



JANUARY 2010

EMPLOYMENT NEWS >>UPDATE

In this issue:

Holiday and leave entitlements – due for significant reform?
[Read more](#)

SUBSCRIBE HERE>>

Sign-up and stay informed

Holiday and leave entitlements – due for significant reform?

Acting Prime Minister Bill English

'... actually we're getting a pretty good response from people.'

Labour MP Darien Fenton

'The changes are a deceitful grab back of workers' holiday rights.'

Last year the National Government commenced looking to the horizon to determine the future of the Holidays Act 2003. On 15 December 2009 an advisory group comprised of union and employer representatives issued a report to advise the Minister of Labour on future policy recommendations expected to be introduced to Parliament in 2010.

The report's stated focus is to make recommendations that:

- simplify the Act
- decrease compliance costs
- increase compatibility with a range of employment arrangements
- do not reduce the rights of workers.

Despite the voluntariness of many proposed mechanisms and the proportionality of proposed entitlement calculations, if enacted, those provisions may reduce the entitlement of some workers. As such the debate has begun.

The calculation of daily pay

There is a unanimous recommendation that all forms of leave, except annual leave, be calculated by a method which pro-rates based on contractual hours of leave taken instead of daily pay. There was also unanimity in recommending that gross annual earnings should exclude non-contractual overtime.

Employer representatives have gone a step further recommending that:

- annual leave entitlement is pro-rated in the above manner
- that calculation of annual gross earnings should not include any amount received in lieu of holidays
- annual leave should be taken at a time convenient for the employer, potentially based on units as small as an hour.

The effect of the undisputed recommendations would result in a reduction of leave entitlements for workers who would have received a day's pay or accrued a day's leave, but will now potentially – depending on their contractual hours for that day – receive a pro-rated lesser amount. It will also add emphasis to contractual hours by reducing the incentive to work overtime.

The effect of the employer's recommendations would extend the impact of an hourly pro-rated measure, but also broadly reduce annual leave pay and the strength of the employee's negotiation power in terms of when they seek leave.

Council of Trade Unions President Helen Kelly
'...those changes would leave workers worse off, with fewer holidays and reduced leave pay.'

Trading in annual holidays for cash

Employer representatives have driven for a system of mutual agreement whereby an employee may seek to trade a week of annual holiday for cash. The swap may only be sought if a balance of three weeks' annual leave is remaining and the employee has requested the swap in writing.

Employers would be permitted to allow or refuse a request without reason. However, they would not be permitted to raise the matter themselves (i.e. in employment agreements or salary negotiations).

Union representatives unanimously rejected this proposal, and despite notions of voluntariness, even employer representatives have acknowledged potential difficulties associated with the change.

Business New Zealand, Chief Executive Phil O'Reilly

'...it could lead to all sorts of industrial difficulties and tensions in a workplace if an employer is prepared to offer flexibility to one employee, but not another, for whatever reason.'

Public holidays

Unanimity was reached to reinstate the ability of an employer and employee to transfer a public holiday to another day; suggestion has also been made that penalty payments – while not a valid motivation – may be waived potentially.

Union representatives have driven against opposing suggestions that a day in lieu of a public holiday should be attached to accrued annual leave, despite their recommendation that annual leave pay should not be hourly pro-rated, which may incur higher pay. They also made the proposal that Easter Sunday becomes the 12th public holiday, which was opposed by employer representatives.

Closing remarks

Ultimately the report is only persuasive in nature. However, considering the lengthy consultation process that was enacted to create it, recommendations which have been made by both union and employer representatives have a strong likelihood of implementation.

Expect new pro-rated leave calculations, the ability to transfer public holidays by mutual agreement, and a change in the way overtime is viewed.

Be particularly aware of the potential for an increase in employers' powers concerning when leave is taken and a mechanism for exchanging the fourth week of annual leave for cash.

EMPLOYMENT NEWS >> UPDATE CONT...

Start a conversation with us.....

If you need more information on holiday and leave entitlements and how it affects your business, or would like to talk to one of our experts, please contact us.

Auckland

Anthony Drake

Partner

DDI 09 915 6549

anthony.drake@kensingtonswan.com

Wellington

Susan Hornsby-Geluk

Partner

DDI 04 916 0963

susan.hornsby-geluk@kensingtonswan.com

Clayton Kimpton

Partner

DDI 09 375 1111

clayton.kimpton@kensingtonswan.com

