not the case from the vague response and lack of understanding shown in how they communicate. I have previously raised the quality of payroll SMEs MBIE has in the project (just lip service to tick the box that payroll was involved).

The effects of dumping additional activities on payroll practitioners rather than including them in software are (just to highlight a few):

1. The impact of time, money and payroll resources on payroll processing in doing multiple tests, checks and additional processes outside the scope of payroll processing.
2. What will payroll providers have to include in their payroll software, so all payroll systems offer the same level of consistency, certainty and hopefully compliance?
3. The impact of tests and additional processes for a business using an outsourced payroll provider.
4. The impact and the reality of expecting a small business to understand and apply multiple tests and additional processes.

1. The impact of time, money and payroll resources on payroll processing in doing multiple tests, checks and additional processes outside the scope of payroll processing.

One of the main reasons for this open letter is to ensure the new Holidays Act does not impact payroll processing. Your officials clearly do not understand payroll (only as pretend experts) and how payroll is processed. I raised this in a recent online meeting with your officials when they shared what had been provided by the core group of the better rules approach, which stated payroll practitioners would undertake checks and tests. There was no mention of payroll software doing these activities.

If you expect tests and checks to be done outside of the payroll system, you create a real risk of non-compliance being brought back into the

payroll process along with the time and cost involved in doing these activities in deadline-defined payroll processing. From what has been seen with the over-the-top complexity, this will effectively shut down payroll processing if payroll practitioners are forced to do these activities outside their payroll when payroll is being processed. Please understand payroll does not have access to a lot of leave information right up to when payroll is processed because of the cut off from the payroll period end date to when payroll is processed. This cannot and should not change for the sake of an updated Holidays Act.

I am currently writing a book on payroll best practice in New Zealand that will be released in the third quarter of 2022. It won't be a bestseller, but as I am only interested in payroll and payroll people, I write on what I know and love. One of the core aims of best practice in payroll is efficiency. Your officials have presented the range of tests and calculations in the better rules approach for the new Holidays Act, and it shows efficiency and payroll best practice is not an aspect considered or understood in the better rules approach. If you plan to have all these extra activities undertaken by payroll practitioners while processing pay, this will undermine payroll on numerous levels, from compliance to additional cost and the time involved. The only effective way this should be undertaken in payroll is by incorporating it into the software with clear transparency so payroll practitioners can check and confirm the outcomes of a test or process as that would be an efficient best practice solution. If this proceeds in its current form, it will seriously undermine payroll's ability to efficiently meet best practice principles.

2. What will payroll providers have to include in their payroll software, so all payroll systems offer the same level of consistency, certainty and hopefully compliance.

We presently have an environment where payroll providers can provide non-compliant payroll software with little or no consequence of being taken to task for the issues included in their software. NZPPA has seen over many years how payroll providers decide what to include or exclude in their software regarding legislative requirements. It is a minefield for employers and payroll practitioners. At present, you find (most often when moving to a new payroll system) that how the Holidays Act has been applied from one payroll system to another is totally different, with calculations not even bearing any resemblance to what the law requires. The lack of support from MBIE to payroll providers in leading and supporting what is needed in payroll systems to meet the Act's requirements is not the fault of payroll providers. It can be directly attributed to the failures of consecutive governments (including yours).

If you are going to resolve one of the top issues for Holidays Act non-compliance, then you must fully define and include in the new legislation all calculations, tests and processes that must be included in payroll software. For the first time, this will ensure all payroll software is designed to provide the same outcomes so employees can be paid

correctly for leave taken and payroll practitioners and businesses have certainty from their payroll system. If a business decides not to follow this, all liability sits with the business and is not payroll providers' fault. Minister, be a leader and not a follower of the failures of previous ministers of this area, as you have an opportunity to do this now.

I need to note that there are real issues with the quality of payroll software locally and especially from overseas payroll providers. Some local payroll providers are well placed to meet any requirements needed to provide compliant payroll systems. If anything, by including requirements to have calculations, tests and processes included in payroll software required by legislation, this will hopefully clean up the payroll industry by removing providers that won't invest in providing compliant payroll solutions for their clients. This would be a win-win for payroll practitioners and the businesses they work for, along with your officials and, of course, employees paid through these payroll systems.

3. The impact of tests and additional processes for a business using an outsourced payroll provider

The use of outsourced payroll providers is a growing trend in New Zealand. It will continue to grow as businesses look at other options because of the complexity of payroll from legislation such as the Holidays Act. An outsourced provider may be a payroll system provider or a service provider that uses payroll provider software. If you require additional tests, checks and processes so that a decision can be made, an outsourced provider will not take on that activity as an incorrect decision could make them liable. For an outsourced provider to go back to their client to get a decision made on a test, calculation or process will directly impact payroll processing and undermines the outsourced option for many businesses going forward while also becoming a substantial additional cost over time to the client using the service. Again, if these activities are combined into the payroll software, this will enable an outsourced provider to process pay without going back to their client. They can streamline these extra activities into payroll processing through the payroll system.

4. The impact and the reality of expecting a small business to understand and apply multiple tests, checks and additional processes when processing payroll

Of course, your response from officials will be that small business payroll is less complex, so a lot of the tests won't even need to happen as terms and conditions and work patterns are standard and, in general, won't require any additional checks. NZPPA has a small business membership type and supports outsourced payroll providers that work extensively with small businesses. From my experience and the questions that come through to our PayTech AdviceLine, I know that many small businesses are just as complex as any big ones. The assumption that a small

business is less complex is just short-sighted and undermines the largest sector of employers in New Zealand.

The complexity being added to the present over-the-top Act simply makes understanding the multiple calculations, tests and processes unworkable and unrealistic for small businesses. Usually, they don't have a dedicated payroll practitioner. If they do have someone in-house processing pay, it would be one of many tasks they do, and it must fit in with all the other demands that small businesses face. It should not take additional time as the business cannot afford to invest in an activity that should not be that complex.

So again, including these additional tests, checks and processes into the payroll software would enable the small business to run their payroll without having to invest in skills that cannot be justified relative to the size of the business to cover all aspects of the Holidays Act. Making payroll software take this off the small business sector (as they are already struggling) is a no brainer. They are the largest employment sector in New Zealand, and it will help ensure compliance and that employees are paid correctly for leave.

Minister, in conclusion, I hope my message has come through in the examples provided in this open letter. The bottom line is payroll must not be used to fix the shortcomings of any new Holidays Act. Live up to what has been promoted and legislate the changes to be part of payroll software. If the hype of your better rules approach is actually workable (which I honestly doubt), there should be no issues in doing this. Or front up and admit now that your better rules approach won't provide what is needed for payroll or business.

As always, I will enjoy the hype and spin of your response but will be happy to correct the officials who actually write it.

Yours sincerely,

David Jenkins
NZPPA CEO & Acting President NZIPI
PO Box 2, Bluff 0626
Phone: +64 9 480 6458
Email: david@nzppa.co.nz
Web: www.nzppa.co.nz