

# Coversheet: Increasing the minimum sick leave entitlement

Advising agencies	<i>Ministry of Business, Innovation and Employment</i>
Decision sought	<i>Increasing the minimum sick leave entitlement</i>
Proposing Ministers	<i>Minister for Workplace Relations and Safety</i>

## Summary: Problem and Proposed Approach

**Problem Definition**

**What problem or opportunity does this proposal seek to address? Why is Government intervention required?**

Under the Holidays Act 2003 (the Act), employees are entitled to a minimum of five paid days' sick leave per year that can be used in the event that they, or their partner or dependant, are sick or injured. Although many employers provide contractual entitlements which are more generous than the statutory provisions, evidence indicates that approximately half of New Zealand employers only provide the minimum of five days' sick leave per year<sup>1</sup>.

New Zealand has a relatively low statutory sick leave entitlement when compared to similar jurisdictions. Workers in the hospitality, retail, manufacturing and construction industries, often only receive the statutory minimum. These workers are more likely to be younger people, women, Māori and those with caring responsibilities.

Some stakeholders, particularly employee representatives, maintain that five days' sick leave a year does not provide adequate support for many workers. There are concerns that employees who exhaust their sick leave entitlements face a choice between working while sick or taking unpaid leave. This introduces additional cost pressures for households. Transmission of sickness in the workplace has flow-on impacts on overall productivity and wellness.

The profile of this issue has been raised in the context of the COVID-19 pandemic, with public health guidance instructing workers to stay home when sick. The Labour Party has signalled prior to, and following the 2020 election, their intention to increase sick leave entitlements – and for this to happen quickly (with legislation introduced by the end of 2020).

Without legislative intervention, many employers will continue to only provide five days' paid sick leave a year to eligible employees. At a large scale, this raises the possibility of employment standards undermining the public health objectives that underpin the government's COVID-19 response, or not aligning with public expectations.

<sup>1</sup> Workplace Wellness Report 2019: <https://www.businessnz.org.nz/resources/surveys-and-statistics/wellness-in-the-workplace-survey/2019-Workplace-Wellness-Report.pdf>

## Summary of Preferred Option or Conclusion (if no preferred option)

**How will the agency's preferred approach work to bring about the desired change? Why is this the preferred option? Why is it feasible? Is the preferred approach likely to be reflected in the Cabinet paper?**

The Ministry of Business, Innovation and Employment (MBIE) recommends:

- increasing minimum sick leave entitlements from 5 days to 10 days a year
- allowing employees to carry over up to 15 days of unused sick leave in any given year (as per the status quo), to be entitled to 25 days (rather than 20 days in the current legislation)
- introducing transitional provisions that, after commencement of the legislative amendment, an employee would first become entitled to the enhanced (10 days) sick leave entitlement in the year that begins on their next entitlement date.

These changes would guarantee an increase in paid sick leave for many employees. They align with public health guidance, better support employees to stay home when sick, and would reduce the transmission of sickness in the workplace. There is also evidence to suggest they would result in productivity gains for some businesses.

The related Cabinet paper is likely to seek agreement to these recommendations, which have been well-signalled in public comments by the Prime Minister.

## Section B: Summary Impacts: Benefits and costs

**Who are the main expected beneficiaries and what is the nature of the expected benefit?**

### *Employees*

Employees are the main beneficiaries of an increased sick leave entitlement. Many will have increased entitlements to paid time off work. Employees who would otherwise have exhausted their sick leave (ie used all five days per year) will have the largest gain, as they will be entitled to additional paid time off. There are therefore direct benefits to employees who can take time off to recover from illness or care for a dependent who is ill, without needing to make a financial trade-off.

Employees will also experience indirect benefits from overall higher use of sick leave across their workplaces – likely reducing the overall spread of infectious illness, and the productivity and financial benefits of lower levels of sickness.

### *Employers*

While employers will bear the costs of increasing sick leave entitlements, they will also benefit from the direct and indirect benefits of employees having better access and use of sick leave. For instance, happier and healthier employees being more productive, a reduced spread of infectious illness within their workplaces when individual employees stay at home while infectious, lower turnover, and lower risk to customers and clients from exposure to sickness while present in their workplaces.

An Australian survey from 2005 suggested that the healthiest workers (who use sick leave when they need it) are up to twice as productive and are less likely to take time off than the least healthy workers.<sup>2</sup> This is supported by anecdotal evidence from employers that already offer higher levels of sick leave than the statutory minimum. They have reported

<sup>2</sup> [https://trenchhealth.com.au/articles/MEDI\\_Workplace\\_Web\\_Sp.pdf](https://trenchhealth.com.au/articles/MEDI_Workplace_Web_Sp.pdf)

that their employees do not take significantly more sick leave, possibly indicating that increased access to sick leave (and the resulting decline in overall illness levels, or ability to rest and recuperate faster), means that employees are less likely to need sick leave at all, and employers have lower rates of overall absenteeism.

