

Report Cover Sheet

Date	16 December 2005	
Subject	Implementation evaluation of the Holidays Act 2003	
Minister(s)	Minister of Labour	
Action sought	<p>note that the evaluation of the implementation of the Holidays Act found a number of areas had worked well (described in paragraph 17), as well as some concerns and suggestions for improvements (described in the table beginning on page 6)</p> <p>note that the Department will work with the New Zealand Council of Trade Unions (NZCTU), Business New Zealand and other stakeholders to develop new information material in response to suggestions for improvement identified in the evaluation (also described in the table)</p> <p>note that the Department intends to release the attached evaluation report early in the new year, and will work with your office to develop the press release</p> <p>note that the Department is scoping up how to evaluate in 2007/08 what the policy changes associated with the Holidays Act have achieved, and will consult with the NZCTU and Business New Zealand in developing this next stage</p>	
Prepared by	Workplace	
Contact Information	Penny Nelson	04 915 4611 (work)
	Shane Kinley	04 915 4514 (work)
Tracker Number	05/49519	

16 December 2005

Minister of Labour

Implementation evaluation of the Holidays Act 2003

Executive Summary

- 1 On 1 April 2004, the Holidays Act 2003 ("the Act") came into force and updated New Zealand's holiday and leave scheme. The Department of Labour ("the Department") commissioned an independent evaluation of the implementation of the Act, involving focus groups and interviews with 19 employer representatives, 27 employers, 12 unions and 6 employees. The study used a qualitative method to elicit a wide range of views, but the results cannot be generalised to the rest of the population.
- 2 The key findings from the evaluation and the Department's proposed response are summarised below. The body of this note and the attached independent evaluation report provide more detail. The Annex outlines the evaluation method.
- 3 The evaluation found that the following areas in general had worked well:
 - Our information provision, particularly the website and Infoline
 - Employers and employees were more aware of holiday and leave entitlements than they had been before the Act was passed, and
 - Many employers were able to implement the Act smoothly, without any major issues, particularly annual holidays, sick and bereavement leave.
- 4 The evaluation found that the following had not worked so well:
 - Some users found that the Department's information was too general, biased, inconsistent, and used language that was not simple enough
 - Employers and unions found that relevant daily pay (RDP) could be difficult to interpret and calculate
 - Employers and unions were confused about transferring public holidays that fell on a weekend to a weekday

- Employers and unions had concerns calculating annual holidays
 - Employers had trouble implementing some aspects of sick and bereavement leave and interpreting the concepts of working time in the Act (e.g. 'a week')
 - Employers had borne the time and effort (and hence cost) of understanding and complying with the Act, and
 - Employers would have preferred more time to implement the Act after it was passed.
- 5 The Department proposes to respond to these concerns by improving the information and guidance we provide, by using additional channels to distribute this information, working closely with the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand to influence the guidance they provide, and by taking the lessons learned into account in future policy and legislative work.
- 6 The Department has already discussed the evaluation report and our proposed response to the findings with NZCTU and Business New Zealand. They are broadly supportive of our proposed response and have agreed to work with us on some elements, such as developing and delivering the information and guidance indicated above, as well as in scoping issues for further evaluation of the Holidays Act.
- 7 Business New Zealand found value in the evaluation process, but still has concerns about the policy underpinning the Act. The NZCTU had some concerns about some of the evaluation findings which they felt did not adequately bring out the issues, or were not adequately contextualised. For example, the evaluation did not specify that some changes introduced by the Act simply codified existing law arising from cases since the previous Holidays Act. This means that some employer concerns were not about a change in law, but a codification of existing law. The Department has responded to these concerns in this note.
- 8 The Department's Communications section will work with your office to develop a media release to be released in the new year.
- 9 Employers, and to some extent unions, raised policy matters in the course of the evaluation, even though they were outside its scope. The next stage of the evaluation, scheduled for 2007/08, will focus on the effectiveness of the Act in achieving its outcomes, and will provide an opportunity to consider policy matters.

Purpose

- 10 This note summarises the results from an independently commissioned evaluation of the Holidays Act implementation in its first year, and the Department of Labour's proposed response. The year-long timeframe highlights issues that arose or persisted during a full year, rather than initial misunderstandings of the Holidays Act.

