



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Transport and Industrial Relations Select Committee
on the Holidays Bill**

Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 34 branches spread throughout the country to which some 150 societies are affiliated. The Council's purpose is to work for the well being of women, families, children and society through research, discussion and action.

Comment on the Holidays Bill was invited and received from the wider membership of NCWNZ. The following submission represents the views of women who are employees and employers.

NCWNZ Policy

NCWNZ has the following policy relating to holiday entitlement: *NCWNZ urge the Minister of Labour to ensure that in any review of the Holiday's Act 1981, three weeks' paid annual leave remain as the minimum legal requirement, unable to be negotiated for cash. 1998*

NCWNZ adopt the principle of the family friendly workplace concept and through National Office and the Branches actively promote the benefits of flexible work environments to employers and employees. 1995

Substantial submissions were written in 1995 and 1997 on the Review of the Holiday's Act. NCWNZ is pleased to see that many of the issues raised in its previous submissions have been addressed in this Bill, and that simple straightforward solutions have been found to resolve matters, such as what constitutes "ordinary pay"

NCWNZ still has concerns about:

- ANZAC and Waitangi Day falling on a weekend and whether under this Bill the day is treated in the same way as public holidays over Christmas and New Year (Clause 39). There is a need for clarity on this issue and probably an additional clause devoted to these two public holidays because they are date specific.
- the calculation of payment for advanced or accumulated paid annual leave where the rate of ordinary pay has varied over time. This may be difficult to resolve and good faith bargaining will be important if a fair and equitable outcome is to be achieved for both parties.
- the entitlements of casual and part time workers and the enforcement of those entitlements.

Executive summary

NCWNZ in general acknowledges and supports the following:

- the importance of a work life balance for all people
- the desirability of flexibility to negotiate what best suits the particular employee and employer as long as neither is disadvantaged by the outcome





- people work more efficiently and in greater mental and physical safety if they have regular breaks from work
- a minimum period of three weeks' paid annual leave
- the continuance of 11 paid public holidays
- 5 days' sick leave and 3 days' bereavement leave, but questions the two tiered approach for bereavement leave
- the total leave provisions contained within this Bill as the minimum acceptable
- a belief in the positive advantages of a period of continuous leave within a 12 month period as being good for health and family
- the ability to award an extra week's paid annual holiday after a period of at least 5 years continuous employment with the same employer

NCWNZ is concerned that the Bill does not obviously protect the entitlements of casual and part time workers and would wish to see this sector given more transparent protection.

NCWNZ is strongly of the opinion that all employees (especially those undertaking casual and part time work) and employers must be fully informed about the contents of this legislation if enacted and the implications explained for both parties. Information must be freely available. Special attention must be given to casual and part time workers to ensure that they are not only aware of their entitlements but actually receive their entitlements. Casual and part time work is often low paid, frequently carried out by women, and undertaken by people who in general have little bargaining power and a great deal to lose by standing up for their rights. This legislation must protect the rights of this vulnerable group.

General Comment

NCWNZ is of the opinion that this Holidays Bill is clear and concise and provides simple solutions to a range of complex issues. The Government is to be applauded for recognising the need to maintain a balance between work and life outside the workplace. Young women who attended the recent Ministry of Women's Affairs meeting on the Women's Action Plan in Christchurch pleaded strongly to have some balance in their lives. There is support for all workers having regular holidays.

There was a strong request that information be made readily available for employees and employers once the legislation is enacted and that all employment agreements should include written statements concerning entitlements to holiday, sick and bereavement leave.

NCWNZ's Survey of Casual and Part time Workers (2002) showed clearly that casual and part time workers did not know of their entitlements. As women are heavily represented in the ranks of casual and part time workers and as these positions are often lowly paid NCWNZ is extremely concerned that these workers have easy access to information about any legislative change. One respondent commented "...far too many part time and casual workers are not informed about their rights and entitlements....it should be obligatory when first employing these workers that the employer or a senior staff member make entitlements very clear and ensure that the employee understands them".

Part 1 – Preliminary Provisions

Clause 5 – Interpretation

NCWNZ believes that there should be a definition of what constitutes casual and part time work and a more transparent statement that this Bill is intended to protect the entitlements of such workers.



Part 2 – Holiday and Leave Entitlements

Subpart 1 - Annual Holidays

Clauses 15 (Purpose of this sub part) and 16 (Entitlement to annual holidays)

NCWNZ assumes this legislation applies to casual and part time workers as well as full time workers and this being the case questions how the three week entitlement is to be calculated.

NCWNZ's formal policy and the majority of responses from this consultation supports a minimum of 3 weeks' paid annual leave. There was support for 4 weeks paid annual leave where an employee reaches a minimum of 5 years continuous service with one employer.

