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The Chairperson
Education and Workforce Committee
Parliament Buildings
Wellington

Tēnā koe

Employment Leave Bill 2026

Toi Mata Hauora | the Association of Salaried Medical Specialists (ASMS) is the union and professional association of salaried senior doctors and dentists. We were formed in April 1989 to advocate and promote the industrial and professional interests of our members. We have more than 6,000 members across Manatū Hauora | Ministry of Health, Te Whatu Ora | Health New Zealand, the Accident Compensation Corporation, and many other smaller healthcare providers.

Introduction

We oppose the Employment Leave Bill in its entirety and recommend the Select Committee decline to progress it. The Bill represents a regression in the statutory protection of workers' leave entitlements in Aotearoa. While it purports to simplify the Holidays Act 2003, the Bill in fact introduces a more complex legislative framework that is longer, more formulaic, more prescriptive and yet less detailed, contains various oversights and errors, and is less transparent. It will deliver materially worse outcomes for workers and introduce complexity for employers.

The Bill abandons the recommendations of the tripartite Holidays Act Taskforce, which represented years of good-faith engagement between government, employers, and unions. In doing so, the Government has discarded a consensus-based reform pathway in favour of a regime that shifts risk and cost onto workers.

Our submission addresses the following concerns:

- The purpose of the Bill
- The loss of leave and holiday pay
- The Bill's definitional complexity
- The perverse incentives within the Bill
- Undue limitations on freedom to contract
- Inadequate Consultation

The purpose of the Bill

The Holidays Act 2003 states its purpose is to provide employees with "the opportunity for rest and recreation." The Employment Leave Bill replaces this with "the opportunity to take paid time away from work." This is not a neutral redrafting. The two formulations reflect fundamentally different conceptions of what leave is for, and this shift in statutory language matters because the purpose guides the interpretation.

"Rest and recreation" speaks to the quality and purpose of the time itself and recognises workers are human beings who require genuine recuperation, not merely an absence from the workplace. It carries echoes of the welfare state tradition in which leave entitlements were understood as a social good, grounded in the insight that sustained labour without adequate rest degrades both the worker and the quality of their work.

The Bill undervalues the time employees can spend with family, such as four weeks' annual leave and twelve full public holidays. This is replaced with fractions of leave measured in hours.

Loss of leave and holiday pay

Under the Bill, the universality of employees having a minimum amount of time off at guaranteed rates of pay has been replaced by hours and capped rates of pay. While every employee can plan for at least four weeks' leave under the current Act, under the Bill, leave hours accrued over a year may well fall short of four weeks. This will make family leave planning more difficult and unpredictable.

The current Act ensures holiday pay reflects an employee's usual earnings, the Bill will cap holiday pay at an employee's lowest current hourly rate. The Bill will result in millions of dollars less in income for employees than under the current Act.

The Removal of the 'Greater Of' Test and Relevant Daily Pay

Under the current Holidays Act, leave is paid at the greater of ordinary weekly pay or average weekly earnings,¹ ensuring workers who receive variable remuneration, such as overtime, allowances, commissions, or penal rates, are not penalised for taking leave. The Employment Leave Bill abolishes this protection. The proposed 'leave hourly rate' is calculated at the *lowest hourly rate payable* under the employment agreement for the day on which leave is taken.

A substantial proportion of New Zealand's workforce has remuneration packages which include variable components. For these workers, who include medical specialists, nurses, sales professionals, and tradespeople, the consequences are stark. Leave will be worth less than time at work. MBIE's Regulatory Impact Statement acknowledges this, noting that "minimum leave entitlements are likely to be worth less to employees who receive commissions and bonuses as a part of their remuneration" and that "where the access to, or value of, entitlements has decreased, employees may avoid taking leave, having workplace health and safety implications."²

Toi Mata Hauora's research shows medical specialists are already required to work extra hours, are unable to take leave,³ and are suffering from burnout due to chronic staffing shortages and inadequate resourcing. Our members note that:

"To maintain our service, I contribute at least 15 hrs of unrecognised overtime every week."

¹ Holidays Act 2003, 129. S21(2)

² *Regulatory Impact Statement: Holidays Act Reform* (Ministry of Business, Innovation and Employment Hikina Whakatutuki, 2025). S79, P23.

³ Matt Shand, 'Leaving It Too Late', *The Specialist*, 2023, <https://issuu.com/associationofsalariedmedicalspecialists/docs/13842-the-specialist-issue-135-web/s/26783047>.