#### *Wider society*

Increased sick leave entitlements produce benefits for wider society by reducing the financial barriers for workers to stay home when they or a dependant are sick or injured. This supports better caring for those who need it, reduced spread of infectious illness, and potentially greater productivity from workers who are happier and healthier.

Increasing sick leave entitlements also aligns with, and supports, evolving public attitudes and expectations about staying at home when sick. In 2018, 35 per cent of workers surveyed said that they go to work while sick, down from 49 per cent in 2012<sup>3</sup>. Changes to social norms are likely to have been accelerated as a result of the public health guidance in response to the COVID-19 pandemic.

### **Where do the costs fall?**

The costs will be borne, in the first instance, by the employers who need to pay for additional paid sick leave entitlements to their employees. This will increase the cost of labour for some employers, made up from the direct cost of paying out sick leave and the potential indirect costs from needing to provide additional cover arrangements for some employees (depending on the business model). Approximately half of all employers currently provide only the minimum entitlement of five sick days per year, so they will need to increase what they provide to meet the new minimum standard.

We estimate a marginal cost increase of approximately \$958 million<sup>4</sup> per year across New Zealand – an increase of 0.88 per cent to the country's wage bill. These figures do not include possible financial benefits as a result of healthier workplaces, decreased absenteeism and improved productivity. They also based on assumptions relating to behavioural change (eg the number of sick leave days taken will increase), and so are only intended to provide a broad indication of possible costs.

These costs will be borne mostly by employers who currently provide between five and 10 days of sick leave. Employers in the manufacturing, construction and accommodation and food services sectors are more likely to only provide the minimum entitlement, so are most likely to be impacted<sup>5</sup>.

There may be some costs to employers to transition or update their payroll system to account for the changes, but this is likely to be marginal and the costs will be spread across a large regulated base of employers in New Zealand.

Some employers currently provide ten or more days of sick leave per year (including those that provide unlimited sick leave). These employers would not be required to increase their

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<sup>3</sup> <https://www.businessnz.org.nz/resources/surveys-and-statistics/wellness-in-the-workplace-survey/2019-Workplace-Wellness-Report.pdf>

<sup>4</sup> This figure is based on an increase from 4.7 to 7 average sick days per employee, per year. Low (\$542 million; 6 days) and high (\$1.3 billion; 8 days) estimates were also calculated. Calculations used Average Weekly Earnings and Full-Time Equivalent Employees figures taken from the Quarterly Employment Survey.

<sup>5</sup> Employment Agreements: Bargaining Trends & Employment Law update 2019/2020. Blumenfeld, Ryall and Kiely (2020).

entitlements, and there is unlikely to be behavioural change by their employees to take any more leave as a result of a higher minimum entitlement. However, some employers may choose to increase sick leave entitlements to maintain relativity and offer competitive employment conditions. We are unable to estimate the costs of discretionary increases above the minimum standard.

### **What are the likely risks and unintended impacts? How significant are they and how will they be minimised or mitigated?**

#### *Employers managing their labour cost pressures*

When faced with cost pressures due to increases in the cost of labour, firms will respond in a variety of ways:

- absorbing the increased costs by reducing profit
- passing on costs by increasing the price of their goods/services
- reducing direct employment costs (ie cutting hours/shifts or reducing level of employment)
- reducing other costs (either fixed or variable costs)
- delaying or avoiding wage increases (eg not passing on increases to those just above the minimum wage)
- reducing other discretionary employment costs (eg additional forms of paid leave, other benefits)
- reducing employees' hours or taking on fewer employees
- increasing use of non-standard working arrangements that have lower labour costs (eg labour-hire, contractors that aren't entitled to sick leave, short-term contracts that take advantage of the six-month period before entitlement begins)

It is not possible to estimate what impacts will be most common, due to the diverse situations and contexts in which employers will be making decisions. Small to medium sized enterprises (SMEs) may be more affected by any changes to sick leave, as their smaller payroll may mean that they are less able to manage/absorb more employees being absent from work. For instance, a small employer might need to hire someone to cover for a sick employee, while a larger employer may manage an absence within their existing workforce. SMEs may also have fewer of the above options for managing labour costs available to them. On the other hand, a 2018 survey of employers found that employees at smaller firms take less sick leave on average<sup>6</sup>.

Some employers may consider that the increased cost of labour due to higher sick leave entitlements is too high. However, we note that unlike other forms of leave, sick leave is not strictly counted as a 'liability,' as the entitlement only arises when an employee is sick and unable to work. In situations where the employee is sick and has no remaining entitlement, the employee may be expected to instead take alternative forms of leave or possibly still attend work – which as discussed above still incurs costs for the employer through increased sickness and lower productivity and wellbeing.

