

LH News

THE NEWSLETTER OF LANGTON HUDSON



Holidays Act reform, finally, almost, shortly, next year?

The Minister for Workplace Relations and Safety Brooke van Velden unveiled policy decisions about long overdue changes to the Holidays Act in September 2025. While the announcements are a significant milestone, the devil is in the detail which will be revealed when a new Employment Leave Bill is introduced early in 2026.

The key changes announced are:

- Annual leave and sick leave will accrue from day one of employment at prescribed rates. This will effectively provide four weeks' annual leave and two weeks' sick leave for employees working a 40-hour week, and a pro rata equivalent for part-time employees.
- Leave will be accrued and taken in hours (not weeks).
- Bereavement and family violence leave will be available for all employees from day one.

- A new otherwise working day (“OWD”) test will be introduced for employees without contracted days or clear patterns of work, based on whether the employee has worked on more than 50% of the corresponding day over the previous 13 weeks.
- All employees will accrue alternative-holiday hours at a rate of one hour for every hour worked on a public holiday that is an OWD for the employee.
- All leave will be paid at an hourly leave pay rate, based on an employee’s lowest wage rate for the day of leave, and excluding commissions, bonuses and variable allowances.
- Parents who take annual leave after a period of parental leave must be paid at the ‘normal’ rate (removing the override which allows for a lower rate of payment currently).
- ‘Casual’ employees will receive a leave compensation payment of 12.5% instead of accruing annual and sick leave.

- Employees who are paid for working ‘additional’ hours, above contracted hours, will receive a leave compensation payment of 12.5% instead of accruing annual and sick leave on those ‘additional’ hours.

There will be a 24-month implementation period to allow payroll providers and employers to make changes to systems (except for the schooling sector, who will get up to 10 years!).

More information is available from the MBIE website [Holidays Act reform](#). The [Key changes](#) page provides a good summary, with more detail in the [Explainer](#).

We will continue to monitor developments and keep clients updated, particularly when the Bill is introduced in early 2026.

If you have any questions or would like assistance drafting submissions on the Bill, please get in touch with one of the team.



New Biometric Processing Privacy Code



Employers who use, or are planning to use, biometric information (e.g. fingerprint or eye scanning, or facial recognition) will need to familiarise themselves with the new Biometric Processing Privacy Code, which comes into force from 3 November 2025.

The Code creates new rules for collecting and processing biometric information. It applies to a range of technologies that are common in the workplace, such as fingerprint, face or eye scans for clocking-in systems or for other identification or authentication purposes, and driver fatigue monitoring systems.

The Code has the potential to catch employers by surprise by applying to practices which may seem trivial, such as requiring employees to set up fingerprint scanning on their work laptops or phones.

WHAT DO EMPLOYERS NEED TO KNOW?

In our January 2025 Stop Press we set out a table comparing the Privacy Act 2020 with the proposed new rules under the draft Code. Now that the Code has been finalised, we summarise below the 13 Biometric Processing Privacy Rules.

Rule 1

Biometric information must not be collected unless the collection is for a lawful purpose, and is necessary for that purpose, and the organisation has adopted reasonable privacy safeguards.

In assessing whether the collection is necessary, an organisation must undertake a proportionality assessment, that takes into account:

- the scope, extent and degree of privacy risk;
- whether the benefit outweighs the privacy risk; and
- the cultural impacts and effects on Māori.

Rule 2	If an organisation collects a biometric sample, the information must be collected from the individuals concerned, except in limited circumstances.
Rule 3	Before, or at the time, biometric information is collected, the organisation must notify the individual: • each specific purpose for which the information is being collected; • whether there is any alternative that is available to the individual; and • a location, address or other method for the individual to obtain further information about the biometric processing. The organisation must also notify the individual as soon as practicable a number of other matters, including: • the intended recipients; • the consequences for the individual if the information is not provided; • the rights of access to, and correction of, the information; • whether the organisation's proportionality assessment is publicly available or available on request; • the organisation's retention period for biometric information; and • how the individual can raise a concern or make a complaint.
Rule 4	The collection of biometric information must be by lawful means, that is fair and not unreasonably intrusive.
Rule 5	Biometric information must be protected by reasonable security safeguards.
Rule 6	An individual is entitled to access their biometric information.
Rule 7	An individual is entitled to request correction of their biometric information.
Rule 8	An organisation must not use or disclose biometric information without taking reasonable steps to ensure that the information is accurate, up to date, complete, relevant and not misleading.
Rule 9	An organisation that holds biometric information must not keep that information for longer than is required for the purposes for which the information may lawfully be used.
Rule 10	If an organisation holds biometric information that was not collected in accordance with Rule 1, it must not use the information for biometric processing, unless a proportionality assessment is first undertaken and privacy safeguards are in place. Rule 10 also sets out limits on the use of biometric information that has been lawfully collected in accordance with Rule 1.
Rule 11	An organisation that holds biometric information must not disclose it to any other person or agency, except in the circumstances set out in Rule 11.
Rule 12	Biometric information may only be disclosed to a foreign person or entity in the circumstances set out in Rule 12.
Rule 13	Organisations may only assign a unique identifier in the circumstances set out in Rule 13.

