

# Holidays Amendment Bill

27 August 2004

Attorney-General

Legal Advice

Consistency With The New Zealand Bill Of Rights Act 1990:  
Holidays Amendment Bill

1. We have considered whether the Holidays Amendment Bill (the Bill) (PCO 5938/7) is consistent with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act). A 'near final' copy of the Bill arrived late on Thursday 26 August 2004, and we understand that the Bill will be considered by Cabinet on Monday 30 August 2004.
2. The Bill aims to address the unintended consequences of the Holidays Act 2003. The Bill seeks to:
  - clarify an employee's entitlement to be paid for working on a public holiday. Under the Bill an employee must be paid the greater of the portion of his or her: (a) relevant daily pay that relates to the time actually worked on the day less certain penal rates, plus half that amount again, or (b) relevant daily pay that relates to the time actually worked. The penal rates to be excluded under (a) are limited to those that are designed to compensate the employee for working on a particular day (for example, weekend rates);
  - provide that existing employment agreements must be amended by the specified date to include a provision relating to pay for work on public holidays, as outlined above;
  - provide a transitional provision so that where an existing collective employment agreement already incorporates time and a half or better rates for public holidays into a composite pay rate, the employer can continue to pay an employee their regular pay for working on a public holiday until the specified date.
  - provide that where an employee is sick or bereaved on a public holiday on which he or she was scheduled to work, the day should be treated as an unworked public holiday (rather than as sick or bereavement leave) and the employee is to be paid his or her relevant daily pay;
  - enable employers, in certain circumstances, to require an employee to produce proof of sickness or injury (eg a medical certificate) at any point after the employer has been notified of the employee's intention to take the leave (currently employers can only require medical certificates where the sickness or injury lasts for 3 or more days).

3. We have concluded that the Bill appears to be consistent with the Bill of Rights Act.
4. In accordance with your instructions we attach a copy of this opinion for referral to the Minister of Justice. A copy of the opinion is also attached for referral to the Minister of Labour, if you agree.

Roger Palairet Acting Chief Legal Counsel Office of Legal Counsel	Joanna Gould Senior Legal Adviser Bill of Rights/Human Rights Team
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CC Minister of Justice  
Minister of Labour

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