#### *Differential impact for part-time workers*

Stakeholders have pointed out that part-time and full-time workers receive the same number of days' sick leave. While this enables those workers to have the same amount of time off in the case of illness of themselves or their dependents, it is a higher proportion of the working time for a part-time employee. In the extreme, if an employee worked one day

<sup>6</sup> Workplace Wellness Report 2019: <https://www.businessnz.org.nz/resources/surveys-and-statistics/wellness-in-the-workplace-survey/2019-Workplace-Wellness-Report.pdf>

a week, an entitlement to 10 days sick leave would give an employee paid sick leave for 20 per cent of their working year. Employers in sectors with a high proportion of part-time workers have suggested an approach similar to annual leave where leave is in proportion to the amount of time spent working. Using this approach, an employee that works one day a week would be entitled to 20 per cent of the entitlement of a full-time employee. Some form of mixed model may also be possible where part-time workers receive some level of fixed entitlement, but additional sick leave is then pro-rated according to hours worked.

The differential impact could incentivise employers to not hire part-time workers if they perceive they will face higher proportional costs as a result.

It is likely that this issue will be raised in the Bill's consideration at Select Committee.

#### *Risk of gaming the system*

Increasing the level of entitlement to sick leave could increase the incentives and risks that:

- Some employers game the system to reduce their potential liabilities. An employer may make hiring decisions in ways that they perceive to reduce their potential sick leave liabilities (such as discriminating against potential employees who have childcare responsibilities that could result in a greater use of sick leave, structuring their workforce to take advantage of the 6 month threshold test, or simply by not complying with the law). While there are avenues to protect against discrimination, or to monitor for non-compliance with employment law, it is not possible to assess the extent to which this could occur.
- Some employees may take advantage of their entitlements, for example, an employee may be encouraged to take sick leave when they are not sick. While the ability for an employer to request a medical certificate after 3 days of sick leave provides a mechanism to check the validity of sick leave of this duration, this would not prevent misuse of fewer than 3 days sick leave.

However, anecdotal evidence from employers already offering greater sick leave entitlements indicates that higher levels of sick leave does not necessarily lead to a greater use of sick leave. We consider the individual scale of the impact to be small enough that this risk is marginal.

#### *Other regulatory impacts*

The Holidays Act is a notoriously complex piece of legislation, and many employers, employees and payroll practitioners have significant difficulty in interpreting and complying with its requirements. There is a risk that any amendments to the Act, even when implemented in the simplest way possible, will increase the risk of non-compliance or unintended interactions that make compliance more difficult. Notwithstanding the currently proposed regulatory change, any future amendments to the Holidays Act need to take account of the regulatory complexity of these entitlements.

Clear communication of the changes to minimum entitlements for sick leave, if implemented, are critical to manage this risk. Communications will need to be designed against the context of a complex set of legislative requirements. This offers an opportunity to raise awareness and understanding of leave rights and obligations amongst employers and employees, particularly those in sectors and occupations most likely to be impacted by the increased entitlement.

There is also a risk of an increased volume of leave entitlement-related complaints or

employment disputes. This can be responded to within the existing information and education and early resolution services housed within the employment regulator (Employment New Zealand, within MBIE), but will have an impact on the overall service levels available under current resourcing levels. Enforcement activities by the Labour Inspectorate may be necessary in some cases.

There are other policy areas and implementation nuance that may need further consideration (eg interactions with the Accident Compensation system when employees are covered by a claim). It has not been possible in the time available to assess all of these potential impacts and intersections – these could be explored further during the proposed Select Committee process.

## Section C: Evidence certainty and quality assurance

### Agency rating of evidence certainty?

Valid and reliable data has been used as much as possible. For example, the Quarterly Employment Survey has been drawn on to estimate the number of employees entitled to sick leave and the average weekly earnings figure has been used to estimate marginal financial impacts. Other data sources, such as business surveys, have also been used when appropriate.

However, there is a lack of objective data with regards to some areas of interest. This includes the actual number of sick leave days provided to employees on average, the number of sick leave days used by employees on average each year, and the costs of sickness to employers across New Zealand. As sick leave is a needs-based entitlement (as opposed to a fixed entitlement, such as with annual holidays), it is difficult to predict the impact that increasing the minimum entitlement would have on employers and employees.

Calculations have used a number of estimates and assumptions, key being how much the average number of sick days used per year would increase by. We have estimated that the average number of sick days used per employee each year would increase from 4.7 to 7 days. This takes into account the fact that many New Zealand employees already receive greater than five days per year (and so their usage is already included in the current average) and behavioural change is therefore likely to be restricted to those receiving an increase in entitlements. It also considers that sick leave usage internationally tends to increase the larger the minimum entitlement. It has not been possible in the time provided to quantitatively estimate the benefits of increasing sick leave.

For these reasons, the financial estimates are only intended to provide a broad indication of possible costs.

*To be completed by quality assurers:*

#### Quality Assurance Reviewing Agency:

The Ministry of Business, Innovation and Employment.

#### Quality Assurance Assessment:

MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Impact Statement **partially meets** the criteria necessary for Ministers to

make informed decisions on the proposals in this paper.