The Code applies from 3 November 2025 to new biometric processing systems that start on or after that date. For organisations that are already using biometric processing (prior to 3 November 2025), there is a grace period until 3 August 2026 for them to come up to compliance.

The Code does not apply to:

- employers that manually process biometric information (i.e. without any technological or computer system comparing or analysing the biometric information);
- biometric processing by a health agency, where the biometric information is health information;

- employers carrying out biometric processing for a trial period.

The information above is a brief summary only, and the Code is quite comprehensive and at times onerous. When introducing new biometric processing systems, there is also the need to consider other dimensions of employment law, such as compliance with consultation requirements under employment agreements, collective agreements and policies, mitigating personal grievances, and developments in case law. Therefore, if you are using, or planning to use employees' biometric information, we recommend contacting our team for advice.



Case Notes

FORESEEABILITY ISSUES OVERTURN \$40K AWARD

In *Chief v New Zealand Defence Force v YFX* [2025] NZEmpC 161, the Employment Court overturned a finding made by the Employment Relations Authority that YFX, a civilian employee of the New Zealand Defence

Force ("NZDF"), had been constructively dismissed.

YFX was employed by NZDF from 2008 until her resignation in July 2020. She lives with severe and complex mental health conditions, including Dissociative Identity Disorder, PTSD, and anxiety. During her employment, a number of workplace issues arose concerning her wellbeing, conduct, and interactions with colleagues. NZDF invited YFX to discuss those issues and informed her that it was not disciplinary in nature. YFX then had a serious mental health episode and went on stress related leave. NZDF sought medical information from her, to better understand her conditions.

YFX raised several unjustified disadvantage personal grievances for which the parties attended mediation. The disadvantage claims broadly alleged:

- NZDF had failed to address or take steps to mitigate the impact of various workplace issues on her (particularly as it was aware of her mental health history);
- there had been inaction by NZDF when made aware of her various concerns; and
- NZDF had not demonstrated good faith in its employment relationship with her.

YFX resigned in July 2020, claiming constructive dismissal because of breaches of duty by NZDF that led to her resignation.

The Court found that all of YFX's claims of unjustified disadvantage were either raised out of time or were not made out. The Court also found that she had not been constructively dismissed due to a lack of (a) causation (i.e. whether the circumstances led to the resignation), and (b) foreseeability (i.e. whether the employer's breach was sufficiently serious to make the resignation reasonably foreseeable to it), which is an objective test.

The Court rejected the proposition that all the grievance claims contributed to YFX's decision to resign. Most of the events occurred between March and October 2019, and so the significantly later resignation was an issue for YFX's case.

The Court found that the situation was difficult for all involved, but NZDF went to considerable lengths to address YFX's workplace needs. It had taken reasonable and practical steps to accommodate her sensitivities and manage her conditions, including making workplace adjustments, holding wellness meetings, and seeking medical advice to better understand how it could appropriately manage her conditions in the workplace.

OUR VIEW

Cases involving mental health issues in the workplace are increasingly frequent. This decision provides a reminder for employers of the need to exercise care in seeking information, providing support and attempting to accommodate an employee's needs.

You can read the Employment Court decision [here](#).

ROAD TO LIABILITY PAVED WITH GOOD INTENTIONS

In *Tillmans Fine Furniture v Rookes* [2025] NZEmpC 152 the Employment Court upheld a decision of the Employment Relations Authority that a fixed term agreement entered into shortly after dismissal under a 90-day trial period did not comply with the requirements of section 66 of the Employment Relations Act 2000 ("ERA 2000").

Initially, Cindy Rookes was employed by Tillmans as a sales consultant pursuant to a 90-day trial period.

On 13 December 2022 she was dismissed in accordance with her 90-day trial period, and no issues arose from this. The reason for the dismissal was that Ms Rookes' product knowledge was not sufficient for her role.

On 15 December 2022, Tillmans offered Ms Rookes employment in the same role on a fixed term basis from 20 December 2022 until 25 February 2023.

