



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Reforming employment leave legislation	Date to be published	14 October 2025

List of documents that have been proactively released

Date	Title	Author
August 2025	Regulatory Impact Statement: Holidays Act Reform	MBIE

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of confidential advice to Government and legal professional privilege.



Regulatory Impact Statement: Holidays Act Reform

Decision sought	This analysis was produced for the purpose of informing final Cabinet decisions on reforming the Holidays Act 2003.
Agency responsible	Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers	Minister for Workplace Relations and Safety
Date finalised	7 July 2025

Briefly describe the Minister's regulatory proposal

The Minister for Workplace Relations and Safety proposes the introduction of a Bill that repeals and replaces the Holidays Act 2003. The objectives of the Bill are to deliver an improved Act that is simple but clear, workable, flexible and future proof, and provides proportionality of employee entitlements and obligations for employers. To meet these objectives, the proposal includes:

- a new hours-based accrual system for annual leave and sick leave
- a leave compensation payment system which provides a payment in lieu of leave entitlements in certain situations
- a single payment calculation for all types of leave.

The proposed changes relate to the government priority of 'going for growth' through better ease of doing business and contributing to competitive business settings.

Summary: Problem definition and options

What is the policy problem?

Issues with the Act have been a longstanding concern for employees, employers and payroll providers. Many of its provisions are unclear, complex, difficult to apply for diverse working arrangements, and hard to systematise in payroll systems. Administrative burden and compliance costs are high for employers, non-compliance is widespread and ongoing, and employees are not always receiving their correct entitlements. There have been, and continue to be, costly remediation programmes across both the public and private sector.

Non-legislative initiatives have been implemented to address these issues, such as increased engagement from the regulator and the development of tools and guidance. While these efforts provide greater clarity and support to employers and employees, they do not sufficiently address the problems with the Act itself. There is broad stakeholder agreement

that legislative change is the best way to provide simplicity and clarity and improve compliance.

What is the policy objective?

The key policy objectives are a new Act that is simple but clear, workable, flexible and future proof, and provides proportionality of employee entitlements and obligations for employers. This will ensure that employees receive their correct entitlements and payments for them and minimise remediation issues and the need for costly payroll investigations and arrears payments. It will also reduce administration and compliance costs for employers.

What policy options have been considered, including any alternatives to regulation?

There are three main options considered in this analysis:

- Option One – The status quo. This reflects the current Act, where no legislative amendments are implemented.
- Option Two – Weeks-based accrual. This reflects the proposals presented in the exposure draft Bill (which was based largely on the 2020 Holidays Act Taskforce recommendation). The key change is a move to a weeks-based accrual model for annual leave, with a focus on providing clarity and certainty within the existing weeks-based framework. It also replaces provisions that require employers and employees to apply judgement and discretion with prescriptive processes and calculations.
- Option Three – Hours-based accrual. This introduces an hours-based accrual model for annual leave and sick leave. It prioritises simplicity, clarity, and workability. This approach moves away from a one-size fits all model by accommodating the most variable working arrangements outside of the core system via a leave compensation payment (LCP) system.

Option Three is the Minister's preferred option in the Cabinet paper.

What consultation has been undertaken?

There has been comprehensive consultation on the issues with the current Act, targeted consultation on the exposure draft Bill, and further engagement with employer and payroll representatives on the current proposals. Due to time constraints, there has not been widespread public consultation on the full set of proposals in Option Three.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

The Minister for Workplace Relations and Safety's preferred option in the Cabinet paper is Option Three in this analysis. Subject to the limitations set out in paragraph 44, Option Three is MBIE's preferred option.

Summary: Minister's preferred option in the Cabinet paper

Costs

There will be up-front costs for employers to update payroll systems and business processes to reflect the new requirements. There will also likely be some minor ongoing increased costs for employers who do not currently provide pay statements to employees and for employers with casual employees or employees with variable-hours.

Some costs will also fall on other affected stakeholders. Some employees will have a reduced entitlement to leave (e.g., sick leave for part-time workers) and a reduced value of leave (e.g., employees with significant commissions or bonuses). For MBIE as the regulator, there will be one-off costs to operationalise the new requirements and upskill staff, provide initial education services, develop guidance and tools and respond to questions after implementation. There will also be implementation and transitional costs to payroll providers to upgrade their systems, the extent of which will depend on current system capabilities.

Benefits

Employers will have greater clarity and certainty and be better able to systematise rules. This will reduce the likelihood and impact of future remediation projects under the new Act. There will also be a reduction in ongoing costs for some employers due to reduced compliance and leave payment costs. Employees will have greater clarity and certainty, be more likely to receive their correct entitlements and payments and have earlier access to some forms of leave. It should also make it easier for the regulator to identify non-compliance.

Balance of benefits and costs

Due to data limitations on the current use of leave entitlements, as well as the inability to conduct payroll testing due to time constraints, it is challenging to determine the balance of benefits and costs with confidence. However, in our view, the overall costs are likely to be less than the status quo over the long-term.

Implementation

The new Act will come into effect 24 months after Royal Assent. All parts of the Act will come into force at the same time, and employers will not be able to adopt the new Act early. Specific transitional provisions will be required to ensure an orderly, fair, and efficient transition from the current Act to the new legislation, such as a methodology for converting existing leave entitlements from weeks and days into hours. A legislative framework enabling any employer to pay estimates of Holidays Act arrears to employees, with the legal status of full and final settlements, will be introduced.

A 24-month implementation period may not be long enough for a small group of employers. Communication strategies and education campaigns will ensure that the proposal is implemented effectively. However, some employers may require more extensive guidance and support to understand and implement the new requirements, irrespective of the length of the implementation period.

Once implemented, MBIE will be the agency responsible for enforcing and monitoring the legislation, as well as ensuring that sufficient support is provided to employers, employees and payroll providers during the implementation period. The provisions in the new Act will be reviewed by MBIE as part of ongoing monitoring and compliance activities.

Confidential advice to Government

Limitations and Constraints on Analysis

There are several factors that limit the scope and analysis of options addressed in this Regulatory Impact Statement. These include:

- Only two alternative options have been included in the options analysis. Due to time constraints and prior Cabinet decisions, officials only had time to consider the exposure draft Bill and one end-to-end hours-based accrual system. No other options could feasibly be considered.

- There has only been targeted and limited consultation on the options included in this analysis. This is primarily due to the limited timeframes for developing policy advice. The lack of public consultation constrains MBIE's ability to fully understand the impacts and costs of various proposals.
- There is a lack of New Zealand data on leave entitlements and their use. Due to time constraints, there has not been an opportunity to conduct comprehensive payroll testing. These data limitations make it difficult to quantify the status quo and estimate the financial impacts of the options.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:



Alison Marris

Manager, Employment Standards Policy

Date: 07 July 2025

Quality Assurance Statement

Reviewing Agency: MBIE/Ministry for Regulation

QA rating: Partially meets

Panel Comment:

A quality assurance panel with members from MBIE and the Ministry for Regulation has reviewed the Regulatory Impact Statement *Holidays Act Reform*, produced by MBIE and dated 7 July 2025. The panel considers that it partially meets the Quality Assurance criteria. This rating is attributable to the limited consultation undertaken on the recommended option. This limits the availability of information to support cost/benefit analysis, and fully informed comparison between the options.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Holidays Act 2003 sets out minimum entitlements to holidays and leave

1. The core statutory requirements relating to holidays and leave are provided in the Holidays Act 2003 (the Act). The Act sets minimum standards for the minimum employees should expect in exchange for their labour. These minimum standards in the labour markets help to address power imbalances that exist between employers and employees.
2. Minimum entitlements to holidays and leave, and payment for them, that employers are obliged to provide to their employees, are set out in the Act. Its purpose is to promote balance between work and other aspects of employees' lives by providing minimum entitlements to annual holidays, public holidays, and sick, bereavement and family violence leave.
3. Under the Act, all employees are entitled to:
 - a. A minimum of four weeks' paid annual holidays after each 12 months of continuous employment. When it is not clear what a week is for an employee with a variable work pattern, the employer and employee must agree what genuinely constitutes a working week based on the employee's work pattern at the time the annual holidays is taken.
 - b. Some employees can be paid annual holidays on a 'pay-as-you-go' (PAYG) basis at not less than 8 percent of their gross earnings in each pay period. PAYG must be by agreement, and only for employees on a fixed-term agreement of less than 12 months or who work so intermittently or irregularly that it is impracticable for the employer to provide them with four weeks' annual holidays.
 - c. Up to 12 public holidays each year, if they are days they would otherwise work.
 - d. An alternative holiday, if they are required to work (or are on call and this impacts on their day) on a public holiday that is an otherwise working day.
 - e. Access to 10 days' paid sick leave and 10 days' paid family violence leave in every 12-month period, and up to 3 days of paid bereavement leave per bereavement:
 - i. after six months of current continuous employment with the same employer, or
 - ii. after working 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.
4. An underlying principle of the current Act is that leave pay must reflect, to the extent possible, what an employee would have earned if they had worked that day. Various calculations and rules exist to determine the payment for periods of leave:
 - a. Annual holidays are paid at whichever rate is the higher of:

- i. the employee's ordinary weekly pay (or if this is not possible to calculate, average weekly earnings in the last four weeks (excluding payments that are not a regular part of pay) and
 - ii. the employee's average weekly earnings in the last 12 months.
- b. The 'parental and volunteers leave override' means that any annual leave an employee becomes entitled during or in the 12 months that follow periods of parental leave or defence force volunteers leave is paid only at their average weekly earnings, rather than the greater of their average weekly earnings and ordinary weekly pay.
- c. Sick leave, bereavement leave, family violence leave, and public holidays are paid at:
 - i. relevant daily pay, or
 - ii. average daily pay if it is not possible to calculate relevant daily pay or the employee's daily pay varies within the pay period.
- 5. The Act also covers other issues. These include annual closedowns for businesses, the transfer of public holidays, and ability to 'cash up' one week of annual holidays.
- 6. While an employment agreement cannot provide less leave than is required under the Act, it can provide more, and many employers do provide entitlements above the minimum. For example, in the public service¹ 60 percent of collective agreements specify more than four weeks' annual leave, with entitlements increasing over time in most agreements (87 percent). Approximately 15 percent provide more than 10 days of sick leave per year and nearly two thirds allow sick leave to be accumulated to a maximum of 260 (rather than 20) days.

The Act is a key pillar of the employment relations and employment standards regulatory system

- 7. The minimum leave entitlements provided under the Act are 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.
- 8. The Act is supported by online tools and guidance, a contact centre that can provide guidance about employment related issues, and problem resolution services established under employment relations statute. These include:
 - a. Mediation Services, where an independent mediator seeks to help employees and employers resolve employment relationship problems in a semi-formal and confidential environment.
 - b. The Employment Relations Authority, an independent body established to consider the facts of an employment relationship problem and make a decision based on the merits of the case.

¹ Public Service Collective Agreement Terms and Conditions (December 2022)

- c. The Employment Court, which hears and determines cases relating to employment disputes, including challenges to determinations of the Employment Relations Authority, questions of interpretation of law, and disputes over strikes and lockouts.
- d. Labour Inspectors, who monitor and enforce compliance with employment standards.