#### Reviewer Comments and Recommendations:

The Impact Statement has been produced under tight time constraints which has led to limitations in the policy process, in particular:

- A lack of consultation with affected stakeholders, particularly small businesses and businesses in the sectors that are likely to be most affected by the change.
- A limited range of options has been considered, particularly alternative sick leave duration periods and funding approaches (as adopted by other countries).

This means there is a risk that not all of the impacts of the proposed option have been identified and/or there were alternative options that could have resulted in better economic and social outcomes.

# Impact Statement: Increasing the minimum sick leave entitlement

## Section 1: General information

### 1.1 Purpose

MBIE is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

### 1.2 Key Limitations or Constraints on Analysis

There are a number of limitations and constraints relating to this Regulatory Impact Analysis. These include:

- The options considered are restricted to:
  - the status quo
  - encouraging employers to provide more sick leave
  - increasing the number of paid sick days to ten per year.Variations of these, such as increasing sick leave to eight or 15 days per year, have not been considered.
- Other options for amending sick leave provisions, such as eligibility criteria, when it can be used and how payments must be calculated, are not within scope but will be considered under the ongoing Holidays Act Review, and those options for future change are not constrained by the level at which the minimum entitlement is set.
- Evidence of the issues with the minimum sick leave amount is based on stakeholder feedback and surveying, anecdotal evidence, and international comparisons.
- There has not been wide consultation on the options considered, although the proposal to increase the sick leave entitlement to 10 days has been the subject of public scrutiny through the electoral process as a significant and well-publicised proposal within the current Government’s manifesto commitments. Officials have undertaken preliminary consultation with employer, employee and payroll representatives.
- There is a lack of New Zealand data on sick leave entitlements and their use. In combination with sick leave being a needs-based entitlement, it is difficult to quantify the status quo and estimate the financial impacts of increasing sick leave.

### 1.3 Responsible Manager (signature and date):



Tracy Mears

Employment Standards Policy team

Workplace Relations and Safety Policy

Ministry of Business, Innovation and Employment

12 November 2020

## Section 2: Problem definition and objectives

### 2.1 What is the current state within which action is proposed?

#### *Sick leave entitlements in New Zealand*

The Holidays Act 2003 (the Act) sets out the minimum entitlements to holidays and leave, and payment for them, that employers are obliged to provide to their employees. Its purpose is to promote balance between work and other aspects of employees' lives and to provide minimum entitlements to annual holidays, public holidays, sick leave, bereavement leave and family violence leave. MBIE is the agency responsible for administering and enforcing the Act.

Under the Act, all employees are entitled to five days' paid sick leave each year. Sick leave can be used if an employee is unwell or injured, or if their spouse, partner, dependent child or other person who depends on them is sick or injured. Employees are eligible for sick leave if:

- they have six months of current continuous employment with the same employer, or
- they have worked for the employer for six months for an average of 10 hours per week, and at least one hour in every week, or 40 hours in every month.

Unused sick leave at the end of a 12-month period can be carried over and added to the employee's next year's entitlement, up to a statutory maximum of 20 days. The Act allows employers to agree to sick days beyond the 20 day limit, as well as to provide more than five days per year and to allow sick leave to be used in advance. Unused sick leave cannot be cashed-up or be part of any final payment to the employee when employment ends, unless specified in the employment agreement.

The Government does not collect data on sick leave provisions or the use of sick leave in New Zealand. However, a survey conducted<sup>7</sup> by BusinessNZ and Southern Cross<sup>7</sup> indicates that approximately half of New Zealand businesses only offer the statutory minimum of five paid sick days per year and the average rate of absence is 4.7 days per employee. It also estimated that 7.4 million working days were lost to illness in 2018, costing New Zealand approximately \$1.79 billion.

Data on collective agreements also provides some insight into sick leave provisions and usage in New Zealand. Approximately 402,900 workers, or 19% of all employees, are covered by a collective agreement, and these employees have access to an increasing amount of sick leave<sup>8</sup>. Only 12 per cent of employees on collective agreements are currently limited to the statutory five days' sick leave in their first year of employment. Two-thirds are entitled to 10 days or more after 12 months with the same employer. A five-day limit in collective agreements occurs primarily in the private sector, especially in the manufacturing, construction and accommodation and food services sectors.

In addition to paid sick leave for employees, New Zealand has a system in place which provides protection for workers who are injured. One form of financial compensation

<sup>7</sup> <https://www.businessnz.org.nz/resources/surveys-and-statistics/wellness-in-the-workplace-survey/2019-Workplace-Wellness-Report.pdf>

<sup>8</sup> Employment Agreements: Bargaining Trends & Employment Law Update 2019/2020. Blumenfeld, Ryall and Kiely (2020).

provided is weekly compensation for lost earnings or while a person is unable to work. This is currently paid at a rate of up to 80% of a person's pre-injury earnings.

The Leave Support Scheme also supports workers to comply with self-isolation requirements. It provides payments to firms to financially support employees who cannot work from home but are required to self-isolate either as a result of contracting COVID-19, possibly contracting COVID-19, or because they or a household member are at an increased risk of severe illness if they contract COVID-19.

