LH News
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The new leave regime is here: time to get ready

The long-awaited replacement for the Holidays Act 2003 has been passed into law. The Employment Leave Act 2026 (the "Act") will take effect on 6 August 2028 and replace the Holidays Act 2003 in its entirety.

The Act brings to a close several years of reform aimed at addressing the well-known complexity and confusion surrounding leave entitlements under the Holidays Act 2003. That complexity has resulted in widespread non-compliance and costly remediation exercises across a range of sectors.

We have been tracking the Act's progress since it was introduced to Parliament earlier this year (see our March and July Stop Press updates). The Act was passed largely in line with the version reported back by the Education and Workforce Select Committee, including the changes we outlined in July.

This article recaps the key changes under the new Act and sets out practical steps employers can start taking now to prepare for the transition in 2028.

A SNAPSHOT OF THE KEY CHANGES

The key changes under the new legislation are:

- **Hours-based leave accrual:** Annual leave will accrue at 0.0769 per hour worked, and sick leave at 0.0385 per hour worked. Leave entitlements will be "banked" as hours rather than calculated based on weeks of service.
- **Leave Compensation Payments:** A new 12.5% Leave Compensation Payment ("LCP") is payable on all casual hours and additional hours (paid overtime and availability-related hours).
- **Notional rosters:** Employers must agree notional rosters with employees at the outset of employment where standard hours, days, or daily hours cannot be determined. Parties may alternatively agree a methodology for determining the notional roster, which provides some flexibility but remains a new administrative requirement.
- **Public holidays:** A public holiday will be an "otherwise working day" ("OWD") if the employee worked on that day in at least 7 of the preceding 13 weeks. Employers must notify affected employees whether a public holiday is an OWD and, if so, the hours the employee would have worked. The Act also introduces detailed rules for on-call work on public holidays, including alternative leave accrual and new record-keeping requirements.
- **Sick, bereavement and family violence leave from day one:** Employees will be eligible for paid sick leave, bereavement leave and family violence leave from the start of employment, rather than after six months.
- **Transfer of employment:** Where employment transfers to a new employer, the parties can agree whether untaken leave transfers, but both employers will have new record-keeping obligations.
- **Remediation process:** A new legislative remediation process will allow employers to resolve historical Holidays Act underpayment issues. However, the detailed mechanisms are not yet available and will be set out in Remediation Regulations to follow.
- **KiwiSaver:** The automatic enrolment exclusion for employees with "intermittent or irregular" work patterns will be repealed, meaning casual employees will need to be enrolled unless engaged for 28 continuous days or less.

PREPARING FOR THE TRANSITION

The new regime has a two-year lead-in, but the scale of the change means employers should start preparing now. To help with that, we have set out below a table of key employer considerations for the transition period.

ACTION	KEY CONSIDERATIONS
1. Workforce planning: Identify the parts of the workforce most affected by the Act and test whether current workforce models remain fit for purpose.	**Review reliance on casual labour:** the LCP could significantly increase labour costs for businesses that rely on casual workforces. Some employers may find reducing reliance on casuals and instead using more permanent part-time arrangements, more cost-effective. **Review reliance on paid overtime:** the cost of LCP on top of overtime hours could significantly increase labour costs for businesses that rely on employees who work paid overtime. Consider whether it will be more economical to increase contracted hours in order to reduce overtime, and/or employ salaried employees (with availability provisions and no overtime pay). **Review on-call arrangements:** businesses relying on on-call arrangements on public holidays may want to reassess whether such arrangements are strictly needed given the potential for these arrangements to become more costly (see our Stop Press dated March 2026).