Efforts to resolve compliance issues and improve the Act have been on-going for several years

9. Systemic compliance issues with the Act came to light in 2014. Non-legislative initiatives were first implemented to improve compliance and enhance greater clarity for employers regarding their obligations. This included the Labour Inspectorate engaging with employers, developing a suite of tools and guides, and conducting proactive audits and investigations. While these efforts provided greater clarity and support to employers and employees, they did not sufficiently address the problems with the Act itself. Complexity, lack of clarity and non-compliance has persisted.
10. To provide a more enduring solution, Cabinet established a Taskforce in May 2018 to suggest recommendations for legislative change. The tripartite group, comprised of union, business and government representatives, provided the Minister for Workplace Relations and Safety with its final report in October 2019².
11. The recommendations in the final report aimed to increase certainty and clarity for employers by providing greater prescription. It also sought to protect employee entitlements and ensure that no employees would be worse off under the proposed changes. The Government of the day accepted all 22 of the Taskforce's recommendations in 2021³.
12. Drafting of legislation to implement the Taskforce recommendations subsequently commenced, although a Bill was not introduced before the 2023 General Election.
13. In September 2024, the Government undertook targeted consultation⁴ on a draft Bill with proposed reforms to the Act. The draft Bill included some changes and additions to the previous Government's decisions⁵. These included simplifications to calculations and a pro-rata approach to sick leave entitlements.
14. Many participants in the targeted consultation indicated that the general framework of the draft Bill was not a significant improvement on the current Act and that more fundamental changes to the leave system would better address longstanding issues. Key reasons given included complexity, compliance costs and workability for those with variable work arrangements.

² <https://www.mbie.govt.nz/assets/holidays-act-taskforce-final-report.pdf>

³ The Regulatory Impact Statement for these changes can be found here: <https://www.mbie.govt.nz/dmsdocument/13433-regulatory-impact-statement-improving-the-holidays-act-2003-proactiverelease-pdf>

⁴ Participants included employers, employees, and technical experts, with consideration of representation across different population groups and industries.

⁵ The Regulatory Impact Statement summarising the departures from the original Taskforce recommendations can be found here: <https://www.mbie.govt.nz/dmsdocument/28526-regulatory-impact-statement-holidays-act-reform-further-policy-decisions-proactiverelease-pdf>

15. In December 2024, officials were directed by the Minister for Workplace Relations and Safety to take a new approach to reforming the Act, with a focus on simplicity, improving workability and reducing compliance costs. The approach involved designing an hours-based accrual model for annual leave and considering whether other models may be best-suited for more complex work arrangements.

Regulatory change is needed to address issues with the Act

16. Unions, businesses and successive governments agree that legislative intervention is required to fully resolve issues with the Act. For example, employers have identified the complexity of the Holidays Act as one of the key issues facing businesses today⁶. Until a simpler and workable legislative solution is provided, employers will continue to struggle to comply with their obligations, and issues with entitlements and payments will persist.

What is the policy problem or opportunity?

17. Issues with the Act have been a longstanding concern for employees, employers and payroll providers. Many of its provisions are unclear, complex, difficult to apply for diverse working arrangements, and hard to systematise in payroll systems. Administrative burden and compliance costs are high for employers, non-compliance is widespread and ongoing, and employees are not always receiving their correct entitlements. There have been, and continue to be, costly remediation programmes across public and private sectors.

The current Act lacks prescription and is complex

18. The Act's flexible regulatory design is intended to provide a leave system that can be readily applied to all working arrangements. However, the one-size-fits-all approach lacks the clarity and prescription needed for employers and payroll providers to know which rules to apply in which situations, and to determine correct leave entitlements and payments.
19. For example, the Act does not prescribe how to determine what a 'week' is for the purposes of annual holidays and relies on employer judgment to determine an 'otherwise working day' for other forms of leave. It is also silent on how to include some types of payments, such as bonuses, in payment calculations. The result is that current provisions generally work for a standard five-day, 40-hour week, but pose several issues when applied to more diverse working arrangements and variable pay structures.
20. Certain terms used in the Act create additional challenges for employers. For example, it can be difficult to understand what 'intermittent or irregular' means in relation to work patterns or what is meant by 'regular' in relation to determining what income should be included in payment calculations.
21. Another issue is that the legislation can be complex for employers to understand and apply. Employers often struggle with the many payment calculations and knowing when to use them. For example, not knowing when to use 'relevant daily pay' and 'average daily pay' when calculating payments for public holidays and sick, bereavement and family violence leave.

⁶ <https://businessnz.org.nz/wp-content/uploads/2024/12/BusinessNZ-Reducing-Compliance-Burden-on-New-Zealand-Small-Businesses-Report.pdf>

Issues with the Act have led to widespread non-compliance

22. The effect of the Act's lack of prescription, simplicity and clarity is that:
- employers and employees do not have certainty regarding the provision of, and payment for, entitlements
 - many employees are not receiving their correct entitlements, or payment for their entitlements
 - employers, particularly those with large numbers of employees on variable work and pay arrangements, can incur relatively high costs to comply with the Act
 - the Act cannot be readily systematised in a payroll system
 - many employers are carrying a liability that cannot be readily quantified (and may change significantly when employees change their work patterns).
23. Despite improved guidance and support for employers over the past 12 years, non-compliance persists. There were 7,146 calls to the MBIE service centre related to the Holidays Act in 2024⁷, while breaches identified by the Labour Inspectorate have risen yearly on average by 45 percent from 1,055 cases in 2021/22, to 1,553 in 2022/2023, and 2,013 in 2023/2024. Breaches predominately relate to payments for annual holidays and public holidays, and holiday and pay records⁸.
24. The sectors most affected by Holidays Act breaches are often those with lower employee pay, such as retail and hospitality⁹. From 2018/2019 to the present, over half (53.4 percent) of breaches of the main sections of the Holidays Act were in the 'accommodation and food services' and 'retail trade' sectors. Other highly affected sectors include construction (19.1 percent) and agriculture, forestry and fishing (16.4 percent).
25. Non-compliance issues have often resulted in underpayments and overpayments to employees and costly remediation projects to rectify them. From November 2015 to 30 June 2020, the Labour Inspectorate had a specialist team investigating and enforcing systemic Holidays Act issues. The work of that team resulted in more than \$237 million in remediation payments being paid to 227,300 employees across numerous organisations.
26. Remediation projects are ongoing. For example, as of December 2024, Health New Zealand / Te Whatu Ora has paid over \$308.2 million in Holidays Act remediation payments to 41,929 current employees. The total financial liability is estimated to be \$2.2 billion. In the education sector, \$47.1 million in remediation payments have been made towards an estimated total remediation liability of \$503.2 million. Confidential advice to Government

⁷ All figures are indicative. Some variations may arise due to operational and technology changes in case management systems and may impact data reported.

⁸ The five most commonly breached sections of the Act are: Section 23 - payment for annual holidays at the end of employment of less than a year, Section 24 - payment for annual holiday entitlements that have arisen at the end of employment, Section 49 - payment for a public holiday not worked, Section 50 - payment of at least time and a half for working on a public holiday, and Section 81 - keeping Holiday and Leave records.

⁹ Sector data is indicative and only reflects breaches where a sector has been stated. While the Inspectorate focuses on all sectors, the retail and hospitality industries are under particular scrutiny due to the high number of complaints.

At the broadest level, all employers and employees are stakeholders, but some will be affected more than others by the changes

27. The primary stakeholders are the 195,273 employers¹⁰ and 2,359,700 employees¹¹ in New Zealand, most of whom stand to benefit in some way from improvements to the legislation. Stakeholders who will benefit most include employers currently struggling to comply with their obligations and employees not always receiving their correct entitlements.
28. Non-compliance is more common in situations where employees work variable hours or receive additional pay (overtime, allowances, commission, bonuses). It is estimated that approximately 284,800 employees work variable hours in any one week (12 percent of all employees), with variable hours more common in the health care, construction, hospitality, and retail sectors¹².
29. Other stakeholders with an interest in Holidays Act reform are:
 - a. employer and employee representative bodies
 - b. payroll providers who provide employers with products to support the payment of employees and provision of leave entitlements
 - c. payroll practitioners who work in employer organisations and are responsible for implementing the obligations outlined in the Act.
30. There is general agreement from stakeholders about the main issues with the Act, and that legislative change is the best way to address them. However, from responses to the targeted consultation on the exposure draft, we know that stakeholders have varying perspectives on what improvements are needed.
31. Individual employees and employee representatives generally support the aims and principles of the current Act¹³, prioritise protecting employee entitlements, and advocate for greater prescription and clarity. In contrast, employers and payroll providers favour simplicity, system workability and minimising compliance costs.

There is an opportunity to reduce complexity and improve clarity

32. Overall, the current Act is not readily implementable for some working arrangements and widespread non-compliance undermines the wider employment relations and standards regulatory system. There is an opportunity to significantly improve the Act and make it more implementable in payroll systems through simpler provisions, clearer obligations and better accounting for different working arrangements.

¹⁰ New Zealand business demography statistics – February 2024

¹¹ Household Labour Force Survey – December 2024

¹² Household Labour Force Survey – December 2024. “Variable hours” based on working more or fewer hours in the last week than usual.

¹³ The Act is based on two key principles relating to entitlements and pay.

- i. That entitlements are determined in relation to the work pattern at the time leave is taken.
- ii. 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.

What objectives are sought in relation to the policy problem?

33. The key objectives of improving the Act are listed below.
- a. **Simple but clear:** New frameworks, processes, rules, and criteria should be as simple as possible, while providing clarity and certainty for employers about their obligations and rights.
 - b. **Workable:** Changes should be readily implementable in existing payroll systems where possible (including those used by large and small businesses), with minimal additional ongoing administrative burden and compliance costs.
 - c. **Flexible and future proof:** Provisions should be applicable to the full range of complex working and remuneration arrangements in the labour market, both now and in the future, and support flexibility where it is appropriate for employers and employees to adopt an approach that suits their circumstances.
 - d. **Proportionality of entitlements and obligations:** Changes should appropriately balance interests between parties, specifically between the provision of entitlements and transparency for workers and compliance costs for employers.

What consultation has been undertaken?

34. Consultation on issues with the Act and the solutions to address them has occurred at multiple points in recent years.
35. In August 2018, the Holidays Act Taskforce consulted with the public on an issues paper. Feedback was sought on the main issues with the Act and possible proposals for change. A total of 87 submissions were received¹⁴, with virtually all respondents agreeing that the key issues with the Act are a lack of prescription, complexity and a lack of clarity. However, thoughts on how best to address these issues varied significantly. Employees were more likely to support providing greater prescription, while employers were more likely to support reducing complexity and a more fundamental overhaul of the Act.
36. Throughout 2021-2022, MBIE completed a policy design process to develop the details required to implement the Taskforce's recommendations in legislation. To support this process, MBIE brought together a working group of stakeholders including payroll system providers, payroll practitioners working in employer organisations, business, and unions. The group contributed their insights into the practicalities of implementing the recommendations in payroll systems, and across a variety of complex employment environments.
37. In September 2024, targeted consultation on a draft Bill to improve the Act based mainly on the Taskforce recommendations was undertaken with employers, employees and technical experts¹⁵. The consultation document also sought views on more fundamental changes to the Act, such as moving to an hours-based accrual model for leave. A total of 76 submissions were received¹⁶. A majority of submitters indicated that while the Bill

¹⁴ Responses were from employers (47%), payroll practitioners or providers (15%), individuals (16%), and other groups or organisations (22%; e.g., law and accounting firms).