#### *Sick leave entitlements internationally*

Paid sick leave entitlements vary significantly across jurisdictions. A scan<sup>9</sup> of provisions in overseas jurisdictions indicates that New Zealand:

- has very broad eligibility for sick leave, with all employees being eligible after 6 months' continuous service (or has worked for their employer a certain number of hours over a 6 month period)
- provides a high rate of payment for days not worked (what the employee would have earned if they had worked), whereas many other jurisdictions provide part payments or a capped rate
- has a lower duration than some comparable jurisdictions.

With regards to eligibility criteria, some overseas schemes are broad and apply to most workers (and in some cases even unemployed people), while others impose a number of restrictions. These can relate to age, hours worked, type of employment (e.g. casual or temporary) and number of months employed with the same employer.

Employees can be paid their normal wage rate, a capped portion of their normal wage rate, or a set rate when on sick leave. Switzerland, Finland and Singapore generally require employees to be paid at their normal rate, whereas the Netherlands, Sweden, Denmark, Austria and Ireland pay approximately 50% to 80% of an employee's wage and specify a maximum payment amount.

There are some jurisdictions, such as Canada and the United States, which do not provide any minimum paid sick leave entitlements at the Federal level. However, many jurisdictions do, and these can range from a few days to a few years. Australia, Singapore and Switzerland, for example, provide the equivalent of a few weeks of paid leave, whereas Sweden and the United Kingdom provide sick leave for a number of months. Paid sick leave in the Netherlands and Ireland can be up to two years in length.

There are three main funding models that exist in other countries: employer-funded; government-funded; or a mixed model. For example, the Netherlands, Switzerland and Singapore require that employers cover the costs of sick leave, whereas in Austria and Ireland it is fully funded by the government. Most of the Scandinavian countries employ a mixed model, whereby employers are required to pay sick leave for a specified duration (eg the first 9 or 14 days), with the Government covering the costs for absences beyond that point. Generally, the greater the sick leave entitlement, the more likely that it is fully or partially government-funded.

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<sup>9</sup> The scan consisted of an analysis of sick leave provisions in the following countries: Australia, Austria, Canada, Denmark, Finland, Ireland, the Netherlands, Singapore, Sweden, Switzerland, the United Kingdom, and the United States.

OECD figures suggest that average rates of absence are higher in countries with greater entitlements than New Zealand. Employees on average had 9.7 paid days off work due to illness in Australia in 2017 – this figure was 8.5 days in Denmark, 9.4 days in Ireland, 11 days in the Netherlands, and 11.3 days in Sweden in 2018.<sup>10</sup> It is unclear whether these figures are directly comparable to the New Zealand context (where employers who already offer increased entitlements have not reported significantly higher usage), and whether social norms and expectations vary across countries.

## 2.2 What regulatory system(s) are already in place?

Sick leave is part of the wider employment relations and employment standards regulatory system. The purpose of this system is to promote employment relationships that are productive, flexible and to the benefit of employers and employees, and to protect workers through minimum standards of employment. These standards set floors which can be improved upon through collective bargaining between employers and employees (and their representatives).

The core statutory requirements relating to sick leave are provided in the Holidays Act. The Act is based on prevailing societal views about just treatment and acknowledges that conditions can arise in labour markets where asymmetries of power and information can exist between employers and employees.

The Act is supported by information and education services offered by MBIE (eg online tools and resources, a telephone and email enquiry service centre) and problem resolution services established under employment relations statute. These include early resolution services, mediation services, the Employment Relations Authority, the Employment Court, and compliance and enforcement action taken by the Labour Inspectorate.

## 2.3 What is the policy problem or opportunity?

New Zealand has a relatively low statutory sick leave entitlement when compared to similar countries, and evidence suggests that more than half of employers only provide the minimum to their employees. Employers in the manufacturing, construction and accommodation and food services sectors are more likely to only provide five paid sick days a year.

There are concerns that many of the employees that only receive the minimum exhaust their entitlements each year. As a result, they face a choice between going to work while sick and using other forms of leave, such as annual leave or unpaid leave. This financial incentive may be contributing to the transmission of illnesses in the workplace, leading to poorer worker wellbeing, health and safety risks and loss of productivity in workplaces, and wider public health impacts through the transmission of infectious illness.

Workers in the hospitality, retail, manufacturing and construction industries are more likely to be faced with these decisions. These workers are generally provided with minimum employment standards, and are more likely to be younger people, women, those with caring responsibilities and Māori.

These issues are likely being exacerbated by the COVID-19 pandemic. Public health

<sup>10</sup> <https://stats.oecd.org/index.aspx?queryid=30123>

guidance advises workers to stay home if experiencing COVID-19 symptoms to help reduce the spread of COVID-19. Social norms regarding going to work when sick are also evolving as a result. Anecdotal evidence suggests that this message of staying away from work when sick is resonating with many workers, but some view that five days' sick leave a year presents a significant barrier to this goal. This is particularly exacerbated in the current economic context, with increased risk of redundancies and financial pressures on employers and employees.