	Review variable pay arrangements: businesses that pay employees variable allowances, incentive payments and commissions may find labour costs reduce, because they are excluded from the hourly rate calculations under the Act. Increasing the proportion of these variable remuneration elements as a part of employees' total remuneration packages, could bring down costs. **Reassess public holiday rosters:** the proposed rules could make short or partial-day public holiday shifts more expensive, potentially favouring full-shift rostering or using alternative operating models on public holidays.
2. Budgeting: Budget for potential costs associated with upgrading payroll systems and higher compliance costs.	**Increased leave costs** including from entitlements arising from day one, LCP 12.5% loading on casual hours and additional hours, and public holidays arrangements becoming more expensive. **Payroll system upgrades** could create new one-off and/or ongoing costs, from payroll providers and seeking legal advice. **Employment agreement and policy updates** may result in one-off costs with service-providers. **Record-keeping requirements become substantially more demanding**, with detailed leave, hours worked, and LCP records required for up to six years. Non-compliance may result in financial penalties.
3. Payroll systems: Engage with your payroll provider early to understand its roadmap for the transition	**System capabilities** Key areas to discuss with payroll providers include: • whether the system will be able to accrue leave and calculate leave payments in hours rather than days or weeks; • how the system will identify and apply the correct leave accrual and payment rules for standard, additional and casual hours; • whether the system will be able to calculate and apply LCPs correctly for additional and casual hours; • how allowances, commissions, bonuses, piece rates and other payments will be treated, given different calculation rules may apply under the new regime; • how the system will support OWD assessments and the new employee notification requirement, including whether the system can notify employees when a public holiday is treated as an OWD and record the hours they would otherwise have worked; • whether the system can apply notional rosters for leave accrual and payment purposes, where those are required; • how the system will manage leave accruals, leave payments and entitlements where employees perform two or more roles; and • implementation timeline for updates to the system, in readiness for August 2028. **Existing leave balance and conversion** The move to an hours-based framework will require existing leave balances to be converted into hours. Employers should discuss with their payroll provider: • when the conversion process will occur; • what information the payroll provider will require from your business; and • whether additional work may be needed for employees with irregular hours, multiple roles or other complex working arrangements. Employees with irregular hours, multiple roles or other complex working arrangements may require additional work to determine the correct opening balances before conversion.

4. Record Keeping: Review record keeping systems and procedures to ensure it complies with the expanded obligations.	The six-year record-keeping requirement has not changed and many other record keeping obligations remains the same. However, the amount of information employers must record has increased under the new Act. In particular, employers will need to ensure they can accurately record and retain: • the number of hours worked by each employee on each day in each pay period; • **leave entitlements, accruals, and leave balances in hours;** • records of when leave is taken, the number of leave hours taken, and the amount paid; • **any Leave Compensation Payments (LCPs), including the hours to which they relate and the amount paid;** • **notional rosters (where applicable);** • **public holiday records, including hours worked, on-call hours, transferred public holidays, and compliance with public holiday transfer requirements;** and • sufficient information to demonstrate how leave entitlements and leave payments have been calculated. Employers should review their systems (including payroll) and processes early to determine whether they can meet the new record-keeping requirements. If you are unsure what information must be recorded under the new regime, seek advice early. *__Bold__ denotes new obligations.
5. Notional rosters: Plan the practical approach for agreeing or calculating notional rosters where they may be required.	Notional rosters are required for employees who don't have specified standard hours (or days they will be worked on). This includes employees with guaranteed hours which are set by variable or flexible work rosters, without regular patterns. They are not needed for employees who only work additional hours, i.e. "casual" employees, or regular rotating rosters. Notional rosters are used to determine when employees may take leave, when leave is requested before a work roster has been set. For employees with irregular or variable hours, consider identifying at the point of hire how any notional roster will be agreed or calculated, so there is a practical framework in place before leave issues arise. This may include: • basing notional rosters on intended standard (required) hours and the days that employees are likely to work those hours; • building notional rosters, or methodologies for determining them, into the onboarding process; • considering whether hours should be spread over the most frequently worked days e.g. if an employment agreement guarantees 16 hours and the employee most frequently works Mondays to Thursdays, the notional roster could be for four hours on each of Monday to Thursday; • checking that the notional roster provides the number of hours the employee is guaranteed; and • looking at actual hours and days worked over a 13-week period, as Labour Inspectors tend to give more weight to that timeframe. Employers may also want to consider whether periodic reviews are needed, for example every 13 weeks or where there is seasonal variation.

6. Employment Agreements: Update employment agreement terms and plan the transition	Employment agreements will need to be reviewed and updated to align with the Act by 6 August 2029, at the latest. Between August 2028 and August 2029, if employment agreements are not updated then the more favourable entitlement will apply. However, this comparison exercise will be complex and costly, so we recommend employers have their agreements in order by 6 August 2028, if possible. The key issue will be the most practical timing and process for making those changes before 6 August 2028: • For existing employees, changes to employment agreements will require employee agreement. Employers may want to align those changes with a natural employment cycle, such as a pay review or role change in the lead-up to commencement of the Act. • Planning the process early for existing employees should avoid employees seeking changes to other terms and conditions as consideration for entering into updated agreements at the last minute. • Existing references to fixed leave entitlements under the Holidays Act 2003, such as four weeks' annual leave, could create unintended enhanced contractual entitlements under the new regime if they are not replaced by 6 August 2029. • For new employees, updated templates should be ready for use from August 2028. Transitional wording could be introduced into agreements to avoid the need for changes at commencement, particularly for employees who begin employment close to the Act's commencement date. • Where notional rosters are required, employers may want to consider whether the agreement needs to provide for the applicable roster or methodology, alongside the practical matters set out above.
7. Collective agreements: Build leave changes into collective bargaining or variation processes	Collective agreements will need to be reviewed and updated to align with the Act also. Any bargaining between now and August 2028 presents a good opportunity to build the required changes into collective agreements by way of transitional wording. Where a collective agreement applies beyond commencement of the Act, consider what contractual process is available to make changes, e.g. whether the collective agreement includes a variation clause, or whether interim operational steps will be needed until the agreement is renegotiated.
8. Policies: Review leave-related policies and consult employees on changes	Employers should review any existing policies that deal with leave, holidays, payroll, allowances, or employee records. Key areas that may require updating include: • How leave is accrued and recorded; • Annual leave, sick leave, bereavement leave and family violence leave being taken in hours rather than days; • Changes to annual leave cash-up arrangements; • Changes to ordinary working day calculations; • Annual closedown and agreed closure arrangements; and • Pay statement and record-keeping requirements.