Background

- 11 On 1 April 2004, the Holidays Act 2003 ("the Act") came into force and updated New Zealand's holiday and leave scheme. The Holidays Amendment Act 2004 came into force on 25 October 2004 and corrected some unintended consequences of the Holidays Act 2003.
- 12 The purpose of the Act is to promote balance between work and other aspects of employees' lives and, to that end, provide employees with minimum entitlements to annual holidays, public holidays, sick leave and bereavement leave, as well as the mechanisms for the leave to be calculated and taken. The Act built upon a number of review processes during the 1990s and the work of the Holidays Act Advisory Group in 2001. It also codified some existing law arising from cases since the Holidays Act 1981, e.g. the alternative holiday given to employees working on a public holiday.
- 13 The Department took the following steps to help employers understand and implement the Act when it was passed:
 - provided information and resources on our website, our toll-free Infoline, in television and radio advertisements, and posted an information package to 150,000 employers
 - designed a 'payroll specification', in consultation with payroll and software companies, to help these companies correctly incorporate the changes required by the Act. Feedback at the time from participating companies indicated that they found the process valuable, although they would have preferred the final specification to have been available earlier than it was, and
 - provided employers with examples of wages and time, and holidays and leave records.

Summary of evaluation methodology

- 14 The Department commissioned Capital Strategy Limited to undertake an independent evaluation of the implementation of the Act in its first year, using qualitative methods. Capital Strategy collected data via focus groups and interviews in Auckland, Wellington and Nelson with 19 employer representatives, 27 employers, 12 unions and 6 employees. Refer to the Annex for more details on the method. Capital Strategy's report is attached.
- 15 In addition to Capital Strategy's research, the Department also consulted with internal staff involved in delivering or implementing aspects of the Act. This information has also contributed to the evaluation findings.
- 16 This paper summarises findings from the contracted evaluation, and where noted, from the consultation with Department staff.

Summary of evaluation findings

What worked well?

17 The evaluation found that:

- Our *information provision has worked well*, particularly the website and Infoline. Employers, employees and unions commonly used the Department as a source of information about the Act and overall, were positive about this information.
- Department staff considered that the *range of methods* they used were generally successful at getting employers and employees to understand the Act's requirements. However, without being able to follow up with callers, they were not sure of the level of understanding or whether that understanding was put into practice in the workplace.
- Department staff believed the *information package* posted to 150,000 employers had been the best method for disseminating information because it reached a large number of employers. Employers themselves had a mixed reaction to this package – some found it good, while others considered it too much information to read.
- Employers and employees were *more aware* of holiday and leave entitlements than they had been before the Act was passed, and
- Many employers were able to *implement the Act smoothly*, without any major issues, particularly annual holidays, sick and bereavement leave.

What didn't work so well?

Issue and problem	DoL comment and response
<p>Employers, employer representatives, unions and employees thought <i>Department information</i> was:</p> <ul style="list-style-type: none"> • <i>not specific</i> enough for some working arrangements (e.g. a business with irregular and seasonal work for casual labour, and with an annual closedown) • sometimes <i>biased</i> • sometimes <i>inconsistent</i> • not always in <i>simple language</i> 	<p>The complexity of working arrangements has meant that the information provided by the Department to date has been relatively generic. We acknowledge that our guidance does not cover the many different combinations of working arrangements. We will work with the NZCTU, Business New Zealand and other stakeholders (such as the Hospitality Association of New Zealand [HANZ] and the Small Business Advisory Group [SBAG]) to create a wider range of scenario-based information on holiday entitlements that reflect different working arrangements.</p> <p>The nature of the Holidays Act, providing universal minimum entitlements to employees, can be a source of frustration for employers in terms of the complexity, cost and inflexibility of those entitlements. Employers may, therefore, interpret information on the requirements as biased towards employees.</p> <p>The information that the Department gives to clients can vary depending on what the client tells us on different occasions. The Department acknowledges, however, that some inconsistencies have been found in our responses to users on the web, in pamphlets, and over the phone. We are working to improve the consistency of information regardless of how it is delivered. This work is being led by the Workplace Information and Promotion team.</p> <p>We are also examining opportunities to express our information in the simplest possible language. Since the evaluation, we have reviewed and/or updated all of our most frequently asked questions and answers about workplace matters (including holidays), which form the basis of our web, printed, face-to-face and 0800 information and guidance.</p>
<p><i>Relevant Daily Pay (RDP)</i> was difficult to interpret and calculate.</p> <p>Employer concerns included:</p> <ul style="list-style-type: none"> • when to use the formula for calculating it 	<p>The Department expected that payroll systems would have been able to implement RDP calculations more easily. We will include RDP calculations in the range of scenarios that we will develop more guidance on with stakeholders. We will also follow up with payroll companies to assess whether improvements can be made to their implementation of RDP.</p> <p>The Act contains a test for determining what would otherwise be a working day, or where</p>