The agreement stated that the genuine reason for the fixed term was to allow Ms Rookes a reasonable amount of time to search for a new job after the Christmas/New Year holiday. There is no dispute that the employer was genuine in offering Ms Rookes the fixed term out of a sincere intention to help her over the holiday season.

The Court held that the fixed term agreement did not comply with the section 66. It determined that even though the employer wanted to help Ms Rookes by keeping her employed for the holiday period, this did not constitute a genuine reason based on reasonable grounds.

In coming to its decision, the Court found:

- Tillmans had an ongoing need for a sales consultant and simply did not want Ms Rookes permanently in the role;
- the fixed term was used to avoid the obligations of permanent employment, including the risk of a personal grievance; and
- the arrangement deprived Ms Rookes of statutory protections, which is expressly prohibited under section 66(3) of the ERA 2000.

For those reasons, the Court found the fixed term was invalid. The dismissal was therefore unjustified. The Court upheld the Authority's award of \$15,000 in hurt and humiliation compensation and three weeks' lost wages.

OUR VIEW

This was an expensive lesson for the employer, who in hindsight would have been better off relying on the trial period to terminate the employee's employment. Attempting to extend the 90-day trial period by framing up a fixed term agreement based on altruistic reasons (e.g., to help an employee) did not pay off.

You can read the full Employment Court decision [here](#).

FAIR PROCESS PREVAILS DESPITE FLAWS

In *VXO v Health New Zealand – Te Whatu Ora* [2025] NZEmpC114, the Employment Court dismissed a challenge by a senior medical officer following his dismissal for medical incapacity.

The case arose from a series of complaints made by a resident medical officer ("RMO") regarding a senior medical officer's ("VXO") inappropriate and unprofessional conduct, including text messages of a suggestive and personal nature. Examples included texts such as "are you texting during handover, you naughty thing?", remarks about her being "more fun to text than in real life", and unsolicited commentary on her cancelled wedding and interactions with her family.

VXO defended his behaviour as misjudged humour, citing a workplace culture of being collegial and supportive. Te Whatu Ora appointed a senior employee to investigate. VXO admitted to several allegations during the inquiry. However, before the disciplinary process concluded, VXO became medically unfit to work due to a serious health condition, and went on extended sick leave. As a result, the employer paused the disciplinary process.

After nine months of unpaid leave and with medical reports showing no likely return to work, the employer terminated VXO's employment due

to medical incapacity. VXO raised various claims, including personal grievances and breach of the collective agreement. VXO argued that Te Whatu Ora's investigation was flawed, biased and lacked independence. He objected to being placed on special leave without consultation and claimed the dismissal was procedurally and substantively unjustified. Te Whatu Ora maintained that its actions were fair and consistent with its obligations.

Both the Authority and the Court dismissed VXO's claims. The Court found:

- The investigation was fair and sufficiently independent, with no evidence of bias or procedural impropriety (there is no rule requiring an employer to engage in an external investigator).
- The dismissal for medical incapacity was justified given the ongoing incapacity and aligned with the terms of the collective agreement.
- While the failure to consult VXO before placing him on special leave was a procedural flaw (i.e., not being provided an opportunity to comment on the proposal to take sick leave), it did not result in an unjustifiable disadvantage.

Importantly, the Court noted that had VXO been dismissed for serious misconduct, proportionality would have been a key issue. Although the allegations were serious and the disciplinary process was underway, no final decision had been made at the time VXO went on sick leave. The Court declined to speculate on whether a hypothetical dismissal for misconduct would have been justified.

OUR VIEW

This case reinforces that employers can navigate complex disciplinary and medical incapacity matters with confidence, provided they act fairly, follow contractual procedures, and consider the appropriate process when health issues arise. The Court's decision affirms that internal investigations can be fair and valid, provided they are objective and procedurally sound. Minor procedural imperfections, such as a failure to consult before placing an employee on sick leave, are not fatal to an otherwise fair process.

You can read the full Employment Court decision [here](#).

WAGE DEDUCTIONS NEED CAREFUL CONSIDERATION FOR SEASONAL WORKERS

In *Soapi v Pick Hawke's Bay Inc* [2025] NZEmpC 208, the Employment Court found that Pick Hawke's Bay breached key provisions of the Wages Protection Act 1983 ("WPA") and the Minimum Wage Act 1983 ("MWA"). The breaches arose from unlawful deductions made from the wages of three seasonal workers employed under Immigration New Zealand's ("INZ") Recognised Seasonal Employer ("RSE") visa scheme.

Ms Soapi, Mr Lau, and Mrs Lau were recruited from the Solomon Islands to work in Hawke's Bay over various seasons. Under the RSE scheme, Pick Hawke's Bay was required to obtain an Agreement to Recruit ("ATR") from INZ, which regulates the lawful and fair recruitment of overseas seasonal workers.