9. Public holiday processes: Get public holiday processes ready for the new hours-based framework.	Identify how the business currently determines whether a public holiday is an OWD, and assess whether that approach aligns with the Act. If OWD assessments are made by payroll software, see section 3 above. Prepare for the new obligation to notify employees about whether a public holiday will be treated as an OWD (and if so, the hours the employee would otherwise have worked). Consider who will perform this notification function, and if you are expecting it to be performed automatically by payroll software, refer to section 3 above. Businesses that rely on regularly transferring whole-public-holidays to another day (e.g. for employees who work overseas) will need to reassess their approach to this, because under the Act it can only be agreed at the employee's request.
10. KiwiSaver: Check whether casuals may need to be automatically enrolled.	Review temporary and casual workforce to identify those who are employed as "true casuals" and those who have a more regular and frequent pattern of work. Employers still will not need to automatically enrol employees who are intermittently offered and accept work and have no regular pattern of work. However, for casual employees who are regularly offered and regularly accept work, for a period of 28 continuous days (or more), the automatic enrolment rules in KiwiSaver may apply once the Act takes effect.
11. Historical remediation: Decide whether to remediate now or wait for the new statutory process	Employers can elect to follow a legislative process to provide reasonable compensation to employees as a way to resolve historical liability under the Holidays Act 2003. The details of the process will be specified in Remediation Regulations, which are yet to be developed. If an employer elects to follow the Remediation Regulations, proceedings cannot be commenced against the employer in relation to historical liability under the Holidays Act. Employers with known historical Holidays Act issues may want to assess whether to continue with existing remediation work or wait for the Remediation Regulations. We recommend taking advice on this point as it will depend on the nature of the issue, how long the compliance risk has existed, employee relations risk, limitation issues, enforcement risk and the potential benefit of the statutory pathway.
12. Communications to staff: Prepare clear, phased communications for managers and employees.	Once key implementation decisions have been made, employers should plan how the Act will be explained to employees. Early, clear, and practical communications can help minimise confusion, maintain trust, and support a smoother transition when the new regime takes effect. HR/P&C and payroll teams will be on the frontline answering employee questions, so should be engaged with and educated first. Messaging may also need to be tailored by workforce groups (such as casuals, shift workers, employees who work paid overtime). Consider a phased approach: **Phase 1: Awareness** • "The law is changing, and we are assessing what it means for our workplace." • Provide a high-level summary of key changes and anticipated timing. **Phase 2: Impact** • "This is what the new framework means for you." • Explain how leave balances, payroll treatment, and workplace processes will be affected. **Phase 3: Implementation** • "This is what you need to do." • Provide details of any employment agreement updates, system changes, training, or employee actions required.

OUR VIEW

The new legislation is a significant improvement on the Holidays Act 2003 and should, in time, reduce the compliance burden for most employers. However, the transition itself will require investment in order for it to run smoothly. Employers who engage early with their payroll providers and legal advisers will be best positioned to ensure a seamless changeover.

That said, some of the issues we identified in our earlier updates have not been resolved. These include the lack of a definition of "on call", the administrative burden of notional rosters and OWD notifications, and the potential for hours-based banking to discourage employees from moving from part-time to full-time work. We will continue to monitor developments, including the timing of the Remediation Regulations.

If you would like assistance reviewing your employment agreements, policies, or payroll arrangements ahead of the new regime, please contact a member of our team.





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

RECENTLY PASSED

LEGISLATION	DESCRIPTION	STATUS
Employment Leave Act 2026	The Employment Leave Act 2026 replaces the Holidays Act 2003, introducing a new system for leave entitlements and payments. For information on key changes and how to prepare for the transition, see our article above.	The bill received royal assent on 6 August 2026 and will come into force on 6 August 2028.