<ul style="list-style-type: none"> • which payments to include in calculating it • what is otherwise a working day if rosters rotate <p>Union concerns included:</p> <ul style="list-style-type: none"> • whether RDP was being calculated correctly and consistently <p>The <i>time and a half payment</i> was also difficult to calculate and administer because it was based on RDP.</p>	<p>an employer and employee cannot agree on this, a Labour Inspector can help determine the issue. The range of scenarios referred to above will help clarify this issue.</p> <p>General improvements regarding RDP, as indicated above will assist in calculating and administering time and a half payments but we will also provide more guidance specifically about time and a half situations.</p>
<p>Employers and employees were confused about the circumstances in which <i>public holidays were transferred</i> to a weekday (Mondayised) when they fell on a weekend.</p>	<p>The Department considers that it gave clear information on transferring public holidays, however this appears to have not been universally accessed. The Department will distribute information through additional channels, such as the networks of employer and employee representative organisations, through our newly developing e-channel, our existing website and new publications. This improved distribution commenced with the pre-Christmas mailout on Christmas and New Year obligations this year to Chambers of Commerce, Citizens' Advice Bureaus, Regional Economic Development Agencies, Business New Zealand and CTU registered unions. In the lead up to Christmas this year, HANZ and the Auckland Chamber of Commerce have also developed guidance for their members on complying with the Act at Christmas and New Year. The Department helped HANZ in developing its guidance, and in return, HANZ allowed the Department to reproduce their flowchart on how to determine employee entitlements over this period.</p> <p>An Employment Court decision in the case of Heinz Watties Limited clarified that in certain circumstances, employers and employees can agree to transfer a public holiday to another specified day. The Department disseminated information about this decision and its implications through our monthly <i>ERA Info</i> newsletter sent to 4,800 people (including employers) and through our website.</p>

<p>Annual holidays:</p> <p>Employer concerns included:</p> <ul style="list-style-type: none"> • confusion about what constituted an <i>'ordinary' week</i>, which made calculating annual holidays complex • some employers found they needed to go back over the many <i>variations in an individual's working arrangements</i> over the past 52 weeks, which also made calculating annual holidays complex • some employees who already got four weeks annual holidays expected this to increase to five, which <i>employers had to manage</i> <p>Union concerns included:</p> <ul style="list-style-type: none"> • calculating annual holidays was <i>complex</i> for part-time workers and workers on a piece-rate system 	<p>The Act deliberately did not define a 'week' so that employers and employees had the flexibility to agree what a 'week' meant for their individual circumstances. The Department recognises that this flexibility may be problematic for some employers, employees and unions. We will improve the information and guidance we provide on this issue which will include developing scenarios for calculating RDP, so that it is more helpful for part time workers, workers with variations in their working arrangements and workers on a piece rate system.</p> <p>To date, the Department has consciously not been highlighting detailed information about managing the increase in annual holiday entitlements (to four weeks), to allow people to focus on the elements of the Act which required earlier changes to practice. However, we will work with the NZCTU, Business New Zealand and payroll companies early in 2006 to develop information about implementing annual holiday entitlements, including managing the increase in annual holiday entitlements.</p>
<p>Sick and bereavement leave:</p> <ul style="list-style-type: none"> • some sectors (particularly the meat industry) had reported an <i>increase in the incidence of sick leave</i> • some employers were confused about when they could ask for <i>proof of illness</i>, and who covered the cost of it • some employers had trouble managing sick leave <i>above the minimum</i> required 	<p>The meat industry concerns need to be viewed in light of the policy decision about how RDP should be calculated which restricted the ability for sick leave to be paid at a flat rate. The meat industry's common method of specifying a flat-rate of payment for sick leave had in practice meant employees generally received a lower rate of pay when taking sick leave, as the specified rate did not reflect productivity payments. As a consequence of this change, employees in this industry may now be more likely to take sick leave when sick, as their pay rates will now not act as a disincentive to taking sick leave.</p> <p>The next stage of the evaluation in 2007/08 is focused on outcomes and will consider whether the incidence of sick leave has increased and the reasons for any increase.</p>