As part of its obligations under the ATR, Pick Hawke's Bay was also responsible for providing pastoral care to the workers. This included the provision of suitable accommodation during their employment in New Zealand.

During their employment, Pick Hawke's Bay made deductions from the employees' wages for:

- reducing a debt balance it claimed the employees owed for variable expenses incurred in bringing them to New Zealand and their repatriation to the Solomon Islands (including the return airfare, the cost of the RSE visa, domestic travel and an advance on wages);
- deductions for other agreed costs such as uniforms (Pick Hawke's Bay shirts), accommodation, fuel, food, work or wet gear, lost kitchenware, immunisation, and storage boxes; and
- overpayment(s).

Once the deductions were made from the employees' pay, they were often left with only \$100 per week. The Court noted that this arrangement left employees financially vulnerable, especially given the limited duration of their seasonal employment and the high cost of accommodation and other deductions.

The Court held the deductions were unlawful under the WPA because the:

- deductions for personal protective equipment violated the Health and Safety at Work Act 2015, which prohibits charging employees for safety gear; and
- deductions were made without proper written consent from employees and were not submitted to INZ for approval, as required under the RSE scheme.

Additionally, the deductions were also found to be in breach of the MWA, as they resulted in the employees' pay being reduced below the minimum wage for the hours worked. Deductions for the accommodation provided by the employer were unlawful as they were not fixed by the employment agreements between the parties, and exceeded 5% of their minimum rates of pay.

OUR VIEW

The case is a cautionary tale for employers in two senses: (1) for generally recouping costs for hiring migrant workers; and (2) to ensure that any deductions (even if lawful) do not bring the pay an employee receives below minimum wage. Employers should be careful to review an employee's hours against proposed deductions to ensure they do not inadvertently fall foul of the MWA.

You can read the full decision of the Court [here](#).



Laws, Laws, Laws – an Employment Legislation Round-up

LEGISLATION	DESCRIPTION	STATUS
Holidays Act Reform	The Government has announced a plan to introduce new legislation (the “Employment Leave Act”) to replace the Holiday Act 2003. For more information, see our article above.	The Minister for Workplace Relations and Safety announced that a Bill will be prepared and issued for public consultation in the first quarter of 2026.
Employment Relations Amendment Bill	The Government has introduced a Bill proposing a suite of changes to the Employment Relations Act 2000, including: • providing greater certainty for contracting parties with the introduction of a “gateway” test; • strengthening the consideration of and accountability for the employee’s behaviour in the personal grievance process; • introducing a threshold for unjustified dismissal personal grievances; and • removing the “30-day rule” for new employees where their role is also covered by a collective agreement. For a more in-depth summary of the changes, refer to our July 2025 newsletter.	The Bill was introduced on 17 June 2025 and is now at Select Committee stage. Submissions closed on 13 August 2025. The Select Committee report is due on 17 November 2025. The Minister for Workplace Relations and Safety has said she is aiming for the Bill to be passed into law in the first quarter of 2026.

Employment Relations (Pay Deductions for Partial Strikes) Amendment Bill	The Government has reinstated the ability for employers to make pay deductions when employees undertake partial strike action. Employers can now either make a proportionate deduction based on identifying the work not performed, or deduct 10%, subject to first notifying employees of the deduction. Unions can apply to the Employment Relations Authority for a determination on whether the deduction has been calculated correctly.	The Bill was passed on 24 June 2025, and received Royal assent on 30 June 2025. It came into force on 1 August 2025.
Employment Relations (Termination of Employment by Agreement) Amendment Bill	This Bill seeks to protect negotiations between an employer and an employee to terminate the employee's employment, whether or not there is a dispute on foot. The fact an exit offer is made by an employer would not constitute grounds for a personal grievance and evidence of the negotiations would be inadmissible, except in limited circumstances.	This Bill was introduced to Parliament in November 2024. The Bill passed its first reading on 9 April 2025, and is now at Select Committee stage. Submissions closed on 10 April 2025. The Select Committee report is due on 7 November 2025.
Privacy Act Amendment Bill	This Bill has amended the Privacy Act 2020 in several ways, including: • by creating a new information Privacy Principle (IPP 3A) that requires agencies to notify individuals when they collect personal information about the individual indirectly, subject to certain limited exceptions; and • extending the grounds upon which requests for access to personal information can be refused where the individual concerned is under the age of 16 or disclosure would be likely to prejudice the safe custody or rehabilitation of the individual.	The Bill received Royal assent on 23 September 2025 and comes into effect on 1 May 2026.
Employment Relations (Restraint of Trade) Amendment Bill	This Bill seeks to amend the law on restraint of trade clauses, including by prohibiting restraints of trade for low and middle income employees, requiring employers of higher income employees subject to a restraint of trade to compensate for the restraint, and to cap all restraints at 6 months in duration. See our August 2023 Stop Press for more information.	This Bill passed its first reading in July 2023. The Select Committee released its report on 24 May 2024. It made a number of recommended amendments, but recommended by majority that the Bill not proceed. The Bill is still awaiting its second reading and is unlikely to pass.