Public Service Amendment Act 2026	The Act was an overhaul of the Public Service Act 2020, as part of the Government's push to go back to "basics" and deliver value for money to taxpayers. The Act amended provisions in the Public Service Act 2020 that mandate the sector prioritises diversity and inclusiveness. Specifically, the Act: • removed the Public Service Commissioner's duty to develop a workforce that reflects societal diversity; • repealed section 75, which required chief executives and boards to promote diversity and inclusiveness; • reduced diversity and inclusiveness obligations within the statutory good employer provisions; • removed workforce diversity and inclusiveness from government workforce policy considerations; and • amended the Commissioner's functions (under section 44 and Schedule 3) to remove responsibilities relating to workforce diversity and inclusiveness.	The Act came into force on 3 June 2026.
Health and Safety at Work Amendment Act 2026	The Act amends the Health and Safety at Work Act 2015 to refocus the regime on preventing serious workplace harm, while reducing unnecessary compliance and providing greater certainty for PCBUs. Specifically, the Act: • introduces the concept of "critical risk", so that PCBUs are required to prioritise risks likely to result in death, notifiable injury or illness, notifiable incident, or occupational disease; • creates a narrower set of obligations for small PCBUs, generally businesses with fewer than 20 workers, while retaining core duties relating to critical risks and basic welfare facilities; • requires larger PCBUs to give express priority to critical risks, without removing their broader duties; • clarifies overlapping duty-holder obligations, including when PCBUs must consult, cooperate and coordinate with each other; • clarifies that an officer's due diligence duty applies to the person in their capacity as an officer, rather than as a worker; and • changes the approved code of practice process, including by allowing industry participants to initiate the development of codes and giving approved codes a stronger role in demonstrating compliance.	The Act received royal assent on 9 July 2026 and will come into force on 1 April 2027.

The Health and Safety at Work (Hazardous Substances) Amendment Regulations 2026	The amendment to the regulations affects workplaces that operate laboratories and handle hazardous substances by introducing new and updated compliance requirements.	The regulations came into force on 30 July 2026.
Parental leave payment rates update	Paid parental leave rates have been adjusted as follows: • the maximum rate increased from $788.66 to $811.05 per week for employees and self-employed people; and • the minimum rate for self-employed parents increases from $231.50 to $235.00 per week, reflecting 10 hours of work at the current adult minimum wages of $23.50.	The new rate came into effect on 1 July 2026.

COMING UP

LEGISLATION	DESCRIPTION	STATUS
Modern Slavery Bill	On 10 February 2026, the National and Labour parties introduced the Modern Slavery Bill. The Bill requires certain organisations to report on the identification, mitigation, and remediation of modern slavery within operations and supply chains. Large public and private organisations (those with significant annual revenue) would be required to publish annual modern slavery statements, to be published on a register. The Bill also includes civil and criminal penalties for non-compliance or the provision of false information (including fines and liability for directors).	As the Bill has cross-party support, it bypassed the ballot process and passed its first reading on 29 April 2026. The Select Committee's report is due on 31 August 2026.
Crimes (Increased Penalties for Slavery Offences) Amendment Bill	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.	The Bill passed its first reading on 17 December 2024, and the Select Committee's report was issued on 22 August 2025. The Bill is awaiting its second reading.
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 that 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.	The Bill's second reading was interrupted on 5 August 2026. It awaits a reconvening of the second reading.

Disability Support Services Bill	The Government has introduced the Disability Support Services Bill, which aims to provide a statutory framework for the operation of Disability Support Services. The Bill also seeks to reverse the Supreme Court's decision in Fleming v Attorney-General [2025] NZSC 188, reported in our February 2026 newsletter, where family carers were found to be Crown employees.	The Bill was considered by the Committee of the whole House on 19 August 2026, and awaits its third reading.

WHAT'S NEW

LEGISLATION	DESCRIPTION	STATUS
Immigration (Enhanced Risk Management) Amendment Bill	The Bill proposes targeted amendments to the Immigration Act 2009 to strengthen immigration compliance, enforcement and system integrity. For employers, the key changes are: • increased penalties for migrant exploitation offences; and • expanded employment infringement offences, including where an employer provides incorrect or incomplete information to Immigration New Zealand or fails to comply with an immigration officer's information request. The Bill also seeks to make broader changes to deportation, refugee and protection, visa compliance and information-sharing settings.	The Bill was introduced on 18 March 2026, and the Select Committee's report was issued on 7 August 2026. The Bill is awaiting 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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