

This article was first published in the *Dominion Post* on 21 September 2009

Holidays Legislation: Do We Need the Nanny State?

Holidays legislation has been a nightmare for many businesses since the Labour government amended the Holidays Act in 2003.

A large-scale survey of 1500 enterprises by Business New Zealand in 2005 found that it had increased costs for 74% of respondents.

Some 38% said that the Act had added 2% to payroll costs, 23% said that it had added 3-5% and 12% said that it had added more than 5%.

The overall complexity of the Act was another part of the problem – 45% of the businesses surveyed had difficulty explaining the changes to employees.

The Act also limits workplace flexibility and has contributed to the slump in productivity growth of recent years.

In June the minister of labour set up a working group to “begin the review of the Holidays Act 2003” and recommend changes.

The working group is focused on several specific vexed issues, among them the calculation of ‘relevant daily pay’ as laid down in the Act, the idea of trading annual leave for cash, transferring the observance of public holidays, and the entitlements of casual employees.

However, as the New Zealand Chambers of Commerce argued in a submission, the review’s terms of reference are not broad enough and the Act needs a fundamental rethink. It said:

“As the labour market has become more complex with, for example, the conventional working relationship of ‘9 to 5 Monday to Friday’ becoming less common, writing legislation to adequately deal with all situations becomes more difficult to the extent that the question needs to be asked as to why there needs to be prescriptive regulation of holidays at all.”

This is a good question and not an academic one. The United States, the world's most productive and wealthy large economy, has no statutory provisions governing annual leave or the terms of employment relating to public holidays. Nor did the United Kingdom until recent years when it became subject to an EU directive.

Yet strangely enough, employers and employees in the United States manage to work out annual leave arrangements for themselves. Low income workers often prefer more pay to more leave. But contrary to union folklore, the result isn't that employees get no time off. Indeed the average number of hours worked per year in the United States is somewhat below that in New Zealand.

Moreover, the situation has not changed with Democratic and Republican administrations and is not a preoccupation of unions.

Two arguments are typically advanced for government regulation of holidays.

The first is the hoary Marxist chestnut of unequal bargaining power. In reality employers have no systematic bargaining advantages – if they did, wages and working conditions like holidays would be steadily cut back. In the tight labour market of recent years many employees had greater bargaining power.

The second argument concerns health and safety. Of course employees need time off but annual leave is a small proportion of the 104 days that they have off as weekends or their equivalent; they often work while on leave; and this does not constitute an argument for statutory prescriptions. If it were valid we should also legislate annual leave for the self-employed, who often work much longer hours.

Why do New Zealand unions and some politicians persist with these phoney arguments? Probably because some workers can be lured into union membership in the mistaken belief that unions can extract better working conditions such as leave from employers, whereas the reality is that they come at the expense of lower wages or other working conditions.

We can safely assume that the 2% cost impact on firms of the Holidays Act changes has by now been offset by a lower path of wages. Firms have to meet the cost of capital that investors commit to them; they cannot accept lower returns and remain viable.

Only productivity gains make workers as a group better off. New Zealand unions genuinely concerned about productivity and the overall interest of workers should take a leaf out of the book of their US counterparts.

The starting point for the review should be the government's primary economic goal of closing the per capita income gap with Australia by 2025.

Large improvements in institutions and policies are needed to achieve this goal – tinkering won't do. The problems with holidays legislation predate the 2003 Act – the previous National government did not succeed in fixing them. Holidays legislation and other areas of employment law are vital to productivity growth and must be addressed in a more fundamental way.

Many options for improvement should be explored by the working group, including adopting a voluntary regime or allowing parties to opt into or out of a statutory framework.

If it falls short, it won't be the end of the matter – the terms of reference suggest it is just a beginning. The recent Government Statement on Regulation requires a regular review of all existing statutes. If the government is serious about its commitment to less and better regulation, the Holidays Act will come under further scrutiny in the first half of 2010.

Roger Kerr (rkerr@nzbr.org.nz) is the executive director of the New Zealand Business Roundtable.