Human Rights (Prohibition of Discrimination on Groups of Gender Identity or Expression and Variations of Sex Characteristics) Amendment Bill	This Member's Bill aims to uphold Te Tiriti O Waitangi by prohibiting discrimination against takatāpui and rainbow (LGBTIQ+) individuals or expression and variations of sex characteristics under the Human Rights Act 1993. This Bill would ensure that this community has increased human rights protections including the ability to take cases of the above nature to the Human Rights Commission.	The Bill is awaiting its first reading.
Employment Relations (Employee Remuneration Disclosure) Amendment Bill	This Bill has amended the Employment Relations Act 2000 to protect employees who discuss or disclose their remuneration, by enabling an employee to raise a personal grievance if they are subject to "adverse conduct for a remuneration disclosure reason", including discussing or disclosing their remuneration.	The Bill was passed on 20 August 2025, and received Royal assent on 26 August 2025. It came into force on 27 August 2025.
Health and Safety at Work Act reform	On 14 June 2024, The Government announced substantial consultation on work health and safety. Key points of consultation include: • whether health and safety requirements are too strict or too ambitious to comply with; • difficulties caused by work health and safety legislation overlapping with other requirements; • actions taken by business, the reasons behind them and their effectiveness; • the reasonableness of consequences for non-compliance with health and safety obligations; and • risk management thresholds. In April 2025, the Minister announced proposed changes to the health and safety regime, including: • carve outs for "low risk" businesses; • increased reliance on approved codes of practice ("ACOPs") in specific sectors and industries; • allowing individuals and groups to develop ACOPs; • leaving day-to-day management of health and safety risks to managers (rather than directors and boards); • "sharpening" the purpose of the Health and Safety at Work Act to focus on critical risks; • clarifying boundaries between the Act and regulatory systems; and • reducing notification requirements to the regulator to only significant workplace events.	Feedback on the health and safety regulatory system has been sought by MBIE, and consultation closed on 31 October 2024. The feedback received will now be reviewed by MBIE and used to inform its advice to the Government.

Use of Biometric Information in New Zealand	The Privacy Commissioner sought public submissions on whether further regulations are necessary in respect of the use of biometric information in New Zealand, such as verifying people's identities online, border control, security, and policing and law enforcement. The Privacy Commission has now issued the Biometric Processing Privacy Code 2025. For more information, see our article above.	The Biometric Processing Privacy Code 2025 was issued on 21 July 2025. It is effective from 3 November 2025, and employers already utilising biometrics have until 3 August 2026 to comply.
Public Service Amendment Bill	The Bill proposes to amend the provisions in the Public Service Act that mandate the sector prioritises diversity and inclusiveness. The Bill seeks to: • remove the Public Service Commissioner's duty to develop a workforce that reflects societal diversity; • repeal section 75 entirely, which mandates promoting diversity and inclusiveness in public service workplaces; and • exclude workforce diversity and inclusiveness from government workforce policy considerations.	The Bill had its first reading on 31 July 2025, and it is now at Select Committee stage. Submissions were due by 31 August 2025 and the Select Committee report is due on 1 December 2025.
Modern Slavery and Worker Exploitation	In 2023, the Ministry of Business, Innovation and Employment released a discussion document proposing legislation to respond to modern slavery and worker exploitation in operations and supply chains through a series of reporting and due diligence requirements. The legislation proposed would have a cascading set of obligations for entities, based on the size of the entity. The Crimes (Increased Penalties for Slavery Offences) Amendment Bill proposes to amend the Crimes Act 1961 to increase the maximum prison term and fine for slavery offences.	We are yet to see any substantive progress from the new Government on this matter, and the leadership group established to provide advice on the topic was disbanded in May 2024. This work is now reported to be 'on hold.' The Crimes (Increased Penalties for Slavery Offences) Amendment Bill passed its first reading on 17 December 2024, and the Select Committee's report was issued on 22 August 2025. The Bill awaits its second reading.

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If you have any queries or you need advice on any of the matters raised in this Newsletter, please contact us.

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