



New Zealand
Payroll Practitioners
Association

Developing and Supporting
Payroll Professionals

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Right Honourable Brooke van Velden
Minister for Workplace Relations and Safety
Private Bag 18888
Parliament Buildings
Wellington 6160

Dear Minister

Open letter on Fundamental Principles for any New Holidays Act

I have been involved in the payroll industry for over 30 years at all levels. I formed the New Zealand Payroll Practitioners Association (NZPPA) in 2007; we now have over 2000 members. NZPPA's primary aim is to develop payroll as a profession in New Zealand. Daily, I talk with payroll practitioners at all levels, working through payroll questions, issues and concerns.

This has given me a rare insight into the New Zealand payroll industry. I honestly live and breathe payroll. I love payroll people because they are the unsung heroes in every workplace.

It was good to see that in December last year, a decision was made to ditch the previous government's latest over-the-top (in terms of complexity, application, and cost) solution to replace the present unworkable Holidays Act.

I have been involved in nearly all government groups and submissions since the Holidays Act 2003 was implemented. I have written numerous letters to previous ministers pleading for payroll to be fully involved and for the issues payroll faces with the act and its processes to be included in any review. Sadly, payroll has had little actual involvement in resolving the issues with the Holidays Act. Payroll involvement has been little more than lip service or ticking a box.

In this open letter, I am not putting forward suggestions for the latest complex world-winning payroll calculations and tests for any new act. The purpose of this letter is to take a step back and focus on what any new act needs to achieve to be workable for all stakeholders. So, I will put forward some basic principles that any new act must be tested or held against to move forward from the last 20 years with a law that works for all employers, employees, payroll providers, and payroll. These principles are based on the following three areas:

- Common sense
- Plain language
- Keeping it simple

Sadly, none of the above have been part of the Holidays Act or any of the numerous reviews I have been involved in since its implementation over twenty years ago.

Yes, Minister, it was good to see that you stated in your response in December 2024, "It is not enough to have 'workable' legislation; we should also strive to reduce complexity and compliance costs as much as possible". But to be honest, we have heard that many times before and then what I call fake payroll academics get put into these review groups (especially anything provided by MBIE), and any real payroll input and practical and operational knowledge is lost for the latest new and shiny approach. The best example of this was the total failure of MBIE's Better Rules approach. As has been seen, its results were roundly denounced in your targeted consultation for a draft bill last year.

So, to get any new act right, here are three principles I want to promote and suggest are needed:

- **Principle 1:** We need an act that allows a manager to sit down with an employee and easily explain, in simple, plain language, how any leave provided under the law was earned, calculated and paid.
- **Principle 2:** We need an act that allows the employer, employee, payroll provider, and any external party (MBIE Labour Inspectorate or even union) to calculate leave using the same simple calculation and arrive at the same outcome each time.
- **Principle 3:** We need an act that pays leave based on what the employee would have earned on an ordinary hour, day, or week of work, not provide an overly inflated rate that does not relate in any way to what the employee would usually be paid.

Principle 1: We need an act that allows a manager to sit down with an employee and easily explain, in simple, plain language, how any leave provided under the law was calculated and paid.

Ninety per cent of daily questions to NZPPA's PayTech AdviceLine are about the Holidays Act. Most of those calls are about explaining how the act works at a basic level. Even after 20 years, it is still not understood by employers, employees, unions, lawyers, MBIE, and, I will say, payroll professionals.

This is because the act has too many moving parts (variations on gross earnings, multiple calculations, how entitlement can change, what a week is and the numerous rules for each leave type included in the act).

We need an act that provides transparency in what leave the employee receives (entitlement) at any time. This way, they can see what they have earned and how it is calculated when taken. The act must also aid the employer in being easily explained and shown on a pay slip. Also, any other external party looking at the same details provided by payroll will come to the same outcome.

So, an essential test for any new Holidays Act is whether it can be easily explained to any party (for example, a manager talking to an employee). The small business sector should be the driver for this as it is the most significant business sector. A small business owner does not have time to become a Holidays Act expert on the present act.

Small businesses need an act that is simple (streamlined), logical (for all parties), provides certainty, and consistently pays an employee correctly, with all payroll systems doing the same calculations using the same methodology.

Principle 2: We need an act that allows the employer, employee, payroll provider, and any external party (MBIE Labour Inspectorate or even union) to calculate leave using the same simple calculation and arrive at the same outcome each time.