While there was some support for 4 weeks annual leave the majority of responses favoured the retention of 3 weeks minimum paid annual leave. The reasons most frequently given were:

- that the New Zealand economy cannot sustain the increase at the current time;
- that New Zealand's large number of small businesses, frequently headed by women, cannot support 4 weeks' paid annual leave because of the increased financial costs and the increased non-availability of human resource especially where that resource undertakes specialist tasks.

Some commented that people are working longer under more stressful conditions and that 4 weeks annual leave was required to cope with the realities of today's working environment. But there was general agreement that 4 weeks was not practical at this point in time.

Even for large employers 4 weeks' annual leave will increase the wage bill by approximately 2%. In the health and education sectors where wages and salaries are a large part of the total expenditure an extra week's annual leave will have a major effect on the Government's budget which will in turn be passed on to taxpayers. A minimum of 3 week's paid annual leave does not preclude larger employers from negotiating 4 weeks if they are in a position to do so. Many of these larger employers will have collective agreements in place making it easier to negotiate an extra week.

There was some discussion as to whether a move to 4 weeks annual leave would raise the level of unemployment as businesses struggled to fund the extra leave costs. One respondent commented on the effect of paid parental leave on small businesses and saw 4 weeks as an additional burden.

One respondent commented "...some sectors of the work force already get 4 weeks annual leave eg social work and mental health services... because they do on-call duty outside normal hours at weekends and on public holidays and the extra week they receive is negotiated to compensate for this, and for the high stress nature of the work". The inference is that these workers would then need 5 weeks to maintain parity. No respondent countenanced 5 weeks annual leave.

A number suggested that 4 week's paid annual leave could be granted once an employee had been with an employer for 5 or 10 years. It was felt that after this length of service an employee had demonstrated loyalty and was likely to be of real value to the employer and worth an extra weeks leave. This was seen as a bonus for loyal service. The Bill as written does not preclude an employer from taking this action.

One respondent pointed out that not all employers are in a position to take 4 weeks paid annual leave.

Several respondents commented that employees should be required to take 2 weeks annual leave, preferably in a continuous period, in every 12 month period. This was seen as a positive move towards achieving a balance between paid work and family life. A number of respondents thought



the accumulation of holidays over several years placed employers in a difficult position if required to pay out large amounts of holiday pay when an employee terminated his/her employment. This becomes a real issue for employers, where holidays pertaining to a period where the ordinary pay rate was lower are taken in a period where the ordinary pay rate is higher. One respondent commented: "...when employees will not take leave... [it] causes a cash flow risk for private or public businesses as the value of that holiday pay must accrue, and may impact on the business when the employee leaves and a large amount of money has to be found". There was some discussion about whether employees should be allowed to accumulate annual leave and whether they should be forced to forfeit leave not taken.

Concern was expressed that it is often difficult for employees to take holidays especially if they are remunerated on the basis of reaching certain work targets. Anecdotal evidence indicates that employees often work late nights and during the weekends in order to be able to take annual holidays, and on returning face a backlog of work. So while the legislation supports employees' rights to annual holidays it does not and cannot factor in the practical difficulties faced by some employees.

Clauses 18 (Taking annual holidays) and 19 (When an employee may be required to take annual holidays) - NCWNZ's supports the rights of an employee to take annual holidays but equally supports an employers right to require an employee to take annual holidays in order to address health and safety issues, redress the work/life balance, and to limit the accumulation of annual holidays. One respondent commented that "The mechanism made available to employers to ensure leave is taken within the relevant work year is overdue and supported." However others thought that employees should be able to negotiate away annual holidays with employers provided that this is the employee's choice and they are fully informed of employment law and that adequate reimbursement is maintained. Casual and part time workers are often in a vulnerable position and it is important that these clauses cover these workers.

Payment for annual holidays

NCWNZ in the main supports clauses **Clause 21, 22, 23, 24, 25, 26, 27** concerning the method by which calculation of annual holiday pay will occur under a range of circumstances. In our opinion the clauses are clear and precise and should be helpful to both employees and employers.

Several respondents queried the pay-as-you-go approach to funding annual holidays (**Clause 27**). While this may be easier for employers it may adversely affect employees who for one reason or another do not budget for their period of annual holidays. Low income and vulnerable groups are most at risk of being affected by this method of payment and they may end up not being able to take annual holidays. However the clause as it stands does limit the circumstances under which this method of payment can be adopted and for this reason is supported. Anecdotal evidence indicates that some workers cannot afford to take holidays and sell their entitlement thus being paid twice for their "holiday period". This is not an option for those who are paid annual holiday pay as they earn.

Closedown periods

There was general support for **Clauses 28, 29, 30, 31, 32, 33** concerning closedown periods. One respondent, an employer in a small business, strongly supported the employer having the final say in determining whether an employee took annual holidays during a closedown period, commenting also that an employee could be required to take unpaid leave if accumulated entitlement did not cover the closedown period. This can be especially important for small businesses where there is limited working capital.