¹⁵ Technical experts include payroll providers and practitioners; legal, accounting, and human resources experts; and representative bodies.

¹⁶ Responses were from technical experts (49%; e.g., payroll professionals, legal professionals), employers (33%) and employees (18%).

provided improved clarity, complexity, compliance costs and workability, more fundamental changes would result in a better Act overall.

38. At the same time, feedback was sought from public service agencies on the costs and implementation considerations of the draft Bill proposals. A total of 29 responses, representing 35 agencies, were received. Overall, agencies thought that moderate or significant changes to payroll systems and internal policies would be required, and additional resourcing would be needed to implement the changes. Agencies that were larger or had more diverse working arrangements anticipated greater impacts.
39. Further consultation was conducted in the first half of 2025 as part of the policy work to develop an hours-based accrual system. This included engagement with key government agencies¹⁷ and a large payroll provider, as well as a series of workshops with business and employer representatives. The feedback obtained as part of this consultation, in addition to insights from the targeted consultation in 2024, has been used to develop and refine Option Three.
40. In summary, there has been comprehensive consultation on the issues with the current Act, targeted consultation on an exposure draft Bill based on the Taskforce recommendations, and engagement with employer representatives and a payroll provider on the current proposals. There has not been any public consultation on the full set of proposals agreed by the Minister.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

41. There are three main options considered in this analysis: the status quo (Option One), weeks-based accrual – exposure draft Bill proposal (Option Two), and an hours-based accrual system (Option Three).
42. To meet the stated objectives, the options have been assessed against the following criteria:
 - a. **Simplicity:** Rules, processes, and calculations are as simple as possible to enhance understanding and minimise administrative burden.
 - b. **Clarity:** It is clear how leave entitlements and pay should be provided for different working arrangements, minimising the need for employers to apply judgement and discretion when determining entitlements and payments. Employers are clear about their obligations, while employees are clear about their entitlements and rights. Employees receive their correct entitlements.
 - c. **Workability:** Rules, processes, and calculations are workable in automated and manual payroll and time and attendance systems.
 - d. **Flexible and future proof:** Provisions are applicable to a wide range of working arrangements, both now and in the future, and allow for employers and employees to adopt working arrangements that are mutually beneficial.

¹⁷ Public Service Commission, Treasury, Ministry of Education, Ministry of Health, Health NZ, Ministry for Ethnic Communities, Ministry for Women, Ministry for Pacific Peoples, Te Puni Kōkiri, Whaikaha.

- e. **Minimises employee impacts:** Promotes balance between work and other aspects of employees' lives by providing access to paid and unpaid time away from work when needed.
 - f. **Minimises employer impacts:** Minimises implementation and on-going administration burden and compliance costs for employers.
 - g. **Minimises perverse incentives and labour market distortions:** Minimises the risk of any perverse incentives on employers or employees to arrange work and leave to minimise obligations or maximise entitlements, which may lead to undesirable labour market impacts.
43. Most of the criteria do not inherently conflict with one another. However, simplicity and minimising employer impacts may require direct trade-offs with minimising employee impacts. Specifically, simplicity in terms of employer obligations and system requirements may result in some employees receiving lower payments or reduced entitlements compared to the status quo. However, greater simplicity does not necessarily lead to an erosion of employee entitlements.

What scope will options be considered within?

44. There are several factors that limit the scope of options addressed in this Regulatory Impact Statement. These include:
- a. Only two alternative main options have been included in the options analysis. The first is the proposed framework based on the recommendations by the Holidays Act Taskforce and consulted on with targeted stakeholders in 2024 (Option Two – Exposure draft Bill)¹⁸. The second is an hours-based accrual system for annual holidays and sick leave, and expanded use of “pay as you go” for leave pay (Option Three – Hours-based accrual). Cabinet directed officials to develop the latter option in December 2024 and for the Minister for Workplace Relations and Safety to report back to Cabinet by mid-2025 [CAB-24-MIN-0488]. As a result of these Cabinet decisions, officials only had time to develop one end-to-end hours-based accrual system. No other options could feasibly be considered due to time constraints.
 - b. There has only been targeted and limited consultation on the options included in this analysis. This is primarily due to the limited timeframes for developing policy advice. The lack of public consultation constrains MBIE's ability to fully understand the impacts and costs of various proposals.
 - c. There is a lack of New Zealand data on leave entitlements and their use more generally. For example, there is no reliable data on how many employers only offer minimum leave entitlements, how many employers offer leave entitlements above the minimum, and how much leave is used by employees each year. These data limitations make it difficult to quantify the status quo and estimate the financial impacts of the options. Where possible, estimates of impacts have been derived from general employment data, Holidays Act-related

¹⁸ Due to time constraints, option two reflects the exposure draft Bill without consideration of potential refinements based on consultation feedback.

survey data, and targeted consultation. However, these data sources have significant limitations given the detailed nature of the proposed changes.

- d. There has not been an opportunity to conduct comprehensive payroll testing due to time constraints. For example, payroll testing could use real payroll data to compare the current and proposed annual leave entitlement and payment calculations. This limits the ability to assess the workability and estimate the possible financial impacts of the options.
45. During the development of Option Three, MBIE considered aspects of the holidays and leave regulatory systems of comparable countries, particularly Australia. There are some similarities between the Australian system and the current New Zealand system while the Australian system is simpler in some areas (one of the key criteria for updating the current Act). However, direct comparisons between the two are challenging due to some fundamental structural differences, such as the Australian Awards framework.

What options are being considered?

46. The three options considered in this analysis are presented in detail in Annex One. A high-level summary of each option, highlighting key differences, is provided below.

Option One – Status Quo

47. Option One reflects the current Act (see paragraphs 3-5 for a summary). Under this option, no legislative amendments are implemented.

Option Two – Weeks-based accrual

48. Option Two reflects the proposals presented in the exposure draft Bill¹⁹. The key change is a move from weeks-based entitlement to a weeks-based accrual model for annual leave, with a focus on providing clarity and certainty within the existing weeks-based framework. It also replaces provisions that require employers to apply judgement and discretion with prescriptive processes and calculations.

Annual leave

49. Employees' entitlement to four weeks of annual leave each year accrues from the start of their employment, at a rate of not less than 0.0768 weeks for each completed week of employment. All weeks of annual leave an employee has earned are treated as a single, continuously accruing pot of annual leave entitlement. What constitutes a week continues to automatically adjust to the work pattern at the time the leave is taken.
50. Employees can be paid annual holidays on a 'pay-as-you-go' (PAYG) basis if they have no agreed hours specified in their employment agreement, work less than 12 hours per week on average, and have at least two seven-day periods off work every six months. A prescriptive process for using and reviewing PAYG (including clear, objective criteria for determining employee eligibility), removes the need for employer judgement.

Circumstantial leave²⁰

¹⁹ To better focus on the core differences between the two main options (i.e., weeks vs. hours), Option Two in this analysis does not include the proposal to expand bereavement leave.

²⁰ Circumstantial leave refers to sick leave, bereavement leave, and family violence leave.

51. Employees' sick leave entitlement is pro-rated to provide some proportionality to the amount an employee works. They are provided with a minimum of five days per year and can be provided with up to five additional days depending on their work pattern.
52. Employees are entitled to sick leave, bereavement leave, and family violence leave (circumstantial leave) from day one if they have agreed hours. For employees without agreed hours, eligibility is assessed every three months, with employees becoming entitled if they worked a minimum of 10 hours per week in the last three months and have had no more than two four-week periods without work in the last six months.

Leave payments

53. Revised payment methodologies are intended to provide certainty while retaining the intent that, to the extent possible, payments should reflect what an employee would have earned if they had worked that day. Annual leave payments are based on the greater of three weekly rates (ordinary weekly leave pay, average weekly earnings, and quarterly average weekly earnings). Circumstantial leave is based on one calculation that includes base rates, productivity or incentive-based payments, and fixed allowances.
54. Leave accrues while on parental leave or volunteers leave, but the parental and volunteers overrides are removed, meaning that all the annual leave accrued during this time will be paid at the usual rate.

Option Three – Hours-based accrual

55. Option Three is an hours-based accrual model for annual leave and sick leave. It prioritises simplicity, clarity, and workability. This approach moves away from a one-size fits all model by accommodating the most variable working arrangements outside of the core system via the leave compensation payment (LCP) system.
56. Simplicity and clarity have been prioritised. Feedback from employers, employees and payroll providers has consistently shown that this is of importance and is an aspect that has not been fully achieved by previous attempts to improve the Act. It also aligns with a Cabinet decision that simplicity should be a focus to improve workability and reduce compliance costs²¹.

Standard hours, additional hours, and discretionary hours

57. Leave is provided differently depending on whether the hour in question is one which the employee must work and be paid for (even when work is unavailable) under an employment agreement, in which case it is a standard hour. If the employee has the right to refuse work when offered, then the hour is either additional if the hour is in addition to standard hours, or discretionary if there is no obligation for the employer to offer any work²².
58. Annual leave and sick leave accrue against all standard hours whereas all additional and discretionary hours receive compensation in lieu of annual leave and sick leave. Employees that only work their contracted hours will accrue annual leave in the form of paid time off work. Employees who work hours in addition to their contracted hours, or

²¹ CAB-24-MIN-0488

²² The exception is when additional hours are worked under an availability provision and an employee does not have a right to refuse them, if the employer makes work available.

work on a casual basis with no contracted hours, will receive all or some of their entitlement as payment at the time entitlement is earned.

Annual leave accrual

59. Employees earn annual leave for each standard hour worked, starting on day one, with leave accrued in hours. The minimum rate (0.07692308 hours per standard hour worked) is intended to reflect a total of four weeks' annual leave for each 52 weeks of employment, based on an employee's standard hours at the time of accrual. There is no automatic adjustment mechanism to reflect changes in work pattern. For example, if an employee changes from part-time to full-time, the annual leave balance is not increased to reflect the increase in hours.
60. Annual leave accrues during jury service, volunteers leave, parental leave, and while on leave provided for under this legislation, such as annual, sick, and bereavement leave. Annual leave does not accrue during unpaid leave and when receiving Accident Compensation Corporation (ACC) compensation.

Sick leave accrual

61. Sick leave accrues on every standard hour worked from day one, at a minimum rate of 0.038 hours per standard hour worked. The rate is intended to reflect the current 10-day entitlement for a full-time employee but would be automatically pro-rated for part-time hours. For an employee working 40 hours per week this would result in 80 hours of accrued sick leave over the course of a year. Employees can accrue up to 160 hours of sick leave irrespective of their working arrangement.
62. Sick leave matches annual leave in terms of accrual during non-worked periods.

Other circumstantial leave and public and alternative holiday entitlements

63. All employees have access to paid days of bereavement leave and family violence leave from the first day of employment. The relationships from which employees are entitled to access three days' bereavement leave are the same as in Option One.
64. All employees are entitled to public holidays if it is an otherwise working day for them. There is a new, more objective test to identify whether it is an otherwise working day where it is not obvious. All employees accrue an alternative holiday hour for every hour worked on a public holiday that is an otherwise working day. Alternative holiday hours are also accrued if the employee is on call on a public holiday that is an otherwise working day for them and may be called in.