“Pressure to work extra, lack of lunch break, often unpredictable finish times, often late finishes, definitely get no thanks for working late. Roster not very flexible and leave not always easy to get.”

“Grossly overstretched at the moment, work in 9 hospitals across half the country because of ongoing SMO shortages. Compromising my family life, and at my age, I should not have to do as many nights on call and long hours - not good for my health.”⁴

“We are understaffed. This does not mean people do not get leave, but it does place a burden on those remaining. I am sick today - instead of taking the day off, I will be working this morning, doing emails, attending a clinical meeting via Zoom, and my clinic will be converted to phone.”⁵

Further disincentivising medical specialists from taking leave by reducing their earnings will not only increase health, quality and safety risks but will likely hasten their move overseas, into the private sector or leave medicine altogether.

Public Holidays and Alternative Days

The Bill replaces the current system of full ‘days in lieu’ with an hours-based alternative day entitlement at a 1:1 ratio with hours actually worked on the public holiday. Where a worker works a full shift on a public holiday, the effect is neutral. However, where a shorter period is worked, as is common for on-call specialists called in for specific clinical tasks, the SMO will receive only the equivalent hours in lieu, not a full day off. This penalises workers for the unpredictable nature of their work.

Additionally, alternative leave moves away from the very reason alternative holidays are so important. Public Holidays are “days of national, religious or cultural significance”. Workers suffer a significant socio-cultural loss if they have to work on those days and are not compensated accordingly. Currently, alternative holidays are earned in full days because working on a public holiday can result in the worker losing the entire day. Regardless of whether someone works eight hours or two, they are prevented from travelling with family and friends or attending cultural events. Alternative holidays compensate for this disruption.

The Bill also removes the rule “that public holidays that fall after employment ends but within a period of annual leave paid out at the end of employment.”⁶ This is a straightforward reduction in entitlements which will affect every worker whose employment ends near a public holiday period.

Loss of Leave for Part-Time Workers

Under the current Act, part-time workers receive the same amount of sick leave as full-time workers. The Employment Leave Bill replaces this with a pro rata accrual based on standard hours worked. A worker employed for three days per week will accrue only six days of sick leave annually—a 40%

⁴ *Over the Edge: Findings of the 2022 Survey of the Future Intentions of Senior Doctors and Dentists* (Toi Mata Hauora Association of Salaried Medical Specialists, 2023).

⁵ Dr Charlotte Chambers, *My Employer Is Exhausting: Burnout in the Senior Medical Workforce Five Years On*. (Toi Mata Hauora Association of Salaried Medical Specialists, 2021).

⁶ *Technical FAQ: What’s Changing with Employment Leave?* P.20.

reduction. Women, people who are disabled, and marginalised communities, who are disproportionately represented in part-time employment, will bear the brunt of this change.

Additionally, while access to sick leave from the start of employment may appear to be a benefit in the Bill, by the time a full-time worker reaches six months of employment, they have access to five days of sick leave rather than ten under the current Act.

Not only are the Bill's equity implications severe, but Aotearoa is still grappling with the consequences of the COVID-19 pandemic.⁷ Research shows that "paid sick leave was linked to lower perceived infection risk, reduced job stress, and higher job satisfaction."⁸ For workers in high-contact roles, including medical professions, "paid sick leave can function much like personal protective equipment or vaccination... It reduces exposure before harm occurs."⁹

Workers on ACC

The non-accrual of annual leave while on ACC is another disempowerment that affects those already vulnerable. Whether the result of a minor or serious injury, this change will reduce workers' ability to accumulate annual leave, preventing them from coordinating time off work with their families or friends. This is a double injustice in the case of a workplace accident.

Transitional Provisions

Confiscation of leave value

The transitional provisions in the Bill amount to a confiscation of the value of existing leave balances. Leave accrued under the Holidays Act, calculated under the 'greater of' test that includes overtime, allowances, and other variable remuneration, will be converted from weeks to hours and then paid out at the new, reduced 'leave hourly rate.' For any worker whose remuneration includes variable components, this represents an immediate confiscation of value.

Consider the following example. A worker has 2.5 weeks of accrued leave. Their average hourly rate, including overtime, is \$40, but their base rate is \$30. Under the current Act, this leave is worth \$4,000. Overnight, after conversion under the Bill, the same hours will be valued at \$3,000, a loss of \$1,000 per worker. Scaled across the health workforce, the fiscal implications are enormous.

The Bill's definitional complexity

The universality of the current Act is underpinned by leave entitlements and pay calculations that are largely immune to categorisation errors (categorisation errors as to the type of hours worked or the type of income received).