<p>by the Act</p> <ul style="list-style-type: none"> • some employers were uncomfortable having <i>discretion</i> over whether an employee had suffered a bereavement 	<p>The Department will develop additional information resources with the NZCTU and Business New Zealand, to help employers understand key Holidays Act principles and requirements, including asking for proof of illness, dealing with sick leave above the minimum and employer discretion over bereavement leave.</p>
<p>Some employers considered the Act difficult to interpret and had borne the time and effort (and hence <i>cost</i>) of <i>understanding and complying with the Act</i>, e.g. keeping records, amending employment agreements, adjusting payroll and often doing manual payroll calculations, educating staff and responding to their queries, getting legal advice.</p> <p>In contrast, employers whose payroll providers had been involved in understanding the Act from an early stage, were able to implement the Act relatively smoothly.</p> <p>Both the contracted evaluator and Department staff found that a few employers felt frustrated at not being able to understand the Act despite their efforts, and so were ignoring it. However, such employers often gave their employees alternative entitlements (e.g. calculating holiday pay at 6% of the gross earnings for a worker who had been in the job for over a year).</p> <p>Department staff reported that employers disregarded the Act for several reasons:</p>	<p>As this was the first major legislative change since 1981 in the area of holiday and leave entitlements, we had expected transition and compliance costs and had taken steps to support employers understand and implement the Act, as outlined in paragraph 13.</p> <p>We will continue to support employers in this area in the following ways:</p> <ul style="list-style-type: none"> • We will work with payroll companies to assess whether there is a genuine need for the reported increase in manual calculations and how this can be mitigated. • Our Small Business Information Units (SBIU) in Auckland, Tauranga, Nelson and Christchurch are working with umbrella organisations representing small businesses, including migrant groups, to improve our information services to such employers. • As described above, we will improve the spread of our information services by distributing information through additional channels, such as the networks of employer and employee representative organisations, through our newly developing e-channel, and our existing website.

<ul style="list-style-type: none"> • to minimise labour costs • because they were immigrants and had trouble with English and/or had done things differently prior to emigrating • because they were small business employers who looked after all aspects of running their business, so complying strictly with the Act was a low priority 	
<p>Some employers had trouble <i>interpreting the concepts of working time</i> in the Act, e.g. 'otherwise a working day' and 'a week', because they perceived the Act as based on a standard 9-5, 5-day working week.</p>	<p>The Department considers that the previous Holidays Act (1981) more closely reflected a standard 9-5 Monday-Friday working week than the Holidays Act 2003. The current Act is intended to provide principles that can be applied broadly to all working arrangements, with the employer being responsible for interpreting concepts to reflect their working environment. However, the findings suggest that employers have found this more difficult than was expected, perhaps in part because under the 1981 Act many businesses had developed their own practices for dealing with entitlements outside these hours.</p> <p>The range of additional guidance referred to above that we will develop should alleviate this issue.</p>
<p>Some employers considered that they did not have enough <i>time</i> (three-and-a-half months) between the Act being passed and its enforcement date <i>to implement it</i>.</p>	<p>The implementation date was finalised during tripartite consultations on the Bill to coincide with the date for annual changes to the tax scheme, so that employers would have a common commencement date for annual changes to their payroll systems. This was also intended to minimise compliance costs for employers. The implementation date allowed for longer than the minimum three months implementation period suggested by SBAG in their 2004 Annual Report.</p> <p>We recognise that some employers would have preferred a longer lead time and will consider this when developing future policy. However, this needs to be balanced with other considerations, such as the need to have certainty over entitlements and to deliver the benefits of new legislation reasonably quickly.</p>

Summary: What is the Department doing in response to the Holidays Act evaluation report recommendations?

- 18 The Department considers that the evaluation findings are generally positive because the Act has been implemented relatively successfully in the majority of workplaces. Most of the concerns reflect issues that we were already aware of and hence working to respond to. However, we recognise that there are some gaps where our current information provision can change to be more responsive to employer, employee and union concerns. We will use the lessons from this evaluation not only in the area of the Holidays Act, but also when formulating other legislation.
- 19 As described in this paper, the Department is responding by improving the information and guidance we provide, and by using additional channels to distribute this information. Specifically, we will:
- Work with the NZCTU, Business New Zealand and other stakeholders to develop information and guidance, including more specific scenarios reflecting a range of variations in working arrangements, particularly for complex concepts, e.g. RDP and transferring public holidays. This work will commence early in 2006
 - Work with organisations representing groups of migrants and small business employers to improve the understanding and knowledge of such employers about Holidays Act principles and requirements
 - Expand and improve the channels we use for delivering information, e.g. our own e-channel with revised information, simple tools and builders. We will distribute information through the networks of employer and employee representative organisations, and
 - Ensure more consistency in Department responses to users, and using simple language. All staff with information and promotion functions will have access to the same scenarios and information to ensure they give a consistent response.