Leave payments

65. A single hours-based payment calculation replaces all payment calculations for annual leave and circumstantial leave. When on paid leave, the minimum an employee will be paid is their lowest base hourly wage for that day. All fixed allowances must continue to be paid in full when an employee takes leave²³. For employees who receive piece rates, leave pay will include an hourly average of piece work wages. Employees who are paid in

²³ 'Fixed allowances' refer to those that do not vary in value and, at the time leave is taken, an employer is contractually required to pay an employee each pay period or on any other basis. The exception is an allowance/payment that compensates an employee for expenses they incur while they are working but that they do not incur while they are on leave.

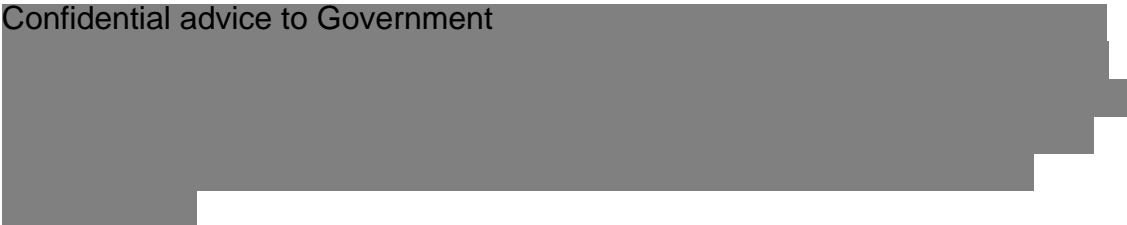
part or in full by commission can agree a minimum rate of pay when on leave which must be at least minimum wage.

- 66. This approach prioritises simplicity and moves away from the intent that, to the extent possible, payments should reflect what an employee would have earned if they had worked that day.
- 67. The payment overrides for employees returning from volunteer or parental leave are removed (the same as Option Two) so any annual leave taken shortly after parental or volunteer leave, is paid at full leave pay.

Leave Compensation Payment

- 68. All additional hours and discretionary hours (i.e., not standard hours) must receive a Leave Compensation Payment (LCP) in lieu of accruing paid time off for annual leave and sick leave. Employers and employees are not able to choose to use LCP for standard hours.
- 69. LCP will be paid in each pay period at a rate of 12.5% of the hourly base rate and 12.5% of all piece rate wages associated with the additional or discretionary hours in question. For employees who are paid wholly or in part by way of commission, LCP must be applied to the greater of their hourly base rate and the minimum wage payable to them under the Minimum Wage Act.

Remediation estimates process

- 70. The Minister for Workplace Relations and Safety is seeking agreement to a remediation estimates process for historical non-compliance. This is a legislative framework enabling any employer to pay estimates of Holidays Act arrears to employees, with the legal status of full and final settlements. While this framework has also not yet been designed, it would seek to overcome any residual legal uncertainty for estimate-based approaches to Holidays Act remediation. It would do so by using legislation to remove specified legal liabilities of employers who had followed the prescribed process.
- 71. Confidential advice to Government

- 72. A remediation estimates process sits outside the core leave framework and could apply to either Option Two or Option Three. For the purposes of this analysis, it is considered as part of both options.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Weeks-based accrual	Option Three – Hours-based accrual
Simplicity	0	0 Some areas of greater simplicity (e.g., accruing annual leave, parental leave override removal, closedown anniversary dates), but some areas of greater complexity for variable working patterns (e.g., PAYG test, providing sick leave entitlements, additional tests).	+ Significantly simpler leave entitlement and payment framework (e.g., hours-based accrual, simple eligibility rules, parental leave payment override removal, one payment calculation for all types of leave). Still some areas of complexity, including applying the hours definitions to some work arrangements and determining whether a day is an otherwise working day for public holiday entitlement.
Clarity	0	+ More prescriptive and clearer generally, although some areas of ambiguity (e.g., determining a week, sick leave entitlement for variable employees).	+ + Greatly improved clarity and removal of employer judgment.
Workability	0	+ Greater certainty improves system workability, although this is counterbalanced by additional tests and complexity in some areas.	+ + Greater simplicity and clarity will lead to improved system workability. However, we have only consulted with one large payroll provider, so there is some uncertainty in this respect.
Flexible and future proof	0	0 Improved clarity and new payment calculations better account for changing work patterns and payments, although tightening of PAYG rules restricts flexibility for employers that may want to apply it to other employees (e.g., fixed-term employees). Some other changes, such as the introduction of a 50% test for circumstantial leave, may incentivise employer behaviour that may have the effect of reduced flexibility (e.g., some	0 Some added flexibility through hours-based accrual and LCP (e.g., it is not reliant on the concept of a 'week'). The new payment methodology may constrain the ability for employers and employees to agree to variable pay structures that may otherwise suit them, while the need to define standard vs non-standard hours may reduce flexibility.

		employers may be reluctant to offer casual employees shifts if it means they will be entitled to public holidays following a busy period).	
Minimises employee impacts	0	<p>+</p> <p>Earlier, broader and more flexible access to time off (e.g., entitlement from day one, restricted use of PAYG, use of part-days), as well as increased payments for some employees due to the new payment calculations and gross earnings definition. However, reduced access to sick leave for part-time employees.</p>	<p>–</p> <p>Earlier and more flexible access to time off (e.g., entitlement from day one, part-days). However, some entitlements will be worth less for some employees due to the change in payment methodology, part-time employees will receive less sick leave, and employees on ACC will not accrue annual leave. With the extension of LCP to additional hours and removal of optionality, many employees will receive less paid time off and LCP instead.</p>
Minimises employer impacts	0	<p>+</p> <p>Improved clarity will reduce compliance costs, pro-rated sick leave will reduce leave costs, while retaining the same units for annual leave (weeks) and other types of leave (days) should mean that the transition process would be less costly and disruptive. Increased costs for variable workers (e.g., additional tests and payment calculations).</p>	<p>+</p> <p>Simplicity reduces administration burden and compliance costs, and the reduction in sick leave entitlements and components included in payment methodology will reduce costs for many employers. LCP is a higher cost than PAYG but includes sick leave entitlement and removes costly compliance risk. Record keeping and pay statement requirements may be more challenging for small businesses.</p>
Minimises perverse incentives and labour market outcomes	0	<p>0</p> <p>Reduced instances of employer judgement and greater protection for employees with variable work and pay, although still some areas for employer judgement. May introduce disincentives to offer discretionary payments due to gross earnings definition.</p>	<p>–</p> <p>Reduced employer judgement needed to complete calculations. It is not clear how overlapping incentives around work arrangement types could play out. Some employers may prefer not to use additional and casual hours with the upfront 12.5% payment. Others may increase use of those types of hours because of the reduced opportunity to take other types of leave. The structure of leave payment minima could drive</p>

			employee demands for bargaining to increase base rate and decrease use of commission and discretionary payments. Where the value of entitlements has decreased, employees may avoid taking leave, posing health and safety risks.
Overall assessment	0	<p>+</p> <p>Enhances clarity and employee access to leave entitlements, while minimising perverse incentives. However, some complexity remains and impacts on employers are not significantly reduced.</p>	<p>++ (subject to limitations)</p> <p>Increased simplicity, clarity and workability and reduced administrative burden and costs for employers. Some erosion of employee entitlements and risk of perverse incentives. Our assessment is subject to the limitations noted in paragraph 44.</p>

Key:

- ++** much better than doing nothing/the status quo/counterfactual
- +** better than doing nothing/the status quo/counterfactual
- 0** about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

Which option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

73. An overall assessment of the impact of the changes is extremely difficult given the technical nature of the changes and the variability of what the changes will mean in practice depending on an individual's circumstances. There are two main types of impact: (1) process changes and (2) potential outcome changes. While in practice these two things are intertwined, it is useful to separate these conceptually. Many of the outcome changes can be considered to be transfers in an economic sense. That is, a reduction in leave payments for employees is a cost to employees that is offset by the benefit to employers. However, they could have real dynamic effects if employers and employees change behaviour as a result.
74. In our view, Option Three best addresses the key issues with the current Act's processes. It reduces complexity, provides greater clarity, and we expect it to be more workable in payroll and time and attendance systems. In particular, the hours-based accrual system and LCP framework makes it significantly easier to calculate and provide leave entitlements than the status quo or a weeks-based accrual framework. However, there could be some complexity for some employers and employees who use flexible work arrangements where there may be difficulty determining which leave system is appropriate. The single payment methodology also reduces the complexity of calculating leave payments for most.
75. These process improvements would ensure employees receive their correct entitlements and payments for them by reducing the components of pay that are considered. This should help to eliminate remediation issues and the need for costly payroll investigations and arrears payments. It also reduces administration and compliance costs for employers.
76. All employers and employees would benefit from these process changes by making it easier to understand what the leave eligibility rules are and when they apply. The clarity about eligibility is likely to be greatest for employees who currently receive PAYG as they often do not receive their correct entitlement to other leave types under the current leave framework. Clarity will also benefit employees with variable hours as it is currently often difficult to determine what a week is or take circumstantial leave for these employees. It is estimated that approximately 12% of all employees work variable hours, primarily in the health care, construction, hospitality, and retail sectors. These employees are proportionately more likely to be younger and female²⁴. The scenario below provides an example of how employers and employees will benefit from greater clarity and simplicity.

²⁴ Household Labour Force Survey – December 2024. "Variable hours" based on working more or fewer hours in the last week than usual.

Alex the shop assistant

Key shift: Taking annual leave for employees with additional hours



This shift affects all employees who have standard hours but also work additional hours. It is estimated that this represents approximately 284,800 employees (10% of all employees), primarily in the health care, construction, hospitality, and retail sectors.

Alex is contracted to work 24 hours per week as a shop assistant on Mondays, Tuesdays and Wednesdays. However, he often picks up an additional shift on Thursdays, working on average 30 hours per week. He requests three days off work in a month's time (Tuesday, Wednesday, and Thursday).

How annual leave is taken under the current system:

- It is unclear what a 'week' is for Alex (e.g., is 24 hours or 30 hours a genuine reflection?), which days he can take leave on (e.g., while he is not contracted to work Thursdays, in practice he nearly always does), and what portion of a week should be deducted for the time away.
- Alex and his employer must discuss and reach agreement on what constitutes a working week for him. In order to determine what portion of a week is being taken, they must also agree whether he would genuinely have worked on the three days in question and how many hours on each day.

How annual leave is taken under the new system:

- Alex accrues annual leave on the 24 standard hours and receives LCP on the additional hours worked. He can take leave on the Tuesday and Wednesday and be deducted 16 hours of annual leave.

