

Submission by



to the

Education and Workforce Select Committee

on the

Holidays (Increasing Sick Leave) Amendment Bill

January 2021

PO Box 1925
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HOLIDAYS (INCREASING SICK LEAVE) AMENDMENT BILL

SUBMISSION BY BUSINESSNZⁱ

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to comment on the Holidays (Extension of Sick Leave) Amendment Bill ("the Bill"). BusinessNZ understands the reason why the Bill has been introduced but is concerned the Bill's effect will be other than intended.
- 1.2 The Bill proposes to extend the amount of paid sick leave available to employees from the current 5 days (accumulating to 20 days) to 10 days and its explanatory note refers to two regulatory impact statements, one provided by MBIE, the other by the Treasury. The MBIE statement supports the extension – although noting the costs will be borne mostly by employersⁱⁱ - but whether the Treasury statement is also in support cannot be determined; the document can no longer be found on the Treasury website suggesting that particularly in the current climate, the costs of extension are not supportable.
- 1.3 BusinessNZ realises its submission is unlikely to reflect the popular view but is concerned that as MBIE itself has pointed out, employers faced with an imposed increase in costs will be faced with a problem which they alone will have to address. How businesses will respond is considered in more detail in the discussion below.

2. RECOMMENDATIONS

- 2.1 That the bill should not proceed in its current form.
- 2.2 That the bill provide instead for an extra leave entitlement where an employee lacking any such entitlement is required to be absent from work due to an established association with the coronavirus.

3.1 DISCUSSION

- 3.1 In its paper to government, MBIE sets out the variety of ways businesses will respond if the 5 to 10 days extension of sick leave is implemented, namely by:
- absorbing the increased costs by reducing profit (only if this is something they are in a position to do, unlikely for many in current circumstances)
 - passing on costs by increasing the price of their goods/services
 - reducing direct employment costs (i.e. cutting hours/shifts or reducing level of employment)
 - reducing other costs (either fixed or variable costs)
 - delaying or avoiding wage increases (e.g. not passing on increases to those just above the minimum wage)
 - reducing other discretionary employment costs (e.g. additional forms of paid leave, other benefits)
 - reducing employees' hours or taking on fewer employees

- increasing use of non-standard working arrangements that have lower labour costs.
- 3.2 The MBIE paper goes on to state that it is not possible to estimate what impacts will be most common due to the diverse situations and contexts in which employers will be making decisions. But it notes specifically that small and medium-sized employers, may be more affected by the proposed sick leave increase, essentially because it is likely they will have fewer resources.
 - 3.3 Very many businesses have been badly affected by the coronavirus pandemic and the arbitrary imposition of increased cost (which an expected minimum wage increase will further increase, as will the introduction of a Matariki public holiday should this happen) will do nothing to assist the productivity growth so badly needed at this time.
 - 3.4 Further, evidence indicates that sick leave usage is commensurate with entitlement. In 2018, the national average of sick leave taken sat at around 4.7 days, approximately 94% of the current 5-day statutory entitlement, around 7.1 million person days of lost productivity.ⁱⁱⁱ
 - 3.5 What the above suggests is that a general increase in entitlement will see a corresponding increase in absenteeism with an obvious effect on productivity. Applying a similar ratio to the proposed 10 days' entitlement gives around 9.4 days, a 3.7 day increase. A Matariki holiday would push this up to 4.7 days.
 - 3.6 Given workforce growth since 2018 this would reduce national productivity by an additional factor of significantly more than the 7.1 million person days lost in 2018.
 - 3.7 The effect of an exponential increase in sick leave entitlement would do nothing to assist the recovery of businesses hard hit by the coronavirus and would likely (or more likely, inevitably) tip more over the edge into insolvency.
 - 3.8 MBIE's argument that sick leave is not strictly counted as a 'liability' for employers as the entitlement arises only when an employee is sick and unable to work^{iv} shows little understanding of the pressures businesses, and employers generally, experience.
 - 3.9 The above said, many employers are prepared to accommodate employees who are genuinely ill while many existing employment agreements already provide more favourable entitlements. But these are usually situations where the business or employer has the ability to respond in this way and has chosen to do so.
 - 3.10 An arbitrary statutory increase, moreover, could have unintended consequences. For example, how would employment agreements that do have more favourable entitlements co-exist with in an altered statutory environment? Consider the following:
 - (a) Each employee shall be entitled to five working days sick leave for each completed six months of continuous service with Council; except where:
 - i) An employee works less than five days per week. If this applies; the employee's sick leave entitlement shall be prorated at the rate of two days sick leave per year for each appointed day of work, with a minimum of five days sick leave on the completion of six months

service, a minimum of five days on the completion of 18 months service and each year after the employee shall be entitled to a minimum of five days sick leave.