In the present act and even in what was put forward by the previous government and MBIE, we have a law that does not provide any certainty about what the employee gets paid for leave. It's common to see that payroll calculates the leave, and the employee does the same, and then the employee discovers a difference between the two and then asks why? If not resolved, this can be escalated to an MBIE Labour Inspector, who will typically come back with a third different leave amount that they believe is payable, and then we go around and around.

At a payroll level, NZPPA sees through its auditing, especially when an employer is moving from their present payroll system (one provider) to a new payroll system (from a different payroll provider). We often see the same data in both payroll systems but different results for leave. There are differences in payroll systems that function at various levels depending on the size and complexity of a business.

This can especially be seen in the small business sector in New Zealand, where payroll systems are, in general, locked down with little or no options to configure. The payroll providers of these systems typically select a range of calculations they believe their users would use in a small business, so we see frequent noncompliance in small business payroll because the payroll system does not provide for all legislative requirements.

Now, payroll providers need to be held liable in any new act (create a level playing field with employers), but at the same time, they need full support from MBIE. The lack of leadership and support from MBIE with the present act can be seen as one of the main reasons why issues with payroll systems and the Holidays Act have occurred.

Keeping it simple concerning calculations has never been part of the present act or what was put forward by the previous government and MBIE's Better Rules approach. There has been a misconception that payroll software will fix all the issues with any new act. This is just not true because the more complex the legislation and its calculations, tests, and checks are, the more compliance and transparency will be buried. This also does not allow the employer to explain and show how the employee's leave was calculated.

To keep it simple, we need to reduce the number of calculations to one for all leave, not the present five (with one – OWP – having three options): one calculation or a base calculation with variations depending on the leave type. The benefit of this one way is that it will streamline payroll software (as long as support is provided), provide certainty, and allow easy education to all stakeholders.

Principle 3: We need an act that pays leave based on what the employee would have earned on an ordinary hour, day, or week of work, not provide an overly inflated rate that does not relate in any way to what the employee would usually be paid.

Bottom line: When an employee takes leave, they should have certainty and expect to be paid what they would usually get for an ordinary week. In the present act, this has been distorted, with an employee who is paid an agreed additional payment, such as an annual bonus, getting the bonus paid but then having the bonus inflate the leave rate for the next 12 months (I call this the gift that keeps on giving).

- **Example 1:** The employee receives the bonus for the agreed work undertaken, but by including this in the leave rate, the employee gets an inflated leave rate from the bonus each time they take leave over the next 12 months through an average weekly earnings (AWE) calculation.

The employee has already received the bonus for the work for which they were assessed and rewarded, but then the Holidays Act creates another payment from the already paid bonus.

- **Example 2:** The employee works variable hours and gets additional payments on top of wages and overtime. In the present act, the variable nature of the work pattern means that if the employee goes sick, then the average daily pay (ADP) calculation would be used.

This calculation will pick up all taxable agreed payments (even an annual bonus) over the last 52 calendar weeks. It can mean payments that have nothing to do with an ordinary day of work for the employee will inflate the leave rate for a day of sick leave. In some cases, NZPPA has seen this inflating the rate by hundreds of dollars.

There should be a distinction between employee payments based on how payments are taxed. This is a logical and straightforward distinction: any payment made to an employee defined as salary or wage is part of the gross for leave (this includes overtime and taxable allowances) under RD5 of the Income Tax Act.

Any payment defined as extra pay would be excluded from gross for leave as it is an additional payment, not a normal part of an employee's regular wage or salary (bonuses, and presently, the 1 week of annual holiday entitlement that can already be cashed up under the act and is excluded from gross for leave) under RD7 of the Income Tax Act.

So, the employee will still benefit from overtime and taxable allowances as the payment is defined as part of salary and wage, which could mean these payments, at times, inflate the leave rate. But these other extra payments won't be included, so the distortion they have been causing in the leave rate is removed.

This distortion has always been in the Holidays Act and is unique to New Zealand when comparing the NZ Holidays Act with how leave is calculated in other countries. Changing the calculations in any new act without sorting out the issues with payments and how they are included or excluded in gross earnings will continue to distort leave payments.

In conclusion, it has been 20 years of an act that has caused havoc for business, with billions of dollars in underpayments to employees, while at the same time providing no certainty for employers going forward along with substantial costs involved in resolving issues. Any new act must be based on principles to ensure it is tested and on the right track even before being passed and implemented. Writing from a payroll perspective, we cannot afford another failure, so please involve real payroll (without just being there for lip service or to tick a box) in developing a new workable act.

Minister, NZPPA and I would be happy to be involved in the process of developing a truly workable (for all) replacement for the Holidays Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Jenkins'.

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