77. Although the benefits of Option Three are significant and widespread, some employers and many employees may be worse off. Part-time employees, who account for approximately 21% of the total workforce²⁵, would receive less paid sick leave, while employees receiving weekly compensation payments would not accrue annual leave while they are off work. In 2023, 148,509²⁶ people were paid weekly compensation²⁷, equating to approximately 5% of all employed and self-employed workers²⁸. Women²⁹ and disabled people³⁰ are more likely to be part-time employees, and employees in the manufacturing, agriculture and construction sectors are more likely to suffer work-related injuries³¹. These employees are therefore more likely to be negatively impacted by the proposed changes to accruing annual leave and sick leave.
78. Employees who increase or decrease their hours may be either disadvantaged or advantaged under the proposals. Under the current Act, annual holidays entitlements are in weeks, and a 'week' needs to reflect the work pattern at the time the leave is taken. For example, if an employee was previously working 20 hours a week but recently increased their hours to 40 a week, a 'week' for them would be 40 hours. Under an hours-based accrual system, however, an employee would build up a bank of leave in hours and this is not adjusted for changing work patterns. Therefore, if someone were to increase their hours, they would be worse off compared to the status quo, while if they were to

²⁵ Stats NZ March 2025 quarter report

²⁶ There is a subset of long-term claims of approximately 8,700 (as of December 2024) that are not expected to move off weekly compensation due to permanent injuries, sensitive claims or long-term service.

²⁷ <https://www.acc.co.nz/im-injured/financial-support/weekly-compensation>

²⁸ Household Labour Force Survey – Q4 2023

²⁹ Stats NZ March 2025 quarter report

³⁰ Household Labour Force Survey – June 2024

³¹ <https://www.stats.govt.nz/information-releases/injury-statistics-work-related-claims-2023/#:~:text=A%20total%20of%20226%2C600%20work,of%20the%20series%20in%202002.>

decrease their hours, they would be better off compared to the status quo. While there is a change to the existing concept of ‘four weeks at the time leave is taken’, we understand that the ‘bucket’ of leave concept is well understood and accepted in Australia.

79. Minimum leave entitlements are likely to be worth less to employees who receive commissions and bonuses as part of their remuneration. There is insufficient data to identify how impactful this change could be, although anecdotally we are aware that many sales consultants, real estate agents and other services professionals receive commissions. Where the access to, or value of, entitlements has decreased, employees may avoid taking leave, having workplace health and safety implications.
80. Beneficiaries who are in employment are also likely to be worse off. As under current settings LCP will be considered extra income, it will offset the benefit amount so that the employee will not be able to “save” the LCP for times when they need to take leave and use it. For any money that is set aside to cover periods of illness, this would be considered a cash asset and may impact an individual’s ability to access hardship or other supplementary assistance. It is anticipated that this would impact approximately 10% (30,000-40,000) of beneficiaries.
81. Due to the widening of LCP compared to pay-as-you-go, there will be more employees taking unpaid leave from work. There is a risk that employees may not put aside the LCP component of their pay and Work and Income may receive more requests for support.
82. There is the risk for perverse incentives and market impacts under Option Three. Employers may be incentivised to provide fewer standard hours and increased discretionary or additional hours to reduce access to paid time off, although this should be largely mitigated by an appropriate LCP loading. In addition, some employers may offer lower base rates and increase discretionary payments to reduce the value of leave entitlements. Finally, some employees may be incentivised to come to work sick because of lower paid sick leave entitlements for part-time and discretionary employees. The likelihood and magnitude of perverse incentives is not well known.
83. It is worth noting that employee impacts will be influenced by the degree to which individual and collective agreements provide entitlements that are above the minimum (e.g., employees may not be worse off if their collective agreement includes more favourable entitlements). Relatedly, reductions in entitlements are likely to trigger collective bargaining processes, which may partially mitigate negative employee impacts over time. Therefore, it is anticipated that lower paid employees that are not subject to a collective agreement, such as is common in the retail, hospitality and construction sectors, may be more impacted than other employees.
84. A legislative ‘full and final’ arrears estimation approach will provide certainty around the remediation processes and outcomes for employers. It will also be simpler and more cost effective than a line-by-line remediation process and enable employees to receive some compensation for their entitlements (and possibly a premium). Cost savings for employers will result from reduced administration costs and not requiring engagement with third parties to undertake remediation processes. The overall liability cost (i.e., what is paid to employees for historical non-compliance) is not expected to be substantially different from the status quo. Although many employers have already undertaken remediation processes and rectified systems issues, it is expected that many employers will use this approach as the move to a new Act will uncover further non-compliance.

85. Legal professional privilege and Confidential advice to Government

86. Legal professional privilege and Confidential advice to Government

87. Legal professional privilege and Confidential advice to Government

88. Overall, MBIE considers that the benefits of Option Three outweigh the costs and the net benefits are higher than the other option and the status quo. However, this assessment needs to be viewed in light of the scope, time, data and consultation constraints identified in paragraph 44.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

89. The Minister for Workplace Relations and Safety's preferred option in the Cabinet paper is Option Three in this analysis. Subject to limitations, Option Three is MBIE's preferred option.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high,</i>	Evidence Certainty <i>High, medium, or low, and explain</i>
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³² Article 7 of ICESCR sets out a list of fundamental elements to guarantee just and favourable conditions of work, which includes paid leave and holidays.

		<i>medium or low for non-monetised impacts.</i>	<i>reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated group – Employers	Implementation costs for most employers to upgrade to a new payroll system and amend employment agreements and businesses processes. Increased ongoing costs for some employers due to LCP payments ³³ , the removal of the parental leave payment override, and additional compliance (e.g., pay statements).	Implementation – Medium Ongoing – Low Similar ongoing costs to the status quo for many employers. Small increased ongoing costs for some employers.	Low
Regulated group – Employees	Ongoing costs for some employees due to reduced entitlement to leave (e.g., sick leave for part-time workers) and reduced value of leave (e.g., employees with significant commissions and bonuses).	Medium	Low
Regulators (Labour Inspectorate)	Transitional costs to operationalise the new requirements and upskill staff, provide initial education services, develop guidance and tools and respond to questions after implementation.	Low	Medium
Wider government	Estimated costs to government as an employer included in the ‘Regulated group – Employer’ estimates.		Low
Other parties	Implementation and transitional costs to payroll providers to upgrade their systems, and support clients.	Medium	Low
Non-monetised costs		Medium	Low
Additional benefits of the preferred option compared to taking no action			
Regulated group – Employers	Employers will have greater clarity and certainty, be better able to systematise rules, and	Overall – High Small to moderate decreased ongoing	Low

³³ The increased cost of LCP instead of time off for annual and sick leave is difficult to quantify without robust testing. However, it is expected that it would be marginal.

	<p>reduce the likelihood and impact of remediation projects.</p> <p>Decreased ongoing costs for some employers due to:</p> <ul style="list-style-type: none"> - Compliance (e.g., simpler system, less intervention). - Leave payments (e.g., sick leave for part-time workers, less inclusive payment calculations). - Simplified remediation process. 	costs for some employers.	
Regulated group – Employees	<p>Employees will have greater clarity and certainty and be more likely to receive their correct entitlements and payments.</p> <p>Earlier and more flexible access to some forms of leave. Greater annual leave payments after returning from parental leave.</p>	Medium	Low
Regulators	<p>Greater clarity and prescription should make it easier to identify non-compliance.</p>	Low	Low
Others (eg, wider govt, consumers, etc.)	<p>Same benefits as regulated groups.</p>	High	Low
Non-monetised benefits		Medium	


90. Due to data limitations on the current use of leave entitlements, as well as the inability to conduct payroll testing due to time constraints, it is not possible to provide financial cost estimates of Option Three with any degree of confidence. However, in our view, the overall costs are likely to be less than the status quo over the long-term.
91. There would be up-front costs for employers to update payroll systems and business processes to reflect the new requirements. There would also be some minor on-going increased costs for employers that do not currently provide regular pay statements or with variable-hours employees that may need to conduct additional tests (e.g., 50% tests for public holidays) or issue LCP payments.
92. These costs are anticipated to be outweighed by cost savings over the longer-term. A simpler system will reduce compliance costs for most employers, while improved clarity and certainty will reduce compliance issues and the need for costly remediation projects.
93. The legislative remediation framework will reduce the costs of undergoing complex remediation processes for many employers. However, as this framework has not yet been designed, it is not possible to estimate the magnitude of the financial impacts.


94. A key monetised benefit is reduced leave payment costs for employers that offer more complex pay structures or have part-time employees due to changes to payment calculations and sick leave entitlements. However, this is directly offset by the monetised costs falling on these employees.

Section 3: Delivering an option

How will the proposal be implemented?

95. The legislation setting out the new leave system under Option Three will differ significantly to the *Holidays Act 2003* (the Act). As a result, payroll providers, employers and employees will need sufficient time and support to understand and implement the new requirements. This is important to ensure the transition from the current Act to the new legislation is clear, orderly, fair and efficient.

96. MBIE, as the regulator for the employment relations and standards system, has responsibilities relating to supporting the implementation of a new Act. MBIE will develop a plan to support employers, employees and payroll providers during the implementation period. Confidential advice to Government
- 

97. Confidential advice to Government
- 

98.

Implementation timeframes

99. A 24-month implementation period should provide sufficient time for affected stakeholders to understand the new legislation, and for payroll providers and employers to implement the changes required in their payroll and business systems. This length of time is longer than the proposed 18-month implementation period in the exposure draft Bill which roughly half of the targeted consultation submitters and government agencies consulted thought was an appropriate length of time, while a third thought that it was too short.³⁴
100. As consultation on Option Three has been limited, given time constraints, there may be limitations relating to implementation that we are not aware of. Those we have consulted with (including the Public Service Commission and an independent payroll expert) generally agreed that the implementation period of at least 18 months would be appropriate for the implementation of the new legislation. On balance, 24 months is

³⁴ 48% of submitters (45% of technical experts, 56% of employers and 45% of employees) and 43% of government agencies thought an 18-month implementation period was about the right length of time.

expected to support an orderly transition, and lead to greater compliance, and increased likelihood that employees receive their correct entitlements.

101. In the interest of simplicity, all parts of the Act will come into force at the same time and employers will not be able to adopt the new Act early. This approach will support communications about the introduction of the new Act and will be simpler and easier for employers to understand their obligations. Employers will benefit from clarity around when and how to implement new requirements which will lead to a more orderly and fair transition to the new Act.

Implementation risks

102. We are aware, based on consultation feedback³⁵ and subsequent consultation with other government agencies, that a 24-month implementation period may not be long enough for a small group of employers. For example, the Ministry of Education has indicated that they would need a significantly longer implementation period, potentially up to a decade.
103. Communication strategies and education campaigns will ensure that the proposal is implemented effectively. However, some employers may require more extensive guidance and support to understand and implement the new requirements, irrespective of the length of the implementation period. Confidential advice to Government

Transitional considerations

104. Specific transitional provisions will be required to ensure an orderly, fair, and efficient transition from the current Act to the new legislation, such as the consideration of the treatment of existing leave entitlements. This includes the balances of earned annual holidays and sick leave entitlement, a calculated portion of annual leave and sick leave which is yet to have arisen, and any earned alternative holidays.
105. Treatment of leave balances will differ depending on whether an employee has standard or discretionary hours. For employees with standard hours, annual, sick and alternative holidays leave balances will be converted to hours. For employees with discretionary hours only, annual leave and alternative holidays balances (which are both earned entitlements that must be used or cashed up at the end of employment) will be cashed out. Sick leave balances will not be converted to hours or cashed out for discretionary hours employees (i.e., they will lose access to their sick leave entitlements).
106. Another key transitional consideration is the treatment of historical liabilities and ongoing remediations as we transition to new law. While most organisations who are likely to take remediation action will have already completed, many live remediations are ongoing³⁶. New non-compliance and liabilities may also come to light as organisations examine payroll systems and convert or cash out existing leave balance. To support employers

³⁵ 35% of submitters (39% of technical experts, 22% of employers and 45% of employees) and 28% of government agencies thought it was either a little or significantly too short.