Sick leave provisions have an associated financial cost for employers. As a result, many employers will continue to only provide five days' paid sick leave a year unless there is legislative intervention.

## 2.4 What do stakeholders think about the problem?

The primary stakeholders are employers and employees. The costs of sick leave are borne by employers and many employees stand to benefit from an increase to minimum sick leave entitlements. Payroll providers are another interested stakeholder group as they will be required to help implement any changes.

MBIE has informally discussed options for implementing the manifesto policy on sick leave with BusinessNZ, the New Zealand Council of Trade Unions and some public sector payroll experts involved with the All-of-Government Payroll programme. As these discussions have focused more on transitional issues, we do not have confirmed views from BusinessNZ or payroll providers on the nature of the problem and its causes.

More generally, the New Zealand Council of Trade Unions is in favour of increasing sick leave entitlements from five days to ten days a year. It considers that "...five days sick leave is unrealistic in achieving the goal of people staying away from work if they are unwell"<sup>11</sup>.

The views of stakeholders are expected to be heard during the planned full Select Committee process, with the Government intending to build consensus on implementation and other issues.

## 2.5 What are the objectives sought in relation to the identified problem?

The key objectives of amending sick leave provisions are to:

- provide better support for employees to stay home when they are sick
- ensure sick leave provisions are clear and simple to understand for employers and employees
- ensure obligations and transitional arrangements can be implemented in payroll systems.

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<sup>11</sup> <https://www.union.org.nz/unions-calling-for-safer-sick-leave/>

## Section 3: Option identification

### 3.1 What options are available to address the problem?

We have assessed the following options, based on the proposed policy in the Labour Party election manifesto:

#### **Option 1: Status quo – no change**

Maintaining minimum sick leave entitlements at 5 days per year, and making no changes to the entitlements or use of sick leave.

#### **Option 2: Education and communications, non-regulatory option**

A non-regulatory option would be to undertake an extensive communications campaign that aims to improve the use of sick leave, in order to achieve the policy objectives of better supporting workers to stay home when sick. There could be two prongs to this approach:

- Influencing employees to take paid sick leave, unpaid leave or other entitlements, or use flexible working arrangements to stay at home when they are sick and reduce their potential exposure in the workplace – despite possible financial barriers to the use of that sick leave, special paid or unpaid leave.
- Influencing employers to offer greater entitlements to sick leave, and more flexible working arrangements, so that their employees are more able to access and use sick leave and stay at home when they are sick.

Elements of this option could also be combined with option 3, in order to encourage better use of increase sick leave entitlements.

#### **Option 3: 10 days of sick leave, able to be saved to a maximum of 25 days**

This option would double the minimum entitlement to 10 days of sick leave per year, and make the minimum change to the roll-over provisions to allow employees to access up to 25 days of sick leave in any one year (compared to the current 20 days).

Increasing the yearly minimum sick leave entitlement would necessitate some degree of change to the provisions concerning carry over and maximum current entitlement. This is because the current settings are not compatible with a ten day increase in entitlement each year. Allowing employees to save up to 25 days of sick leave updates the roll-over provisions in a manner consistent with the status quo.

### 3.2 What criteria, in addition to monetary costs and benefits have been used to assess the likely impacts of the options under consideration?

The options have been assessed against the following criteria:

- **Cost:** The cost to employers of providing the entitlement
- **Simplicity:** Consistency with existing entitlements, and simplicity of understanding and implementing the changes
- **Certainty and coverage:** The extent to which employees have confidence that they will be able to take sick leave when they need it
- **Effectiveness:** How well the option will support achieving the policy objectives, and avoids perverse incentives or unintended consequences

### 3.3 What other options have been ruled out of scope, or not considered, and why?

- Other possible increases to sick leave entitlements (such as an increase to eight days or 15 days) have not been considered as there is a public expectation for an increase to 10 days due to the Labour Party manifesto commitment. It is also currently the most common amount in New Zealand collective agreements<sup>12</sup>. We consider that the relative advantages and disadvantages of 8 versus 10 days would be minor, and 15 sick days would exceed the social norms around how much an employer is expected to provide.
- More complicated entitlements (such as splitting sick leave from entitlements to care for others who are sick) have not been considered as this would introduce greater complexity to the Holidays Act, which already has implementation issues due to its complexity.
- A more thorough or 'first principles' review of sick leave entitlements has not been undertaken or considered due to the timeframes available. Further, the tripartite Holidays Act Taskforce recently provided the Minister for Workplace Relations and Safety with a set of recommended changes to the Holidays Act – including changes to sick leave entitlements. This will be progressed separately and is not constrained by a sooner change to the level of entitlements.
- Other funding models (eg government fully or partially funding sick leave) have not been included in this analysis. MBIE considers that an increase to 10 days would not likely require a different funding model (other jurisdictions tend to require employers to cover the first few weeks of sick leave and only centrally fund absences beyond that point). Alternative models would also add significant complexity to the holidays and leave entitlement system (including interactions with the benefit and accident compensation systems), and could not be progressed within the timeframe available.

