LH StopPress
LANGTONHUDSON
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UPDATE ON HOLIDAYS ACT REFORM

The Holidays Act's days are numbered, as the Employment Leave Bill remains on track to be passed before this year's election.

The Bill has now been through the public consultation process, and the Education and Workforce Select Committee has proposed some changes.

The key features of the Bill remain intact. These are summarised on MBIE's website: Holidays Act reform: Employment Leave Bill | Ministry of Business, Innovation & Employment.

Summarised in the table below are the key changes proposed by the Select Committee, and the issues we identified in our March Stop Press that have remained unaddressed.

We will continue to monitor the Bill's progress through Parliament. Once we have its final wording, and confirmation of when it will take effect (current projection being 2028), we will provide another update on what clients need to know.

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Original Bill	Changes proposed by Select Committee	Our view
Annual leave		
Annual leave will accrue at 0.0769 per hour worked (except for casual hours and additional hours). Leave hours are "banked" with no balance adjustment if contracted hours change.	No material change.	The issue of banking accrued hours acting as a disincentive for employees moving from part-time to full-time, remains.
Sick, bereavement and family violence leave		
Sick leave will accrue at 0.0385 hours per standard hour worked (except for casual hours and additional hours) from day one of employment up to a maximum of 160 hours. Part-timers will have a pro-rated sick leave entitlement. Employees will be eligible for bereavement and family violence leave from day one of employment.	No material change.	The issue of the availability of paid sick leave from day one increasing employer costs and potentially impacting productivity, particularly in high turnover industries, remains.
Leave compensation payment		
A leave compensation payment ("LCP") will be payable at 12.5% on: ❖ each "casual hour" worked; and ❖ each "additional hour" worked (i.e. paid overtime or time worked under an availability provision which is separately paid). If an employer incorrectly accrues leave when an LCP should have been paid, the employee can: ❖ either take the annual leave component or cash it up (at 7.69%); and ❖ take the sick leave component.	If an employer incorrectly accrues leave when an LCP should have been paid, the rate at which the employee can choose to cash up the annual leave payment has been increased to 8.61%, in order to make good the employee to the full 12.5% value of the LCP the employee missed out on. The Select Committee decided against allowing employees to cash up the sick leave component because it would add too much complexity.	This change makes sense, but (compared to the Original Bill) it increases the cost for employers who mistakenly accrue leave instead of paying an LCP.
Casual workers		
"Casual hours" means hours that, under the employee's employment agreement, the employer	No material change.	The issue remains that whether hours are "casual hours" may evolve over time and not be clear,

is not required to offer and the employee is not required to accept.		and a "set and forget" approach to payroll will continue to carry a high risk of non-compliance.
Notional rosters		
Notional rosters are required when it is not possible to determine one or all of the following: ❖ the number of the employee's standard hours; ❖ the days they will be worked; and ❖ the hours in each day they are to be worked. Employers must agree a notional roster at the time the employment agreement is entered into and ensure it is kept up to date. Notional rosters will be used to determine leave accrual and when leave can be taken.	Notional rosters must, to the extent possible, be an accurate reflection of an employee's intended pattern of standard hours. Default position remains that a notional roster must be agreed at the outset and kept up to date. However, parties have the option to agree to a methodology for determining the notional roster.	The administrative burden of agreeing to notional rosters remains. However, the option of agreeing a methodology to determine the notional roster provides more flexibility which is a positive change for employers.
Double-dip		
Where an employer incorrectly allows a cash up of accrued annual leave or alternative leave, the employee would be entitled to both keep the cash and have their leave reinstated.	Employees will be entitled to have their leave reinstated only. The Select Committee explains this proposed change is so that employers can still seek recovery of the overpayment from employees.	This proposed change removes the issue of double-dipping and is therefore a positive change for employers.
Public holidays – otherwise working day		
A public holiday will be treated as an otherwise working day ("OWD") if the employee worked on the day in at least 7 of the preceding 13 weeks (if the employee does not have specific contracted days or a regular pattern of work). New administrative requirement for employers to notify these employees about whether a public holiday is an OWD and, if so, the number of hours the employee would have worked.	No material change.	The administrative burden of having to notify employees whether a public holiday is an OWD remains.

Public holiday – on call		
If an employee is on call on a public holiday on an OWD, they: ❖ receive a leave payment in respect of hours they did not work, but otherwise would have worked if it was not a public holiday; ❖ are paid T1.5 for each hour worked; and ❖ accrue alternative leave for the number of hours they were on call but did not work.	No material change.	Issue remains that there is no definition in the Bill of what "on call" means.
Alternative leave		
Employees are entitled to accrue alternative leave for each hour, or part of an hour, that they work on a public holiday that is an OWD.	No material change.	Issue remains that "part of an hour" is not defined in the Bill, and that employers might arguably be required to accrue alternative leave in small fractions of an hour.
Transfer of public holidays		
Parties can agree to transfer a whole public holiday to another day upon an employee's request, or part of a public holiday on either the employer's or employee's request.	No material change.	Issue remains that an employer will no longer be able to initiate agreement with an employee to transfer a whole public holiday to another day.
Multiple roles with same employer		
If an employee has multiple roles with the same employer, then they must be provided with separate leave entitlements and leave balances for each role.	Default position remains as per the Original Bill. However, parties can agree in writing to a different approach on how multiple roles will be treated for leave purposes.	This proposed change introduces more flexibility for employers.
Remediation process		
Employers can elect to follow a legislative process to provide reasonable compensation to employees as a way to resolve outstanding liabilities under the Holidays Act 2003. The aim is to provide an efficient way to resolve historical underpayment issues using a process that is easy for employees and employers to understand and use.	Minor changes.	The issue remains that employers will not be able to use the new remediation process until after the Remediation Regulations have been made.

Regulations setting out the detailed mechanisms for calculations will follow after the Bill is passed ("Remediation Regulations").		
Transfer of employment		
Where employment is being transferred to a new employer, the original employer and the new employer can agree on whether untaken leave will be transferred to the new employer.	New record-keeping requirements for both the original employer and the new employer about how employees' leave entitlements are being treated in the transfer.	New administrative burden for employers in a transfer of employment scenario.
KiwiSaver		
The current exclusion in the automatic enrolment rules for employees who have "intermittent or irregular" work patterns will be repealed.	No material change.	The administrative of burden for employers having to automatically enrol casual employees into KiwiSaver remains (unless the employee is under a "contract of service that is for a period of 28 continuous days or less" or a "casual agricultural worker").