Confidential advice to Government

with remediations relating to the current Act, MBIE will provide new guidance on a simplified method for estimating arrears.

107. The Minister for Workplace Relations and Safety is seeking delegated authority from Cabinet to finalise the specific transitional provisions that will appear in the Act during the early stages of the drafting process, such as the precise formula(s) for converting leave balances from weeks and days into hours.

How will the proposal be monitored, evaluated, and reviewed?

108. Once implemented, MBIE would be the agency responsible for the legislation. The Labour Inspectorate, as the regulator for the employment relations and standards regulatory system, would be responsible for enforcing and monitoring the new arrangements, and ensuring that sufficient support is provided to employers, employees and payroll providers during the implementation period.
109. MBIE will track the number and types of queries to the MBIE contact centre, the Labour Inspectorate and our websites (business.govt.nz and employment.govt.nz) in relation to the Holidays Act. The number and types of breaches resulting from Labour Inspectorate activities, as well as Employment Relations Authority and Employment Court cases, will also be monitored.
110. The new arrangements would be reviewed by MBIE as part of ongoing monitoring and compliance activities. Confidential advice to Government
If minor issues are identified, further guidance or minor amendments to the Act could be considered.

Annex One: detailed descriptions of options for reforming leave legislation

Earning leave– entitlement and eligibility			
Key area	Option 1: Holidays Act 2003	Option 2: Weeks-based accrual (Employment Leave Bill)	Option 3: Hours-based accrual
Annual leave	Weeks based entitlement <ul style="list-style-type: none">- 4 weeks entitlement arises after 12 months of continuous employment.- Continuous employment includes all periods of employment, except unpaid leave beyond the first week.- Legislative framework does not support accrual systems used by many employers in order to provide earlier access to ‘earned’ annual leave entitlements. Requires complex workarounds to ensure compliance.- A ‘week’ adjusts to reflect work pattern at the time leave is taken.	Weeks based accrual <ul style="list-style-type: none">- Entitlement accrues continuously in weeks from the start of employment, at a rate of not less than 0.0768 weeks for each completed week of employment (to provide 4 weeks annual leave after the same period of employment as the status quo).- The only period of employment during which annual leave does not accrue is unpaid leave beyond the first week (unless it is sick, bereavement or family violence leave, unpaid parental leave under PLEPA or volunteers leave).- A ‘week’ adjusts to reflect work pattern at the time leave is taken.	Hours based accrual <ul style="list-style-type: none">- Entitlement accrues continuously in hours from the start of employment, at a rate of not less than 0.07692308 hours per standard hour worked (to provide the equivalent of 4 weeks annual leave a year).- Annual leave also accrues on standard hours during paid leave under the Act and other legislation, jury service, parental leave and volunteers leave.- Annual leave does not accrue during the following non-worked periods: unpaid leave (including when for sick, bereavement and family violence purposes which it would under options 1 and 2) or when receiving accident compensation payments.- Annual leave does not accrue on additional and discretionary hours.- Balances of annual leave hours do not adjust if hours of work change.
Sick leave	Days based universal entitlement <ul style="list-style-type: none">- 10 days sick leave entitlement arises after 6 months’ current continuous employment’ (or if they have worked an average of 10 hours per week, and at least one hour in every week or 40 hours in every month).- Subsequent 10-day entitlements arise after each 12-month period that meets the same criteria.- Sick leave can be carried over, up to a cap of 20 days.	Days based, pro-rated entitlement <ul style="list-style-type: none">- Employees with agreed hours begin accumulating sick leave entitlement in days from the first day of employment.- Sick leave entitlement is provided on a pro-rated basis – a 5-day base entitlement for all employees and up to 5 more days depending on number of days worked per week.- In the first year of employment, 2 days is provided on day one, 3 days at 3 months, and any additional entitlement at 6 months.- Subsequent pro-rated entitlements arise in full after every 12 months employment, up to a cap of 20 days.- Employees without agreed hours begin accumulating sick leave after three months if they have worked a minimum of 10 hours per week in the last 3 months.	Hours based accrual <ul style="list-style-type: none">- Sick leave accrues continuously in hours from the start of employment, at a rate of 0.0385 per standard hour worked, up to a cap of 160 hours.- The proposed rate is intended to provide the equivalent of the 10-day entitlement for a ‘full-time’ employee. Entitlement is automatically pro-rated based on an employee’s number of standard hours of work.- Sick leave does not accrue on additional and discretionary hours.- Sick leave accrual matches annual leave in terms of accrual during non-worked periods.
Bereavement and family violence leave	Days based entitlement <ul style="list-style-type: none">- If an employee meets the same qualifying criteria as for sick leave (above) they are entitled (after 6 months) to:<ul style="list-style-type: none">- three days of bereavement leave on the death of their spouse/partner, parent, child, brother or sister, grandparent, grandchild or spouse’s/partner’s parent, or if they experience a miscarriage or stillbirth;- one day of bereavement leave on the death of any other person the employer accepts as a bereavement;- ten days family violence leave each year.	Days based entitlement <ul style="list-style-type: none">- Employees with agreed hours are entitled from the first day of employment to the same as option one plus:<ul style="list-style-type: none">- three days of bereavement leave on the death of their aunt, uncle, niece or nephew, step-parent, brother, sister or child, brother, sister or child’s spouse or partner, spouse or partner’s brother or sister, spouse or partner’s brother or sister’s spouse or partner, another person who the employer accepts the employee’s relationship is of a similar nature to those included in the list.- Employees with no agreed hours are entitled to the above if they meet the same criteria as for six leave after 3 months.	Days based entitlement <ul style="list-style-type: none">- Same as option one, but all employees (including those with only discretionary hours) are entitled from the first day of employment.

Public holidays	Days based entitlement <ul style="list-style-type: none"> - All employees are entitled to a paid day off work on a public holiday if it falls on an ‘otherwise working day’ (OWD). - <i>Determining if a day is an OWD</i>: if not clear, an employer and employee must reach agreement by considering factors including the employee’s employment agreement, work patterns, rosters, whether the employee only works if work is available, and reasonable expectations the employee would have worked that day. 	Days based entitlement <ul style="list-style-type: none"> - Same as option 1 but with new criteria <i>for determining if a day is an OWD</i>: <ul style="list-style-type: none"> - the employee would have worked on the day according to agreed days of work or an agreed work pattern set out in the employee’s employment agreement; or - if the employee does not have either of those, the ‘50% test’ is met. An employee would meet the ‘50% test’ if they had worked (or been on paid or unpaid leave) on at least half of the corresponding days of the week in the previous 13 weeks. - The above would not apply if it was reasonable to expect an employee would not have worked due to parental leave, volunteers leave, accident compensation or unpaid leave. 	Days based entitlement <ul style="list-style-type: none"> - Same as option 2, including new OWD criteria. All employees (including those with only discretionary hours) are entitled to a paid day off work on a public holiday if it falls on an OWD.
Alternative holidays	Days based entitlement <ul style="list-style-type: none"> - Employees who work or are on call (which means their activity is restricted on the day) on any part of a public holiday are entitled to an alternative holiday (as a unit of a whole day) if it is an OWD for them. 	Days based entitlement <ul style="list-style-type: none"> - Same as option 1, with new OWD criteria above. 	Hours based accrual <ul style="list-style-type: none"> - All employees accrue alternative holiday hours at a rate of one hour for every hour worked or on call (where there is a requirement to work if called) on a public holiday that is an OWD (option 2 criteria).
Leave compensation payment system	Optional in limited circumstances <ul style="list-style-type: none"> - An employee may receive their annual leave entitlement on a Pay-As-You-Go (PAYG) basis (by agreement) instead of being provided four weeks’ annual leave if they are: <ul style="list-style-type: none"> - on a fixed-term contract of 12 months or less; and - work on a basis that is so ‘intermittent or irregular’ that it is impracticable for the employer to provide annual leave. - PAYG is paid at a rate of eight per cent of gross earnings in each pay period. 	Optional in limited circumstances <ul style="list-style-type: none"> - An employee may receive their annual leave entitlement on a PAYG basis (by agreement) instead of being provided four weeks’ annual leave if they: <ol style="list-style-type: none"> 1. have no agreed hours of work specified in their employment agreement; AND 2. work for an average of 12 hours or less per seven-day period; AND 3. have at least two, separate, continuous periods of seven days or more during which work is not performed in every six months. - PAYG is paid at a rate of eight per cent of gross earnings in each pay period. - All fixed term employees accrue annual leave from day one. 	Compulsory for all non-standard hours worked <ul style="list-style-type: none"> - PAYG framework is replaced with a broader concept of ‘leave compensation payment’ (LCP) and applies (with no optionality) to all casual hours worked (which includes hours worked on top of standard hours). - LCP compensates for both annual leave and sick leave. - LCP is paid in each pay period at rate of 12.5% of wages that were actually paid in relation to an employee’s time worked and for piece work for each relevant hour. - For employees paid wages wholly or in part by commission who do not have a base wage for time that is higher, the minimum amount the LCP rate can be applied for each relevant hour is the minimum wage rate payable under the Minimum Wage Order.
Taking Leave			
Key area	Option 1: Holidays Act 2003	Option 2: Weeks-based accrual (Employment Leave Bill)	Option 3: Hours-based accrual
Annual leave	Rights and obligations for taking annual leave		
	<ul style="list-style-type: none"> - Taken by agreement in the first instance. - Employers must not unreasonably withhold consent to a request to take entitlement that has arisen (do not have to allow any leave in first 12 months). - Employers must allow entitlement to be taken within 12 months of the date it arose, and at least two weeks in a continuous period. - Employers can require any entitlement that has arisen to be taken if they cannot reach agreement with employee (with 14 days’ notice). 	<ul style="list-style-type: none"> - Option 1, but with adjustments to align with a weeks-based accrual system. Key differences are: <ul style="list-style-type: none"> - Employers must not unreasonably withhold consent to a request to take accrued entitlement from day one. - Employers can require an employee to take accrued entitlement up to the amount an employee’s balance exceeds four weeks, if they cannot reach agreement (with 14 days’ notice). 	<ul style="list-style-type: none"> - Underlying principles aligned with option 1 and 2. Adjustments to align with hours-base accrual system. Key differences are: <ul style="list-style-type: none"> - Employers must not unreasonably refuse an employee’s request to take any entitlement hours they have accrued from start of employment. - Employers must allow and can require employees to take their balance of leave entitlement that exists at their last 12-month employment anniversary within the next 12 months (with 14 days’ notice).

