

Holidays Act 2003 Review – Terms of Reference

Purpose

1. The purpose of the Holidays Act Working Group (the Group) is to make recommendations to Government for a clear and transparent set of rules for providing entitlements to, and payment for, holidays and leave that can be readily implemented in a payroll system and is applicable to an increasingly diverse range of working and pay arrangements.
2. It is important that a customer-focused approach is taken to this review to ensure that recommendations are readily implementable by employers and their payroll providers.

Background

3. There is widespread non-compliance with the Holidays Act 2003 (the Act) and it is generally accepted that this is due both to issues with the implementation of the legislation in payroll systems and the business processes that support these, and issues with the legislation itself.
4. The Act works well for a standard, five day, 40 hour week, but can be difficult to apply to more diverse working arrangements and complex remuneration packages. This is primarily because the Act is based on two key principles relating to entitlements and pay:
 - a. that entitlements are determined in relation to the work pattern at the time the leave is taken
 - b. that employees should not be financially disadvantaged by taking leave, that is, they should be paid (at least) what they would have earned had they worked.
5. In these situations, the Act relies heavily on employers making judgements as to how the provisions of the Act apply to the specific circumstances of the individual employees, and in some cases agreement with the employee is required. In some cases, these may need to happen each time leave is requested.
6. The result is an Act that does not provide certainty to employers and employees, is difficult for employees and employers to understand and interpret, is hard to systematise in a payroll system, and can incur relatively high compliance costs for employers.

Objectives

7. The Group is required to develop, test and make recommendations to the Government on policy options for the provision of, and payment for, holiday and leave entitlements that:
 - a. continue to promote the existing purpose of the Holidays Act 2003
 - b. provide clarity and certainty for employers and employees so that employees receive their correct entitlements
 - c. are simpler than the current Act in relation to provisions of, and payment for, entitlements to holidays and leave
 - d. are readily implementable in a payroll system
 - e. minimise compliance costs for employers
 - f. minimise perverse incentives on employers and employees
 - g. ensure the balance of decision-making between employers and employees when it comes to requests for holidays and leave is appropriately calibrated

- h. are readily applicable to the full range of working and remuneration arrangements in the labour market both now and in the future
- i. aim to protect overall entitlements for employees.

Scope and parameters

8. The Review will retain the purpose of the current Act (in section 3) and (at least) the current levels of entitlements (such as four weeks' annual holidays, five days' sick leave).
9. The Group will consider:
 - a. options to improve both the provision of, and payment for, entitlements that meet the objectives set out in paragraph 7, and:
 - i. where trade-offs between competing objectives are required, will be explicit about how these are made
 - ii. may include consideration of the place of the standard five day, 40 hour, working week in the Act
 - b. any other matters relating to the Act that it sees fit. This may include holidays and leave entitlements modified by other Acts (such as the Parental Leave and Employment Protection Act 1987).
10. The principles set out in paragraph 4 may also be reconsidered, but options must aim to preserve the intent of these as far as possible.
11. The Group will not, however, consider the complex issue of remediation of historical underpayments of holiday and leave pay.

Membership and Process

12. The Group will consist representatives from MBIE, the State Services Commission and Inland Revenue, along with three to four members each representing workers, employers, led by an independent Chair with the power to commission work.
13. The Group will be chaired by Gordon Anderson, a law professor at Victoria University. The Chair is an independent/neutral party in the Group discussions, whose purpose is to facilitate the parties to reach jointly agreed recommendations to Government.
14. The Group is expected to consult widely to get a comprehensive understanding of the issues with the Act, and draw on international examples of holidays and leave legislation where appropriate.
15. The Group is also expected to work closely with technical experts such as payroll providers, business rules specialists, and service design and delivery specialists to assist with the design and testing of policy options.
16. The Group is required to support their recommendations with quantitative analysis of different options, tested with bona fide payroll data, to ensure that those options are readily implementable and adverse consequences have been identified.
17. The parties agree that consistency of attendees will be important for the Group to achieve its objectives, and will ensure that representatives will not be changed unless this is unavoidable. If any change in representatives is required, the party

concerned will ensure the new attendee/s have been well briefed on previous discussions and progress.

18. The parties will each ensure that their constituents/stakeholders have appropriate opportunity to have input into development of options, through the parties' internal governance arrangements. MBIE will ensure that appropriate cross-agency structures in place for senior government officials to be kept informed of, and have input into, the work of the Group.
19. MBIE will provide secretariat support to the Group and information and research that the Group identifies is required to facilitate its discussions.

Rules of engagement

20. The parties agree that they will:
 - a. work together in good faith, balancing the interests of all parties
 - b. hold discussions in confidence and on a without prejudice basis
 - c. agree any external communications at each meeting.
21. If the parties are unable to reach agreement on recommendations, the Group's final report will outline:
 - a. the areas where the parties have reached agreed recommendations
 - b. the areas of difference.

Timing and reporting

22. The Group will report back to the Minister of Workplace Relations and Safety with their recommendations within 12 months. This timeframe will give the Group sufficient time to commission work and undertake robust testing of options.
23. The Group will also provide an interim report after six months, so that Cabinet – and the New Zealand public – can be informed about the Group's progress.
24. Each party will be responsible for reporting to their constituents/stakeholders, in accordance with any messaging agreed during the Group's discussions and as required by their internal governance mechanisms. In doing so, the parties agree to honour the confidentiality of the Group's discussions.