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<sup>12</sup> Employment Agreements: Bargaining Trends & Employment Law update 2019/2020. Blumenfeld, Ryall and Kiely (2020).

## Section 4: Impact Analysis

**Marginal impact: How does each of the options identified in section 3.1 compare with taking no action under each of the criteria set out in section 3.2?**

	1: Status quo	2: Education and communications	3: 10 days, roll-over to 25 days
<b>Cost</b>	0	0 No direct cost to employers (although costs could be borne based on behavioural change in response) Minor cost to Government to fund education/communications, which are not currently funded to this level	- Estimated overall cost to economy of approx. \$958 million per year. Borne mostly by employers who currently offer 5-10 days of leave, and whose employees take extra leave. Could include minor cost to Government to fund education/communications
<b>Simplicity</b>	0	0 No change to statutory holiday/leave entitlements	- Any changes to Holidays Act could introduce complexity/risk of non-compliance
<b>Certainty and coverage</b>	0	0 No change to coverage of entitlements, although increased awareness of entitlements could raise concerns about access	++ Ensures that those employees who are currently entitled to 5 days sick leave have increased access to another 5 days' sick leave
<b>Effectiveness</b>	0	+ Possible moderate positive effect on people taking leave when needed, but not certain, and unlikely to shift behaviour significantly given the financial incentives once leave entitlements have been exhausted	++ Supports sick leave entitlements being consistent with society's expectations of staying at home when sick, and encourages higher use of sick leave
<b>Overall assessment</b>	0	Not preferred option, as does not achieve purpose of better supporting workers to stay home when sick and incentivising behavioural change	Preferred option to provide greater coverage of sufficient sick leave entitlements, and incentivising behavioural change

### Key:

++ much better than doing nothing/the status quo

+ better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- worse than doing nothing/the status quo

-- much worse than doing nothing/the status quo

## Section 5: Conclusions

### 5.1 What option, or combination of options is likely to best address the problem, meet the policy objectives and deliver the highest net benefits?

MBIE recommends:

- increasing minimum sick leave entitlements from five days to 10 days a year
- allowing employees to carry over up to 15 days of unused sick leave in any given year (as per the status quo), to be entitled to 25 days (rather than 20 days in the current legislation)
- introducing transitional provisions that, after commencement of the legislative amendment, an employee would first become entitled to the enhanced (ten days) sick leave entitlement in the year that begins on their next entitlement date.

These changes guarantee an increase in paid sick leave for many employees. They align with public health guidance, better support employees to stay home when sick, and will reduce the transmission of sickness in the workplace. There is also evidence to suggest they will result in productivity gains for some businesses.

There are also indirect benefits as increasing sick leave entitlements align with, and support, public attitudes and expectations about staying at home when sick. Higher entitlements will remove regulatory barriers to employees and employers meeting these expectations, and lifting the overall level of sick leave entitlements supports shifting public norms.

These recommendations need to be viewed in light of data and consultation limitations. As previously outlined, a lack of objective data with regards to some areas of interest and the fact that sick leave is a needs-based entitlement makes it difficult to predict the marginal costs of these proposals. With regards to consultation, time constraints have meant that only preliminary discussions with key stakeholders on the options for increasing sick leave have taken place to date.

The consultation that has taken place indicates that there may be a mixed response to increasing sick leave to 10 days a year. Employees and employee representatives are expected to be highly supportive, payroll providers and practitioners are likely to highlight the cost implications for payroll systems, and some businesses will highlight the added costs.

## 5.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	Impact \$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts	Evidence certainty (High, medium or low)
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### Additional costs of proposed approach compared to taking no action

Regulated parties (employers and employees)	Increased ongoing costs for some employers that need to increase sick leave entitlements. One-off costs for some employers to update their payroll systems.	\$958 million per year	Low
Regulators (Employment New Zealand, including Labour Inspectorate)	One-off costs to update guidance, tools and websites and ongoing early resolution service to resolve problems as they arise. Significant communications campaigns to raise awareness and understanding will displace other planned activities.	Low level/volume information and education and service activities can be funded within baselines.	Medium
Wider government	Estimated costs to government as an employer are included in the 'regulated parties' estimates. It is expected that costs to government will be relatively low given the high level of collective agreements in place providing for 10 days sick leave.		High
Other parties	May be some one-off costs for payroll providers to upgrade systems.		Low
<b>Total Monetised Cost</b>		\$958 million per year	Low

### Expected benefits of proposed approach compared to taking no action

Regulated parties (employers and employees)	Employees that currently receive an entitlement between 5 and 10 days will have access to more sick leave entitlements, better supporting them to stay home when sick. Employers may see improved productivity due to decreased sickness in the	Medium	
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	workplace.		
Regulators	No change.		
Wider government	Same benefits as regulated parties.		
<b>Non-monetised benefits</b>		Medium	

### 5.3 What other impacts is this approach likely to have?

#### *Wider society impacts*

These proposals could affect social norms and expectations in relation to sickness in the workplace. By reducing the financial barriers for workers to stay home from work, tolerance for going to work while sick may reduce for both employers and employees. This trend is already evident: in 2018, 35 per cent of workers surveyed said that they go to work while sick, down from 49 per cent in 2012<sup>13</sup>. Changes to social norms are likely to have been accelerated as a result of the public health guidance in response to the COVID-19 pandemic.