	Parameters for using annual leave entitlement		
	<ul style="list-style-type: none">- Employers and employees may agree how an employee’s entitlement to four weeks’ annual leave is to be met based on ‘what genuinely constitutes a working week’ for an employee at the time AL is taken and, on that basis, what portion of entitlement an employee has used.- A Labour Inspector may determine the matter if they cannot agree (which is most likely where hours vary).	<p>There is a prescriptive formula for determining what a ‘working week’ means for an employee and the portion of entitlement used for a period leave</p> <ul style="list-style-type: none">- If an employee has standard hours those hours always define a working week (pay compensates for additional hours when leave is taken).- Hours are used as the basis for determining entitlements, with averages used when hours are not clear.- Leave can be taken on any agreed days of work or, if there are none, days an employee could have worked under their employment agreement.- There is a prescribed maximum number of hours an employee can take on an agreed day of leave.- There are distinct rules for applying the formula for different groups of employees.- An employee cannot take more than 1 week of entitlement in a calendar week, with rules for assigning hours if the maximum number exceed a week.	<p>Base parameters</p> <ul style="list-style-type: none">- In a seven-day period an employee can take up to the number of standard hours they would have worked in that period, according to their employment agreement.- When an employee takes leave the hours they can be required to work reduce by that number.- Leave must not be taken on a day an employment agreement makes clear an employee would never have worked. <p>Identifying days and maximum hours that can be taken on day</p> <ul style="list-style-type: none">- If an employment agreement (or roster that has been created when leave is requested) specifies the days standard hours are worked and the number of standard hours that will be worked each day, those are the days and hours leave can be taken.- If an employment agreement does not include all the variables required for determining leave entitlements, it must include a notional roster that will be used for leave purposes (that aligns with the base parameters).- Part-year workers can use entitlement during periods of seven-consecutive days or more when they are not required to work under their employment agreement and will not be paid.
	Cashing up (exchanging entitlement for payment) annual leave		
	After their first entitlement arises, an employee may request to ‘cash up’ up to one week of their entitlement in each subsequent 12 months of continuous employment.	After the completion of the first 12 months of employment, an employee may request to ‘cash up’ up to one week of their accrued entitlement in each subsequent 12-month period.	In each 12-month period, an employee may request to ‘cash up’ 25% of their balance of accrued annual leave entitlement hours as at their last 12-month employment anniversary.
	Annual leave and closedown periods		
	<p>Annual closedowns</p> <ul style="list-style-type: none">- Employers can have one closedown period per year when they require an employee to take annual leave entitlement.- They must provide at least 14 days’ notice.- If an employee does not have leave entitlement, the employer must pay the employee 8 percent of their gross earnings since the start of employment, or entitlement last arose, and reset their anniversary date. <p>Agreed closures</p> <ul style="list-style-type: none">- An employer can discontinue an employee’s work at other times but cannot require an employee to take entitlement and must agree on the arrangements that will apply.	<p>Annual closedowns</p> <ul style="list-style-type: none">- To have an annual closedown when they require an employee to take leave, an employer must first establish a ‘closedown window’ by first consulting with employees, and then providing notice in writing to employees at least three months before the start of the first closedown window.- They must provide at least 14 days’ notice before a specific annual closedown.- All accrued leave is entitled leave so the provision for paying out entitlement that has not arisen is redundant. <p>Agreed closures</p> <ul style="list-style-type: none">- An employer can discontinue work at other times if they agree the dates and leave arrangements in writing with the employee at least 14 days in advance.	<p>Annual closedowns</p> <ul style="list-style-type: none">- Same as option 1 but the notice period is extended to 21 days.- Like option 2, the requirement to pay out leave entitlement that has not arisen is redundant. <p>Agreed closures</p> <ul style="list-style-type: none">- Same as option 2.

Sick, bereavement and family violence leave	<p>Specified circumstances when leave may be used</p> <ul style="list-style-type: none"> - Sick leave - if an employee or their spouse, partner or dependent are sick or injured. - Bereavement leave - if one of the persons listed above dies. - Family violence leave - if an employee, or a child who lives with them, experience family violence. <p>Days on which leave may be used</p> <ul style="list-style-type: none"> - Leave may be used on any day that is an OWD (see definition above for public holidays). <p>Determining the amount of leave used</p> <ul style="list-style-type: none"> - No explicit provision for leave to be taken in part-days. If an employee takes leave for only part of a day, this can still be counted as using a whole day of leave. <p>Sick and family violence leave during accident compensation</p> <ul style="list-style-type: none"> - Employer and employees may agree that one day of sick or family violence leave be used for every five days an employee is off work and receiving accident compensation, if the employer pays the different between Ordinary Weekly Pay and the weekly compensation. 	<p>Specified circumstances when leave may be used</p> <ul style="list-style-type: none"> - Same as option 1 <p>Days on which leave may be used</p> <ul style="list-style-type: none"> - Limb One: Entitlements (in days) can be used if, when the employee notifies the employer of the intent to take the leave, they would have worked on the day in question according to the days of work or work pattern specified in an employment agreement or a roster or any other document. - Limb Two: If there are no days of work in the employment agreement or a roster does not exist at the time of notification, the 50% test is used (like public holidays – see above). - Like public holidays, if it is reasonable to expect an employee would not have worked, entitlements cannot be taken despite the criteria above. <p>Determining the amount of leave used</p> <ul style="list-style-type: none"> - Employees can take leave in whole or part days, directly proportionate to the hours they would have worked on the day (an average is used if the hours are not clear). A formula for determining the proportion of a day an employee has used is provided. <p>Sick and family violence leave during accident compensation</p> <ul style="list-style-type: none"> - Employer and employee can agree to taking 0.2 days of sick or family violence leave for every whole day that the employee is off work and receiving accident compensation. The employer must pay the employee for each part day according to the normal payment rules. 	<p>Specified circumstances when leave may be used</p> <ul style="list-style-type: none"> - Same as option 1 <p>Days on which leave may be used</p> <ul style="list-style-type: none"> - Limb one: Same as option 2. Rostered days/hours include both standard and additional hours (and discretionary hours for bereavement and family violence leave). Being ‘rostered on’ includes any situation where specific hours of work have been offered and accepted. - Limb two: If there are no days of work in the employment agreement or if no roster exists when leave notified (for example where sick leave is known and notified in advance), the notional roster described above for annual leave is used where an employee has standard hours. If the employee has no standard hours, leave cannot be used on a day if work was not rostered. <p>Determining the amount of leave used</p> <ul style="list-style-type: none"> - Sick leave: Is taken in hours, up to the number of hours the employee would have worked on the day according to agreed or rostered hours, or hours set out in a notional roster. Taking part days is automatically enabled. - Family violence and bereavement leave: Same as option 2. But, if hours that would have been worked are not clear, notional roster is referred to. <p>Sick and family violence leave during accident compensation</p> <ul style="list-style-type: none"> - Employers and employees can agree to use and be paid for sick leave or annual leave that is up to 20% of their standard weekly hours for each week off work. They can also agree to use and be paid for up to 0.2 days of paid family violence leave for every whole day they are off work. Employer must make payment in accordance with the normal payment rules for the leave hours/days used.
Alternative holidays	<ul style="list-style-type: none"> - An employee can agree with their employer that they will take an alternative holiday on any day that is an OWD. - Must be a whole working day off, regardless of the amount of time the employee worked on the public holiday. - If agreement cannot be reached, employer can require employee to take the leave, with 14 days notice. - Employee may request to cash up alternative holidays if 12 months have passed. The employer and employee must agree to the mount of payment. 	<p>Same as option 1 but with:</p> <ul style="list-style-type: none"> - new OWD criteria (see public holidays above); and - the ability to take as a single day or parts of a day that add up to a whole day (like sick, bereavement and family leave above). 	<p>Rules generally aligned with, but more flexible than annual leave:</p> <ul style="list-style-type: none"> - When alternative holidays hours are taken is by agreement and an employer must not unreasonably withhold consent. - Can be taken on any day an employee could have worked under employment agreement (except another public holiday). Can be used to take a whole or part day off. If an employee takes alternative holiday hours, the number of standard hours an employee could be required to work reduces. - Employer can require an employee to take leave if unable to reach agreement with 14 days’ notice. - Employees can request to cash up alternative holiday hours at any time. Hourly pay rate (below) applies.

Public holidays	<p>Public holidays falling on a weekend</p> <ul style="list-style-type: none">- When the Christmas, New Year, Waitangi Day and ANZAC Day public holidays fall on a Saturday or Sunday they are treated as falling on the following Monday (or Tuesday) for employees who would not otherwise be working on the Saturday or Sunday. <p>Public holiday transfers by agreement</p> <ul style="list-style-type: none">- Employers and employees can make an agreement to transfer part of a public holiday when a shift spans two days so that it covers on whole shift.- They can also agree to transfer a whole public holiday to another OWD and, if the transfer is agreed, the employee work and be paid as normal on the public holiday.	<p>Public holidays falling on a weekend</p> <p>Same as option 1</p> <p>Public holiday transfers by agreement</p> <p>Same as option 1 but with a clarification that a request to transfer a whole public holiday can only occur when an employee was not going to work on a public holiday otherwise, and only following an employee’s request (to distinguish it from a situation where they work on an OWD at an employer’s request and are paid T1.5 and are entitled to a public holiday).</p>	<p>Public holidays falling on a weekend</p> <p>Same as option 1</p> <p>Public holiday transfers by agreement</p> <p>Same as option 2</p>
Payment of entitlements			
Key area	Option 1: Holidays Act 2003	Option 2: Weeks-based accrual (Employment Leave Bill)	Option 3: Hours-based accrual
Annual leave	<p>For any portion (the number of whole or part weeks) of entitlement taken or cashed up, an employee is paid at a rate based on the greater of:</p> <ul style="list-style-type: none">• Ordinary Weekly Pay (OWP) – the pay an employee receives under the employment agreement for an ordinary working week. It includes regular productivity or incentive-based payments (including commission), regular overtime payments and the cash value of board and lodgings provided by the employer. If it is not possible to determine OWP, a four-week average of gross earnings (minus payments that are not part of regular pay) must be used.• Average Weekly Earnings (AWE) – an average of gross earnings for the 12 months before the end of the pay period before the annual leave. <p>When employment ends: Leave ‘earned’ but that has not yet arisen as an entitlement is paid out at eight per cent of gross earnings since the last date entitlement arose. Untaken entitlement that has arisen is paid out as if it were being taken at the end of employment.</p> <p>If a public holiday would have occurred had the leave been taken, and it would have been an OWD, an employee is entitled to be paid for that public holiday.</p> <p>Parental leave and Volunteers leave</p> <p>Annual leave an employee becomes entitled to during or in the 12 months that follow these periods is only required to be paid at the employee’s AWE, with no comparison to OWP.</p>	<p>For any portion (the number of whole or part weeks) of entitlement taken or cashed up, an employee is paid at a rate based on the greater of:</p> <ul style="list-style-type: none">• Ordinary Weekly Leave Pay (OWLP) replaces OWP and includes:<ol style="list-style-type: none">1. Pay the employee receives as salary or wages for their ‘ordinary weekly hours’ under their employment agreement PLUS2. Fixed allowances (allowances of a non-variable amount) that are always payable under the employment agreement (unless they are ‘enduring allowances’), PLUS3. Cash value of Board and Lodgings.• Average Weekly Earnings (AWE) – same as option 1 but using a revised definition of gross earnings below.• Quarterly Average Weekly Earnings (QAW) - an average of gross earnings for the pay periods that started within the 93 days before the one in which the annual leave is taken, excluding payments earned over a period longer than 13 weeks. <p>When employment ends</p> <p>Available accrued entitlement weeks are paid out as if they were being taken at the end of employment. Public holidays that would have fallen in the period paid the same as option 1.</p> <p>Parental leave and Volunteers leave</p> <p>When annual leave that accrues during or after these periods is taken it is paid at the same rate as annual leave taken in any other circumstance (greater of OWP, AWE or QAW).</p>	<p>A single hours-based payment calculation applies to all leave types.</p> <p>The hourly leave pay rate includes:</p> <ul style="list-style-type: none">• The ‘base’ hourly wage rate for the day on which the hours of leave are taken. Base wage rate is defined as the lowest of any wage rates specified in the employment agreement that would otherwise apply on the specific day.• For employees paid wholly or in part by piece wages, an hourly average of piece work wages (including any base wage the employee is paid) paid over a specified (52 week) reference period.• For employees paid wholly or partly by way of commission, who do not have a ‘base’ hourly wage rate that is equal to or higher than the minimum hourly pay rate payable to them under the Minimum Wage Order, an amount at least equal to the minimum wage. <p>All fixed allowances, which are defined as those that do not vary in value and, at the time leave is taken, an employer is contractually required to pay an employee each pay period or on any other basis. The exception is an allowance/payment that compensates an employee for expenses they incur while they are working but that do not incur while they are on leave.</p> <p>The gross earnings term and definition are redundant.</p> <p>When employment ends</p> <p>Available accrued annual leave and alternative holiday entitlement hours are paid out at the lowest wage rate specified in the employment agreement for any day or time of work as at the date employment ends. The same rules for piece wages and commission above for leave taken apply.</p>