Next steps

- 20 The Department has already discussed the evaluation report and our proposed response to the findings with NZCTU and Business New Zealand. They are broadly supportive of our proposed response and have agreed to work with us on some elements, such as developing and delivering the information and guidance indicated above, as well as in scoping issues for further evaluation of the Holidays Act. This will ensure that we take account of multiple perspectives, and reach a wider audience. Our information campaign about the coming change to annual holidays presents a good opportunity to work with our social partners from an early stage, as does developing the scenarios.
- 21 The Department proposes to send participants in this evaluation a summary of the results and of the subsequent Department response.
- 22 The Department's Communications section will work with your office to develop a media release to be released in the new year.
- 23 Finally, the scope of this evaluation was limited to implementation, so even though policy issues (e.g. increased legislative complexity) and impact issues (e.g. allegations of increased mis-use of sick leave) were raised, they

were not addressed here. The Department is scoping up how to evaluate in 2007/08 what the policy changes associated with the Holidays Act have achieved. We will consult with the NZCTU and Business New Zealand in developing this next stage to ensure that the evaluation framework is broadly supported.

Recommendations

- 24 I recommend that you:
- i. **note** that the evaluation of the implementation of the Holidays Act found a number of areas had worked well (described in paragraph 17), as well as some concerns and suggestions for improvements (described in the table beginning on page 6)
 - ii. **note** that the Department will work with the New Zealand Council of Trade Unions (NZCTU), Business New Zealand and other stakeholders to develop new information material in response to suggestions for improvement identified in the evaluation (also described in the table)
 - iii. **note** that the Department intends to release the attached evaluation report early in the new year, and will work with your office to develop the press release
 - iv. **note** that the Department is scoping up how to evaluate in 2007/08 what the policy changes associated with the Holidays Act have achieved, and will consult with the NZCTU and Business New Zealand in developing this next stage

Shane Kinley
Policy Manager, Workplace Group
for Secretary of Labour

Annex: Evaluation methodology

1. The evaluation was done using qualitative methods. Qualitative methods are useful for eliciting a wide range of views, but the results cannot be generalised to the rest of the population. These views can be divergent and contradictory, e.g. some employers found the Act easy to understand, while others found it confusing and difficult to apply.
2. Capital Strategy sourced four groups of research participants as follows:
 - *employer representatives* and *employers* through Business New Zealand and other employer representative organisations, the submitters to the Holidays Bill and the Amendment Bill and participants in the Holidays Act Working Group
 - *unions* through the NZCTU and the submitters to the Holidays Bill and the Amendment Bill, and
 - *employees* through employers, unions and the national office of the Citizens Advice Bureau.
3. Capital Strategy collected data from all these participants through five focus groups, 23 face-to-face interviews, and seven telephone interviews. In total, 19 employer representatives, 27 employers, 12 unions and 6 employees participated from Wellington, Auckland and Nelson.
4. The Department itself consulted with internal staff involved in delivering or implementing aspects of the Act.
5. The evaluation focused on areas which anecdotal evidence suggested employers and employees had more issues with than other sections of the Act. This was to identify where the Department could learn some lessons, and areas that could be improved. As a result, the findings were about concerns more than about what had worked well.
6. The evaluation focused on the following areas:
 - a) What is the major issue faced with the implementation of the Holidays Act and why?
 - b) Comment on the implementation of specific provisions:
 - Taking of and payment for annual holidays
 - Time and a half for working on a public holiday
 - Sick/bereavement leave, and
 - Relevant daily pay (RDP).
 - c) Sources of information about the Act and its changes, and the usefulness of those sources.
7. Employers and to some extent, unions raised policy matters in the course of the evaluation, even though they were outside its scope. The next stage of the evaluation, scheduled for 2007/08, will focus on the effectiveness of the Act in achieving its outcomes, and will provide an opportunity to consider policy issues.