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Right Honourable Michael Wood  
Minister for Workplace Relations and Safety  
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Wellington 6160

## **OPEN LETTER TO MICHAEL WOOD MINISTER FOR WORKPLACE RELATIONS AND SAFETY – YOU HAVE TO GET RID OF THE ROT FIRST BEFORE PUTTING YOUR TRUST IN PAYROLL PROVIDERS AND THEIR SOFTWARE TO FIX THE HOLIDAYS ACT!**

Dear Minister

In this open letter, I want to highlight the issues with payroll providers that offer payroll systems to pay NZ employees. A payroll provider can be a company based in NZ that has designed a payroll system, which is sold to businesses to pay their employees. Or they could be an overseas company that provides payroll systems to pay NZ employees. However, that system is designed and developed overseas, and in some cases, overseas providers have no presence in NZ.

The Holidays Act review and your better rules approach is banking on the new legislative changes being systemised into payroll systems (I have already sent an open letter on the associated issues). That is a simplistic and very naive view. We have payroll providers that cannot even meet the requirements of legislation now. If you think changing the Act will alter their behaviour and approach to creating, developing and supporting their payroll systems, it clearly shows you and your officials do not understand payroll and this very real issue.

Numerous areas affect payroll, but to get this into a perspective you and your officials can understand, I will focus on the main areas impacting payroll. I won't name names, but I am putting forward common issues that can be found in some form across nearly all payroll providers. The main focus will be on compliance, but I will also highlight common behaviours from providers that negatively impact businesses using them.

One of the statements often heard from MBIE is that an employer must do due diligence in selecting a compliant payroll system. The selection of a payroll system is a specialised activity. A typical business does not have the internal skills to undertake the task and

challenge a payroll provider. In simple terms, a payroll system is multi-faceted, and the more complex the work environment is the more complex the selection, implementation and configuration become. When looking for a payroll solution, a small business relies on marketing materials (claims made by payroll providers), word of mouth (such as recommendations from an accountant), and a very basic understanding of what they believe a payroll should be doing. They do not have the money to hire payroll SMEs or even understand why that would be an option. There is a belief that if a business provides a payroll system in NZ, then it must be compliant with legislation, but this is one of the myths of payroll.

We have an unregulated industry where payroll providers can make wild claims on compliance not just on the Holidays Act but also on a wide range of legislation that impacts payroll. Here are just some of the claims I discovered by just doing a 10-minute search of payroll provider websites: "KiwiSaver Certified", "Holidays Act Seriously Compliant", "Accurate and Compliant Payroll", "IR-Compliant", and even the "Only company that is compliant with the NZ Holidays and Parental Leave Act". There is no external organisation that certifies payroll software in NZ. I am not asking that a government agency be involved in this (as the public sector lacks the necessary skills or credibility).

Now, some will say the legislation is already in place to challenge payroll providers on the claims they have made about the compliance of their payroll software. An example is the Fair Trading Act. However, I have been involved in three situations over the last five years where different businesses wanted to use the Act to take their provider to task on compliance claims. In all three situations, they decided there was too much risk and cost involved. Because of the issues with the Holidays Act, the provider could use the defence of the business not using the system correctly (but it was about the system's issues and not how it was used), or the system setup was based on instructions provided by the business (they were under the impression the system would be set up to be compliant). Now, these were medium to large businesses, so just think of small businesses without resources or money trying to challenge providers. The balance of power is with the payroll provider, and this must change to become at least a level playing field.

### **Base system compliance and payroll provider behaviour**

The examples provided in the following list have been divided into two groups:

## **1. Base system compliance**

This is about the base payroll system and how the payroll provider designed it. It is not about how the system was configured or used by the business using the system and the payroll practitioner running payroll. The base system has been designed in a way that does not provide the options for the system ever to be compliant. It does not matter how it is configured or used; the system at the foundation level is non-compliant. So, the bottom line is that this is the payroll provider's fault.

## **2. Payroll provider behaviour**

This is about the common behaviours of payroll providers once they are approached about issues with their payroll software. Yes, it's very hard to legislate on, but it needs to be included to give you an overall context of what employers and payroll practitioners face from providers of NZ payroll systems wherever they are based.

### **1. Base system compliance**

- NO transparency in payroll with payroll practitioners unable to see what the payroll system is doing regarding calculations and how they are configured (what data, such as payments included or excluded and over what time period). This is not about a payslip which is an outcome of payroll processing. It's about full transparency throughout the payroll process so payroll practitioners can see, confirm, assess and resolve any issues with a calculation at any point and not just after leave has been paid or finding out about problems years later. It is about being proactive and not reactive. From the audits that NZPPA has undertaken over many years, we have found that what many payroll systems are doing in the background has nothing to do with what legislation requires (for instance, doing averages to define the time when the week is variable and there is no agreement to do so, and the average could disadvantage the employee).
- The payroll system (provider) decides on legislative choices that are not theirs to make (it is the client's responsibility). This is where the provider overlooks what the law states and designs their system based on how they believe a payroll system should do specific calculations. In the Holidays Act, there are default calculations and alternative calculations. Commonly, a payroll provider will use the alternative calculation as the default. For instance, under ordinary weekly pay (OWP), the default is for the employer to define what the employee would be paid for their ordinary working week, Section 8(1). If the week cannot be determined because, for

instance, the employee works variable hours and gets a range of payments, under Section 8(2), the 4-week average can be used. It is typical to see payroll providers not including Section 8(1), and OWP is only calculated using a 4-week average. Now, this is not a fault of payroll practitioners or employers but of the provider and how they have designed their base payroll system. This is just one example of the numerous areas where the system and not the business is causing issues with the Holidays Act.