Would the proposed amendment require this employer (and others with similar terms) to provide 15 days after 12 months?

- 3.11 If, contrary to BusinessNZ's view, the proposed amendment is to go ahead in its present form, it should expressly provide that no further adjustment is required if the relevant employment agreement (whether an IEA or CEA) meets the statutory minimum when the amendment comes into force.
- 3.12 And note – on a without prejudice basis - there will similarly be a need for pro-rating where there are employees working part-time.
- 3.13 For example, some employees, particularly, but not exclusively, in the retail and hospitality sectors, may work only one day a week. (Retail NZ has put the number as high as 1 in 5, often students or persons with family commitment.) For such employees, 10 days' sick leave a year would equate effectively to something like 20 per cent of the working year, representing a significant potential cost likely to reduce the amount of part-time work on offer and thereby to disadvantage those who want part-time employment.
- 3.14 However, BusinessNZ acknowledges that there may be employees who experience particular difficulty if, for example, asked to self-isolate. Therefore, rather than permanently increasing the number of statutorily provided sick leave days (which, as pointed out, would have its own unintended consequences), it would be better to attach any sick leave increase to the coronavirus relief packages. This would allow for extra leave where the employee was required to be absent from work as a consequence of an established association with the virus via supporting documentation, while at least to an extent, avoiding some of the difficulties to which this submission refers.
- 3.15 As well, although most employees use sick leave as intended while many employers already provide sick leave entitlements more generous than the current statutory 5 days, it must be recognised that there is always an employee minority that will abuse sick leave and so are challenging for employers to manage.
- 3.16 In order to deal with the kind of problems some employers experience, BusinessNZ's members have therefore made the following suggestions for consideration:
- employees should be required to provide a medical certificate within (say) 48 hours of a request from their employer with failure to comply constituting misconduct
 - employees taking 2 or more consecutive sick leave days should produce a certificate at their own cost and within 48 hours
 - employees who have taken more than 10 sick days in their current 12-month period should provide a certificate for every day after that, again at their own cost and within 48 hours
 - health professionals should provide more detail on the reason for providing the medical certificate i.e. not simply state 'unfit' for work

- the ability to deal with employees under the medical incapacity heading should be broadened by, for example, allowing for the dismissal of any staff member who, over a 12-month period, has been absent for or who has taken 20 or more days sick leave.

It is noted that the MBIE employment website carries the following comment: 'Employers should be aware that it is common for a dismissal for medical incapacity process to take a number of weeks, if not months, and there will be a number of meetings or exchanges of information. This makes sure that both parties have had an opportunity to present evidence and give feedback, and to ensure that all alternatives have been considered. Such dismissals are very rare'.

For many employers this process is too hard to manage. Instead, they must manage the ongoing uncertainty of an employee taking excessive sick leave.

4. RECOMMENDATIONS

- 4.1 That the bill should not proceed in its current form.
- 4.2 That the bill provide instead for an extra leave entitlement where an employee lacking any such entitlement is required to be absent from work due to an established association with the coronavirus.

ⁱ **Background information on BusinessNZ**

BusinessNZ is New Zealand's largest business advocacy body, representing:

- Regional business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Employers Otago Southland](#)
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and the Business and Industry Advisory Council ([BIAC](#)) to the Organisation for Economic Cooperation and Development ([OECD](#)).

ⁱⁱ Coversheet: Increasing the minimum sick leave entitlement: Where do the costs fall?
MBIE 2020

ⁱⁱⁱ BusinessNZ and Southern Cross Workplace Wellness Report 2020 ^{iv} Ibid p4