Relationship between annual holidays and other entitlements

There was general support for **Clauses 34, 35, 36** concerning the not taking of sick leave or bereavement leave during annual holiday leave, the possibility of taking annual leave if sick leave or bereavement leave is exhausted, and the acceptance of a public holiday falling during annual leave as not being part of an employee's annual leave.

Subpart 2 - Public Holidays

There was general support for **Clauses 37, 38, 39, 40, 41**, concerning what constitutes a public holiday.

It is assumed that casual and part time workers are covered by these clauses.

It is unclear whether Waitangi Day and ANZAC Day will be treated as per Clause 39 and NCWNZ considers that there should be an additional clause dedicated to these two public holidays outlining what is to happen should these days fall on a weekend. They are sufficiently different from the other Public Holidays to warrant their own dedicated clause. Currently, when ANZAC Day or Waitangi Day fall on a weekend, no alternative day is provided. Is this to continue?

NCWNZ questions whether, given the diverse nature of New Zealand society, provisions may be needed in the future to deal with religious festivals of other than the Christian religion.

Entitlement to Public Holidays

There was general agreement with **Clauses 42, 43, 44**, concerning entitlement to public holidays.

It is assumed that casual and part time workers are covered by these clauses.

Payment for Public Holidays

There was general agreement with **Clause 45, 47, 48** concerning payment for a public holiday.

There were divergent opinions concerning **Clause 46** - payment if an employee works on a public holiday. NCWNZ is pleased to see that an employee who works on a public holiday shall be entitled to a paid day off in lieu but there was some discussion as to whether the employee should be paid at 1.5 the ordinary rate on the Public Holiday. It was noted that some sectors who routinely work on Public Holidays, eg home care workers, should be protected and that the 1.5 payment rate proposed offers these workers some protection from exploitation.

There was general agreement with **Clauses 49, 50, 5, 52, 53, 54, 55** concerning an Alternative Holiday if an employee has worked on a Public Holiday.

Entitlement to sick leave and bereavement leave

There was general agreement with **Clauses 56 and 57** concerning entitlement to sick leave and bereavement leave, and the requirement to notify the employer of intention to take leave. NCWNZ assumes casual and part time workers are entitled to sick leave and bereavement leave and queries how this will be calculated and whether there are any special provisions needed to ensure that such workers receive their entitlements.

One respondent commented: "... in the public health sector, casual employment is often the choice of the employee. I know several nurses who prefer to be on a casual contract, so that they can determine their workdays. If this is their choice then they are not entitled to bereavement or sick leave." This highlights the public's perception that casual and part time workers are not entitled to special leave. NCWNZ is of the opinion that such workers should be entitled to sick leave and bereavement leave.



There were a range of opinions concerning the entitlement of 5 days sick leave (**Clause 58**) and the carrying over of sick leave (**Clause 59**) and the proof of sickness or injury (**Clause 61**).

While some respondents thought 5 days were sufficient others thought that a longer period was required. One respondent commented "...families are isolated these days, if a spouse gets flu, then passes it onto the other spouse and children there is not enough time for them to recover and then look after the other family members". The same argument applies concerning the payment of sick leave pertaining to one period in another period where the rate of ordinary pay may have been different.

Some respondents favoured the accumulation of sick leave up to 15 days; others thought it should not be accumulated beyond the 12 month period.

One respondent thought that an employee should be required to provide proof of illness or injury after 2 consecutive days of sick leave. (**Clause 61**).

Bereavement Leave

While there was general agreement with **Clauses 62, 63, 64, 65** concerning what constitutes bereavement leave, one respondent did not support a two tiered structure as she said "it is not for the employer/government to determine who is more significant to me in my life. The death of a dear friend could have more impact than the death of a rarely seen grandparent or sibling." This respondent thought that there should be three days bereavement available to all included in 62(2)(a) and (b), and that any additional time should be taken as annual leave after negotiation with the employer.

Several respondents queried whether three days leave was sufficient for Maori and Pacific people given their cultural practices pertaining to death. (**Clause (62)(3)(c)**). Given New Zealand's diverse ethnic mix maybe there are other cultural considerations which may need to be considered in the future.

Part 3 – Enforcement and Other Matters

Clause 68 - Penalty for non-compliance. One respondent questioned why there was a difference in penalties for breaching the Act for employers who were companies as opposed to individuals. She favoured the penalty for an offence being the same.

Clause 73 - Holiday and leave record. A comment was made about the need for education for employers about keeping adequate records of all leave.

Clause 77 - Presumption that employment is continuous if employee dismissed and re-employed within 1 month. One respondent particularly supported this clause saying she knew of forestry/milling companies who cancelled employment before Christmas and rehired in January.

Conclusion

There has been an extended period of consultation over employees' entitlements to annual leave, sick leave and bereavement leave and it is heartening to see that all the consultation has not been in vain. In general NCWNZ is supportive of this legislation and commends the government on the clear and concise wording of this Bill. With some minor amendments it will provide valuable employment legislation.

Beryl Anderson
National President

Barbara Glenie
Convener, Employment Standing Committee