- The payroll system does not provide the legislative calculations required by law. This is quite common in overseas-designed payroll systems used to pay NZ employees. The provider just changes settings in their overseas-designed payroll system (such as Australia) and then flogs it in NZ as the NZ payroll module of their payroll system. This is usually seen when all the jargon is based on overseas-provided legislation. There are leave types such as long service leave and carers leave (using an Australian example). The worst example is when leave is just paid at the ordinary rate of pay, and none of the Holidays Act requirements are even followed.
- Payroll system software is not kept up to date (in some cases for years after changes are made in law), causing payroll to create manual workarounds to resolve the issues. This is quite common when legislation is changed, but the payroll provider puts it on their development list to be done later (usually much later). For instance, several payroll providers were still using the 4-week average for relevant daily pay (RDP) many years after it was changed to average daily pay (ADP) in 2011. Some payroll providers were still using the repealed Holidays Act 1981 long after the implementation of the Holidays Act 2003. Payroll systems must be kept up to date, and legislation would help ensure they are provided as required by law. To do this, MBIE will have to change their poor leadership and support for payroll providers by not providing details of the requirements of legislative changes until the implementation date. Your MBIE officials need to learn from IRD and how they provide information on changes well before any implementation date. As an IRD representative is part of your better rules approach, I hope they are there for more than just lip service!
- Payroll providers are leaving old calculations in their systems so they can still be used as they are seen as valid options by the system's users. It is quite common to see in payroll systems old calculations that have been superseded by current legislation. There may be a valid reason to have them present if they have to recalculate a previous period on which those calculations are valid. However, using the previous example of the 4-week average for RDP used before 2011, there's no excuse to have a 4-week average

using a divisor of days still present in a payroll system to calculate FBAPS leave.

- This has already been discussed, but some payroll providers are promoting their payroll systems as compliant with legislation, especially the Holidays Act when there is no certification or external process in NZ to verify their payroll systems are compliant.

### **Payroll provider behaviour**

- Payroll providers who have got calculations wrong and know they are wrong (in some cases for many years) but do not front up to their clients. Instead, they just hide changes as an update without acknowledging the issues they have caused, including any liability for underpayments to employees.
- Isolating their clients when issues have been raised by stating no other client has had the same problem. NZPPA sees this often as our members raise the same issues with the same response from the payroll provider, so we know it is a common problem with that provider's software. NZPPA has also even approached several payroll providers, asking for issues to be resolved. The typical response is on a par with the spin and hype you and your officials provide with issues not being resolved.
- Payroll providers are dictating the payroll process based on how their system has been designed and not how payroll is processed in NZ.
- Payroll systems that are well past their use-by date are still used to get subscription money out of clients. This is seen when a financial equity business owns the payroll provider (usually from overseas), which is a trend in NZ.
- NZPPA receives numerous complaints from our members that when the business or payroll practitioner raises an issue with a payroll provider's payroll software, they don't want to know. Our members find that calls, requests, and emails are not answered. If issues are logged, they are not resolved, and in the worst cases, they are forced to look for a new payroll provider.

### **Government purchasing criteria undermining the NZ payroll industry**

My final point is that the government's purchasing criteria for payroll software and services are far too focused on a small group of overseas providers and have created a situation where any new development in the

public domain means the work does not have to go out to tender. They can just sit on the gravy train, making tens of millions from the public purse. When I see that work goes overseas to be undertaken by qualified but far less paid individuals, I see that as a great loss to the NZ payroll industry as a whole. It is also interesting to note that nearly all the major Holidays Act nightmares, and let's throw in Novopay as well, were from overseas providers. Minister, this may be an opportunity for you to show leadership and help develop a home-grown payroll industry with an innovative group of payroll providers to assist NZ businesses going forward in always ensuring employees are paid correctly.

In conclusion, if you want the chance of having the updated Holidays Act work, then one area to start with (along with making the legislation workable in payroll) is sorting out the rot in the payroll systems presently used in NZ. Make payroll providers accountable for offering compliant software that functions the same across all providers. This will ensure consistency and transparency for all involved, including payroll practitioners, small business owners, labour inspectors, auditors, unions and, of course, hard-working employees.

Again, as always, I expect your response written by your officials will be full of spin and hype, stating all the areas covered in this open letter are already underway. As stated in the title, please help get rid of the rot so we have a chance to make the next Holidays Act work!

Yours sincerely,

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