In reducing leave entitlements and leave pay, the Bill creates a mosaic of definitional hurdles. Hours worked must be classified as standard, additional or casual, and whether based on an actual or notional roster. This, in turn, requires daily tests to determine whether hours must be offered or accepted. Income received has to be classified as salary, wages, or piece rates, whether an

⁷ Shanti Mathias, 'The Ninth Wave of Covid: What You Need to Know', The Spinoff, 11 March 2026, <https://thespinoff.co.nz/society/11-03-2026/the-ninth-wave-of-covid-what-you-need-to-know>.

⁸ Suyoung Kwon et al., 'Protecting the Frontline: How Paid Sick Leave Access Influences Perceived Risk, Job Stress, and Job Satisfaction Among Home Service Workers', *Journal of Occupational and Environmental Medicine* 68, no. 1 (2026): 80, <https://doi.org/10.1097/JOM.0000000000003524>.

⁹ Kwon et al., 'Protecting the Frontline'.

allowance, an availability provision, an incentive payment, or just an hourly rate, whether it's the lowest hourly rate or another.

Almost every conceivable contractual arrangement is at play, and will all require interpretation. The Bill creates an administrative system at high risk of administrative errors and contestability over the correct categorisation of components of pay and types of hours worked.

The designers of the current Act promoted simple definitions, exemplified by very low levels of litigation. The Bill will reverse this trend.

The Standard Hours Problem: On-Call Work, Additional Duties, and Definitional Gaps

The Bill's distinction between 'standard hours' and 'additional hours' is central to its architecture, yet the definitions are inadequate for the realities of modern employment, particularly in the health sector.

Section 6(1)(a) defines standard hours as hours the employer "requires the employee to work and must pay the employee for, regardless of whether the employer in fact requires the employee to work those hours." On-call hours for salaried medical specialists should, on a plain reading, fall within this definition. SMOs are contractually required to be on call as part of their job size, and these hours are regularly rostered. However, *MBIE's Technical FAQ: What's changing with employment leave?* highlights a troubling carve-out,

"Hours a salaried employee works under an availability provision that are compensated by salary will not be considered additional hours (so leave does not accrue and LCP is not paid in relation to those hours). These extra hours are also not required to be recorded separately in an employee's Leave Record, and Wages and Time Record."¹⁰

Leave does not accrue, and LCP is not payable. The hours simply vanish from the leave framework. On call, probably not uniquely, falls into a definitional gap and could create a perverse outcome; employers are incentivised to integrate on-call work into a specialist's role to reduce leave obligations. For a health system already struggling with burnout and workforce retention, this Bill is a step in the wrong direction.

The absence of a statutory definition of 'role' compounds these problems. The Bill assumes a clean separation between roles that does not reflect the reality of specialist medical practice (especially given Te Whatu Ora's current regionalisation push), where an SMO may work across multiple sites, rosters, and departments under a single collective agreement. The implications of section 17 (multiple roles) are discussed below.

The perverse incentives and unintended consequences

Casualisation and the Erosion of Leave Entitlements

Casual workers will lose their accrued annual leave and sick leave entirely. Their balances will be zeroed on commencement, replaced by a Leave Compensation Payment (LCP) of 12.5%. While the

¹⁰ *Technical FAQ: What's Changing with Employment Leave?* (Ministry of Business, Innovation and Employment Hīkina Whakatutuki, 2026).

Act attempts to frame it as an increase from the current 8%, this masks a fundamental shift, from a right to paid time off when sick, to a cash loading that provides no guarantee of rest or recovery.

The Bill's structure also actively incentivises casualisation. As standard hours attract leave accrual obligations while additional and casual hours attract only a 12.5% loading, employers in industries that are understaffed or inconvenienced by workers' leave may structure work to minimise standard hours. The Regulatory Impact Statement concedes this risk, acknowledging that "employers may be incentivised to provide fewer standard hours and increased discretionary or additional hours to reduce access to paid time off." As a result, "some employees may be incentivised to come to work sick because of lower paid sick leave entitlements for part-time and discretionary employees."¹¹

Multiple Roles and the Fragmentation of Leave

Clause 17 states that where an employee has more than one role with the same employer, each role is treated separately for leave purposes. We have significant concerns about the consequences of this provision.

