



**Wellington Chamber of Commerce and Business Central**  
**Submission to the Ministry of Business Innovation & Employment**  
**on the**  
**Holidays Act Issues Paper**  
**October 2018**

*Introduction*

Thank you for the opportunity to make a submission the Holidays Act issues paper published in August 2018 by MBIE.

Through our three membership brands, the Wellington Chamber of Commerce, Business Central and ExportNZ, our organisation represents around 3,000 businesses across the central and lower North Island. Our organisation is one of the four regional organisations that make up the Business New Zealand family and is also accredited through the New Zealand Chambers of Commerce network.

The Wellington Chamber of Commerce has been the voice of business in the Wellington region since 1856 and advocates policies that reflect the interest of Wellington's business community, and the development of the Wellington economy as a whole.

Business Central represents employers and provides employment, health and safety, and human resources advice, and advocates policies that reflect the interest of the business community.

As a member of Business NZ, we support their work on the working group and the policy issues they have already highlighted.

*General comments*

It is clear the current Holidays Act is no longer fit for purpose. Despite its recent passage, the Act has not kept up as labour markets have evolved to provide the rewards and flexibility staff demand. Now, the complexity and difficulty in interpreting fairly and accurately the current legislation is problematic.

We are pleased to see the progress made by the Holidays Act Taskforce to address an important issue affecting employees and employers. The comments in paragraph 10 are particularly resonant, "While it often works for a standard, five day, 40 hour week, the Act can be difficult to apply to more diverse working arrangements and complex remuneration packages." Non-compliance is too high, usually due to issues of complexity that are not the fault of employers who want to do the right thing and pay considerable sums for expert payroll systems.

In discussions with our members we find the areas of most particular concern:

- Accurately calculating “Holiday Pay”.
- Definitions of “week” and “day”.
- Discretionary payments.
- When to apply 8% “Pay as you go”.

Our overall desire is for a simple regime that provides the entitlements employees need while making sure employers can confidently follow the law.

#### *Comments on key issues*

##### Difficulties with the Act (1 & 2):

Our comments on the difficulties complying with the current regime are already covered in the ‘general comments’ section above. It is probably correct that the hardest examples to calculate involve workers in hospitality, retail and health; but as we have seen, public sector organisations have struggled too demonstrating how widespread problems are.

##### Affected employees (3 & 4):

The real-world scenarios in this section highlight the complexity of the current regime and the need for change. These problems will only become exacerbated in the future as a more workers move away from standard 40-hour salaries and more personalised remuneration patterns emerge. We agree with the concluding statement from the Taskforce; “This highlights to the Taskforce that any solution needs to be flexible enough to cover all possible arrangements, especially given the expected shifts towards more flexible work patterns in the future.” There are already additional law changes progressing through Parliament including the recently passed Domestic Violence provisions, and bereavement leave for miscarriages.

##### Labour Inspectorate (5 & 6):

Issuing guidance to employers to aid their interpretation and implementation of the law is very useful. Employers do want to comply, and having accurate and succinct information from the enforcement agency on how they view the law is saves time and expenditure on legal advice. A successful model for this is the guidance documents issued by the Financial Markets Authority. They prefer to educate and work with their regulated population in order to boost compliance across the whole sector and do so in a collaborative way. This could extend to providing an amnesty period to resolve non-compliance when widespread misinterpretation of the Act is uncovered.

Businesses, particularly small businesses, rely heavily on their payroll providers. Therefore, the inspectorate should work closely with the main providers to ensure their products are working accurately, thus ensuring the vast majority of employees are being treated fairly.

##### Cross-cutting issues (7, 8 & 9):

It is clear the definitions, units of measurement, and formulas used in a new Act need to be simple, streamlined and easily understood by all. The twelve-month qualifying period for annual leave should be abandoned in favour of starting entitlements from day one. The current Act makes flexible, seasonal and part-time employees’ entitlements difficult to calculate accurately, particularly when those employees’ working arrangements change during the course of the year.

Payroll systems should be able to calculate the correct entitlements for employees without the need for any manual override. Business owners, particularly SMEs, need their technology tools to work accurately and have neither the spare resources nor expertise to second-guess the outputs.

Annual holidays (10 & 11):

Calculating annual holidays is the most significant problem with the Act. This is where standardised definitions and streamlined formulas for calculating holiday pay will benefit the greatest number of affected employers and employees. The rules around pay-as-you-go are particularly vague leading to confusion. Obligations around parental leave are either unclear or burdensome on employers.

BAPS leave (12 & 13):

There is a need to remove the variability and volatility in the amount of pay an employee receives for a given day off. This means looking more at what the employee has earned over a period of time, rather than what they might earn on a given day. This would remove the inappropriate incentives created by the fact that, particularly in respect of relevant daily pay, some days are presently more lucrative than others.

Other issues (14 & 15):

The Issues Paper and Annex 2 provide a comprehensive list of current issues. Specifying a simple accrual method would improve workability and cover leave taken in advance. Consideration should also be given to employees working multiple part-time jobs.

Ideas for change (16, 17, 18, 19 & 20):

We have included various ideas for change in the relevant sections above. In addition, we would encourage consideration of:

- Using hours as the unit of measurement to accrue and pay leave.
- Whether greater use of pay-as-you-go holiday pay can cater for seasonal and variable part-time employees.
- Increase standardisation of how entitlements are calculated so they rely more on formulas that can be executed by payroll software, and less on subjective human judgements.
- Whether “otherwise working day” is a practical concept.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Milford', written in a cursive style.

John Milford  
Chief Executive  
Wellington Chamber of Commerce, Business Central