Sick, bereavement and family violence leave, non-worked public holidays and alternative holidays	<ul style="list-style-type: none">- For each day of leave an employee is paid their relevant daily pay (RDP) – the amount of pay they would have received had they worked. RDP includes productivity and incentive payments, overtime that they employee would have otherwise received and the cash value of any board or lodgings provided.- If it is not possible or practical to determine the employee’s RDP, or daily pay varies in the pay period the leave falls, each day of leave is paid at ‘average daily pay’ (ADP) – a daily average of gross earnings over the past 52 weeks.- When employment ends available alternative holidays are paid out at RDP/ADP for the last day employment.	<ul style="list-style-type: none">- A new definition of relevant daily pay (RDP) replaces both the current definition of RDP and the alternative ADP calculation. It is a single calculation that, in addition to normal wages/salary, includes:<ol style="list-style-type: none">1. Productivity or incentive-based payments (including commission but excluding payments earned over a period longer than 13 weeks) calculated as an average hourly rate, PLUS2. The amount of any fixed allowance (as per OWLP) attributable to the whole or part day of leave, PLUS3. Cash value of Board and Lodgings.	Public holidays that would have fallen in the period of leave if they had been taken the end of employment are not paid. Parental leave and Volunteers leave Following these periods annual leave taken is paid at the same rate as annual leave taken in any other circumstance.
Definition of gross earnings	<ul style="list-style-type: none">- Includes all payments an employer is required to pay under an employee’s employment agreement (this includes all overtime payments, piece rates, leave payments, allowances (except reimbursing allowances) and productivity and performance payments such as commission and bonuses and incentives.- ‘Discretionary payments’ are not included.	Same as option 1 but definition is expanded to include: <ul style="list-style-type: none">• all ‘discretionary payments’ (all annual bonuses, commission, and incentive payments would be included regardless of whether they are contractual);• ‘cashd up’ annual leave (statutory and non-statutory). The following exclusions are clarified: <ul style="list-style-type: none">• enduring allowances• employee share scheme benefits, and• any loan made by the employer to the employee.	
Payments for working on a public holiday	An employee is paid the greatest of: <ul style="list-style-type: none">- the employee’s RDP or ADP for the time actually worked on the day (not including any penal rates in the employment agreement that relate to that day) plus half that amount again (T1.5); or- the employee's RDP for the time actually worked on the day, including any penal rates in the employment agreement. There is no requirement to pay an employee for non-worked hours if they work some, but not all, their otherwise contractual hours. They do receive a whole alternative holiday (see above).	An employee is paid the greatest of: <ul style="list-style-type: none">• T1.5 all of what they earned under their employment agreement for time actually worked on the day (including salary/wages, productivity and incentive-based payments and allowances attributable to the day (excluding any penal rates)); or• the employee’s usual rate of pay, plus any applicable penal rates, for the time actually worked; or• any other rate of pay agreed by the employer and employee. An employee is paid leave pay for any hours they would have worked under their employment agreement, but did not work, due to it being a public holiday, and receives a whole public holiday.	<ul style="list-style-type: none">- An employee is paid T1.5 all of the wages they earned in relation to time and for piece work on the public holiday.- There is a provision that, where an employee is paid wages wholly or in part by way of commission, the minimum amount T1.5 can be applied to, for each hour, is the minimum wage rate payable under the Minimum Wage Order.- There is an express provision that employees and employers may agree to a rate higher than T1.5.- An employee is paid leave pay for any standard hours they would have worked under their employment agreement but did not due it being a public holiday. They accrue alternative holiday hours on the hours worked.
Other			
Key area	Option 1: Holidays Act 2003	Option 2: Weeks-based accrual (Employment Leave Bill)	Option 3: Hours-based accrual
Treatment of leave entitlements in a restructuring situation	In general, employees’ outstanding leave entitlements cannot be transferred to their new employer in restructuring situations, because the current Act requires outstanding leave entitlements to be paid out at the end of employment. This may disadvantage employees who must wait to become entitled to leave again.	Employers are required to include the treatment of leave entitlements as a matter in Employee Protection Provisions that they will negotiate with any incoming employer in restructuring situations. If the employers agree, they may choose to allow employees to transfer their leave entitlements to their new employer, rather than having them paid out. This aligns with common practice.	Same as option 2, but without the requirement that if leave entitlements are transferred, when the employee takes the transferred leave, they must be paid at a rate not less than if they had been paid out.

	There are limited exceptions in which employees may choose to transfer their leave entitlements under the Employment Relations Act 2000 (ERA).	<p>If leave entitlements are transferred:</p> <ul style="list-style-type: none"> - employers must negotiate how liability for transferred leave entitlements is apportioned; - employers must exchange the information required for the new employer to correctly determine the employee's leave entitlements and payments; and - when the employee takes the transferred leave, they must be paid at a rate not less than if they had been paid out. 	
Records	<p>The ERA requires an employer to keep records in sufficient detail to demonstrate that they have complied with minimum entitlement provisions. To support employers to do this, the ERA and <i>Holidays Act</i> set out specific information that an employer must keep in an employee's Wages and Time Record and Holiday and Leave Record.</p> <p>The ERA and Holidays Act require employers to retain an employee's leave records for a minimum of six years.</p> <p>It is currently not clear what employers' obligations are to retain records when issues have been raised that may take longer than 6 years to resolve, what triggers obligations to keep records longer, and how long records should be held for.</p>	An updated list of record-keeping requirements to support the implementation of changes to the structure of leave entitlements and payment methods under option 2.	<p>An updated list of record-keeping requirements to support the implementation of changes to the structure of leave entitlements and payment methods under option 3 (decisions to be made by the Minister for Workplace Relations and Safety during drafting). Priority will be given to the objectives of simplicity and minimisation of administrative burden, while also meeting those of clarity, certainty and transparency.</p> <p>Retention period additions</p> <ul style="list-style-type: none"> • A Labour Inspector who has begun any investigation, proceedings or enforcement action that is expected to continue beyond the six-year retention period may give notice to an employer requiring them to retain all or any part of an employee's Leave and/or Time and Wage records that are relevant to that investigation, proceeding or enforcement action. • The Employment Relations Authority or the Court may also give such a notice or extend or renew a notice already in place.
Pay statements	Employers are not legally required to provide pay statements , although may do, and employees have a legal right to request information about their pay and leave entitlements.	Employers are required to provide a pay statement to each employee in every pay period , including key information about the employee's pay and leave. Information that employers must provide as part of each pay statement will be set out in regulation.	<p>Employers are required to provide a pay statement to each employee in every pay period.</p> <p>The information requirements for pay statements are:</p> <ol style="list-style-type: none"> general employment information; payments made in the pay period (itemised by category); statutory leave taken in the pay period; deductions from payments in the pay period; net pay in the pay period; employer contributions in the pay period; and statutory leave balances.
Parental leave payment methodology	Under the Parental Leave and Employment Protection Act (PLEPA) the parental leave payment rate is the greater of an eligible employee's ordinary weekly pay before parental leave payments commence or the employee's 'average weekly income', up to a maximum of amount of \$754.87.	<p>Ordinary weekly pay in the in the PLEPA is replaced with a standalone formula that would:</p> <ul style="list-style-type: none"> • use a four-week average of an applicant's gross weekly earnings (as defined for tax purposes); and • specify that the four-week reference period is the most recent four weeks up to the point that entitlement to parental leave payments commences. 	<p>Ordinary weekly pay in the in the PLEPA is replaced with an average of an applicant's gross weekly earnings for the four most recent regular pay periods (for a weekly pay period), two regular pay periods (for fortnightly or half-monthly pay periods) or one regular pay period (for a monthly pay period) for which employment income information has been filed, as at the date parental leave payments commence (or the earlier of the date of a transfer application of date of transfer).</p> <p>There will also be flexibility for the most recent employment information as at the date of application to be used for the calculation when that is earlier. In this case, if Inland Revenue requests further information, or an applicant</p>

			provides more up-to-date information before parental leave payments commence, there will be a provision for IR to update the parental leave payment calculation with the most recent employment information as at the date the additional information was provided.
Calculation of protected earnings	The Social Security Act 2018, Social Security Regulations 2018, Public Community Housing Management Act 1992 and Legal Services Act 2011 all use 'Net ordinary weekly pay' for determining weekly Protected Earnings where an employer is making deductions from an employee's weekly pay.	NA	Net ordinary weekly pay is replaced in these pieces of legislation with a reference to Net Earnings (as used for the calculation of Protected Earnings in Section 165 of the Child Support Act 1991).
Payment for employment education leave and health and safety training	The ERA and Health and Safety at Work Act 2015 use RDP and ADP for the purpose of payments for days of paid leave for employment relations education and health and safety training.	NA	RDP and ADP are replaced with a requirement that an employee must be paid the wages or salary payable under their employment agreement for each hour they would have otherwise worked under their employment agreement on a day that they are on leave to attend an employment relations course or health and safety training.
KiwiSaver automatic eligibility rules	The KiwiSaver Act 2006 uses the Holidays Act 'intermittent and irregular' criteria for using PAYG instead of providing annual leave for the purpose of defining employee groups that are not included in the automatic enrolment rules for KiwiSaver.	NA	Reference to PAYG in the KiwiSaver Act is removed and not replaced. This will narrow the existing exclusions from the automatic enrolment rules for KiwiSaver and mean employees who have an intermittent and irregular work pattern will be automatically enrolled.