The clause appears to be an attempt to overturn the ERA determination in *Lo v Health NZ* [2025] NZERA 604. In that case, a doctor reduced their weekly hours in one role from full-time to part-time, to pick up an additional half-time role along the corridor in the same hospital. The total number of hours per week remained substantially unchanged. When the employee wanted to take leave (they had more than four weeks of leave owing), the employer stated that they had insufficient leave accrued in the new role and couldn't go on holiday. The Employment Relations Authority sensibly declared that the employee must be regarded as having one annual leave balance in order to meet the objectives of the Holidays Act, 'to allow holidays'.

The fragmentation of leave across multiple 'roles' will prevent workers from accumulating sufficient leave to take sustained periods of rest. An SMO who works across two hospital sites under the same collective agreement may find their leave split between two balances, neither of which is sufficient for genuine 'rest and recreation'. This is further exacerbated if an SMO has been recently appointed to a new 'role'. Where they may have sufficiently leave under their first role, the absence of leave in their second 'role' limits their ability to take sustained leave. This is antithetical to the current purpose of annual leave, which exists precisely to provide an unbroken period away from work.

The clause will also disadvantage employers. Many firms rely on employees to be adaptable, picking up work outside their usual roles to help an organisation function efficiently. Many roles are not formally separated, do not have hours attached to them, or are for a limited amount of time to cover absences.

Clause 17 creates administrative difficulties for both the employer and employee in accounting for the accrual and taking of leave. Often, an employer and employee might agree that the employee will take leave from a particular role where production needs to temporarily cease. But that may not be the role where clause 17 has determined there is a leave entitlement. That may be in another role where the employer does not want production to slow. The Clause interferes with the employer's

¹¹ *Regulatory Impact Statement: Holidays Act Reform.*

and the employee's current right to agree what best suits the parties in terms of timing and access to leave.

Clause 17 encourages the atomisation of the employment relationship, for unclear purposes. It will encourage the creation of artificially separate employment relationships, with downstream consequences for both parties when employment decisions must be applied to and justified for each employment agreement separately.

Undue limitations on freedom to contract

The Bill repeats the current Act's principle of being a minimum code. Explicitly, the Bill repeats s6(2) of the current Act:

This Act does not prevent an employer from providing an employee with enhanced or additional entitlements (whether specified in an employment agreement or otherwise) on a basis agreed with the employee (cl. 20(2)).

However, the Bill's transitional provisions then require employment agreements to conform to the structure and definitions set out in the Bill. See Schedule 1, clause 6 of the Bill. Absent is any principled recognition of the right of parties to contract in a way that best suits their employment practices and workplace circumstances.

Inadequate Consultation

The consultation process for this Bill has been wholly inadequate. MBIE's own Regulatory Impact Statement is remarkably candid on this point, noting that 'due to time constraints, there has not been widespread public consultation on the full set of proposals' and that 'the lack of public consultation constrains MBIE's ability to fully understand the impacts and costs of various proposals.' The RIS further acknowledges a 'lack of New Zealand data on leave entitlements and their use' and that 'there has not been an opportunity to conduct comprehensive payroll testing.' The RIS received a quality assurance rating of only 'Partially meets.'

This is legislation that will affect every worker and every employer in Aotearoa. It replaces a statute that has been in force for over two decades and is supported by extensive case law. That it has been developed without widespread public consultation, without adequate data, and without comprehensive testing is indefensible. The Government abandoned the tripartite Taskforce process, which had produced a consensus-based reform pathway, in favour of a rushed, ideologically-driven rewrite. This Select Committee process is now the only meaningful opportunity for public input, and it is attempting to rush a Bill with tax-level complexity through a contracted submission period. In the strongest possible terms, Toi Mata Hauora recommends that the Select Committee decline to progress the Employment Level Bill on process alone.

Conclusion

The Employment Leave Bill is not a simplification of the Holidays Act. It is a wholesale rewriting of the statutory minimum floor for leave entitlements undertaken without adequate consultation and resulting in materially worse outcomes for workers. It will reduce the value of leave, confiscate accrued entitlements, incentivise casualisation, fragment leave, and create perverse incentives for employers to structure work in ways that minimise their leave obligations. The Bill contains innumerable flaws, demonstrative of its rushed preparation. Therefore, beyond erasing workers'

entitlements, it will inconvenience employers and result in protracted employment disputes before the Employment Relations Authority and the Employment Court.

Toi Mata Hauora recommends that the Select Committee decline to progress the Employment Leave Bill.

Toi Mata Hauora wishes to appear before the Select Committee to speak to this submission.

To discuss this submission further, please get in touch with James Roberts, Policy and Research Advisor, via james@asms.org.nz

Nāku noa, nā



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