#### *Impacts on the Government as an employer*

Although the State sector employs approximately 16 per cent of New Zealand's workforce, increasing minimum sick leave entitlements is expected to only have only a minor fiscal impact on Government. This is because the vast majority of collective agreements in the State sector already have at least 10 days sick leave per year. Out of 50 agreements, only four have less than 10 (three have nine days and one has five days), and affect approximately 3,000 FTEs.

#### *Employer responses*

Firms may respond to the increased cost of labour (assuming sick leave use increases) in a number of ways, as outlined in section B. It is not possible to assess the likelihood or impact of these responses, but they could include impacts to other terms and conditions, or the choices employers make about employees' hours and working arrangements or taking on additional staff.

<sup>13</sup> <https://www.businessnz.org.nz/resources/surveys-and-statistics/wellness-in-the-workplace-survey/2019-Workplace-Wellness-Report.pdf>

## Section 6: Implementation and operation

### 6.1 How will the new arrangements work in practice?

Implementation of option 2 will require an education and communications approach, undertaken by MBIE. A detailed implementation and communications plan would be developed. This would likely include updated information and guidance online (for instance on [employment.govt.nz](http://employment.govt.nz) and [business.govt.nz](http://business.govt.nz)), and targeted information campaigns to employers and employees (eg web, print, media). The plan could be developed and undertaken relatively quickly, subject to funding being agreed by Cabinet. This approach could also accompany options 3 – depending on the specific needs for implementation of these options.

The implementation of option 3 would require legislative change to the Holidays Act via an amendment Bill. We anticipate this Bill coming into effect two months after the Act receiving Royal Assent – this would allow some time for a communications campaign prior to commencement.

Once commenced and implemented, MBIE will be the agency responsible for the legislation. Employment New Zealand (part of MBIE), as the primary regulator for the employment relations and standards regulatory system, would be responsible for administering, providing information and education, early resolution and mediation services and enforcing the new arrangements. Significant disputes that cannot be resolved, or enforcement action, could also be escalated to the Employment Relations Authority or Employment Court.

### 6.2 What are the implementation risks?

There are already well-known and widespread compliance issues with the Holidays Act – driven partly by difficult-to-interpret legislation and poor implementation in payroll systems. This means that there are implementation risks for any changes to the Holidays Act – even relatively simple ones as proposed in option 3.

Given the timeframes, some decisions have been set aside for consideration at Select Committee. There are risks that further consideration could raise more significant issues, or that consultation means that consensus or agreement cannot be reached with social partners.

Implementation will be supported by a communications campaign coordinated by MBIE. This will proactively clarify new obligations for employers and provide support to employers that have queries. Depending on costs and resourcing available, these communications could be leveraged to highlight employment obligations more generally, and depending on the scale and reach required this may require additional funding.

## Section 7: Monitoring, evaluation and review

### 7.1 How will the impact of the new arrangements be monitored?

Minimum employment standards are implemented and monitored by MBIE, which is responsible for employment regulations (information and education eg employment.govt.nz, the Labour Inspectorate, early resolution and mediation services, and supporting the Employment Relations Authority). As an existing employment standard, building awareness and understanding of extended sick leave is a business-as-usual activity, although there is likely to be an increased need for information and education in the early stages of implementation to encourage behavioural change and compliance and identify any issues that arise. Where problems do arise, existing services for early resolution, mediation and enforcement action can provide for these. Existing resources can provide for a low level/volume of activity to be absorbed, but given heightened demand for employment services in the current COVID-19 context, this will add to the need to prioritise use of services, and lower response times.

MBIE carries out regular surveys (such as the National Survey of Employers) and StatsNZ carries out the Business Operations Survey. These surveys might be able to be used to collect data about the provision and use of sick leave (along with other employment standards).

Other groups, such as BusinessNZ, have also undertaken research into the use of sick leave, and these surveys could be built on to assess the impact of the extension.

### 7.2 When and how will the new arrangements be reviewed?

The tripartite Holidays Act Taskforce has provided the Minister for Workplace Relations and Safety with a report that recommends changes to the Holidays Act to improve the usability of and compliance with the Act. The report recommends some changes to sick leave, and if the recommendations are to be implemented, there will be a further opportunity to make changes to sick leave entitlements.