



Holidays Act - Are you compliant?

Holidays Act 2003





Holidays Act compliance is an obligation for all employers in New Zealand.

Non-compliance with the Act is a major issue for New Zealand employers, especially as it affects the integrity of payroll. Getting it right puts additional pressure on businesses, particularly in the current environment.

It is widely accepted that, despite best intentions, many New Zealand organisations are not meeting their obligations under the Holidays Act.



A FEW YEARS ON

The systemic non-compliance with the Holidays Act 2003 (the Act) across New Zealand businesses is a known issue, making headlines quite often due to the substantial back-payments that employers are making to their staff. We are now a few years on from when the issue initially surfaced and we are still seeing an increasing number of new high profile cases emerging.

It is evident that there is a higher degree of awareness of the issue, with some important court rulings addressing problematic areas such as 'what constitutes ordinary pay based on the frequency of payment' and the definition of 'discretionary payments' including release of further guidance materials from the regulator.

One of the largest payroll system providers has recently acknowledged issues with some of its payroll systems.

The regulatory body has also significantly stepped up payroll audits from 2016 (192 audits completed as at March 2020) and there has been wide-spread media coverage of some high profile holiday pay remediation projects completed and in progress, with some back-payment liabilities ranging in the tens of millions. This is prompting businesses to ask "are we sure we are paying the correct amount of holiday pay?"

Of the back of increasing visibility and interest in this area, more and more businesses are pro-actively assessing their compliance positions to ensure they are managing compliance risk and doing it right by employees.



REVISITING THE ISSUE

If your organisation is yet to assess its compliance position or you are nervous as to whether your initial assessment was robust enough, there are some clear red flags in terms of determining whether you have a risk of non-compliance. Some common issues for employers include a workforce that works variable hours regularly, payment of allowances, commission and bonuses, regular changes to employee's work pattern, work performed over public holidays and multiple types of employment contracts. Experience tells us that there are a number of factors which makes it notoriously difficult to meet the requirements of the Act, thereby increasing the risk of non-compliance, some of which are not fully in the control of employers:

- The design of the Act which requires the exercise of judgments consideration of employees' work patterns is open to interpretation;
- Incorrect Payroll system configuration;
- Currency of measure: Payroll systems are designed to track in hours whereas the Act talks about holiday pay in 'weeks' and 'days';
- Incorrect payment and provision of entitlements to casual and fixed term labour;
- Set and forget payroll practices, that are not reviewed or updated to reflect the current work environment;
- Lack of expertise in the payroll function; and
- Incorrect treatment of different pay components.



REMEDIATION

Identification of non-compliance is only one part of the issue faced by organisations. The **remediation of non-compliance is proving to be a bigger challenge** due to the need for a multi-disciplinary team who understand the requirements of the Act and are able to develop and implement practical solutions.

Depending on the size of your organisation, remediation projects can take over a year to complete and require extensive stakeholder engagement and financial investment. Some of the common considerations during Holidays Act remediation include:

- Availability and the quality of the data;
- Translating the legal requirements into your business context;
- Effective communication and engagement with stakeholders (e.g. employees, regulator, unions, etc.);
- Contacting and validating former employees;
- Enhancement of payroll systems, procedures and practices to ensure compliance on a go-forward basis; and
- Impact of other legislation e.g. Unclaimed Money Act 1971.

Inability to correctly navigate through the above can result in **significant underpayments and/or overpayments**. Other issues include:

- Ongoing non-compliance resulting in further exposure and regulator scrutiny;
- Heightened risk of fraudulent claims of back-pay when trying to contact and remediate former employees'; and
- Poor employee engagement and reputational damage.

Holidays Act compliance assessment and remediation also provides an **opportunity** for employers to identify **root causes for historical overpayments** which is very common and can result in significant leakage. As part of the go-forward remediation, enhancements and controls can be implemented to manage this risk.

Currently, a key consideration during **mergers and acquisitions is holiday pay exposure** and we are seeing more deals requiring due diligence over this as well.

The Government commissioned a review of the current legislation which has now been completed and the findings are currently being presented. This may result in changes to the Act and/or further guidance on the application of the Act in the near future potentially requiring further work by employers to ensure their systems and processes are compliant.

Whilst economic recovery is currently taking centre stage, organisations' **compliance obligations still remains with the risk of the financial exposure increasing**. It is clear that there is an increasing appetite from employers' to ensure they are compliant with the Act and this issue is far from being resolved.



Working with you...

KPMG have developed a clear and robust framework based on our experience working with many organisations, to provide certainty, cutthrough insights and deliver results.

We take a very proactive attitude to Holidays Act remediation work whereby we guide organisations on compliance and remediation issues, with deep understanding of the regulators expectations to ensure that the interpretation of the Act is consistent with current approaches and legal positions.

Our differentiated data-driven focus removes guess-work or the need for broad assumptions, delivering swifter outcomes and avoiding unintended consequences or unsupported outcomes.



OUR FRAMEWORK

Our methodology and approach to Holidays Act compliance assessment and remediation has evolved over time to ensure we are keeping pace with the developments in this area and are providing you peace of mind over your compliance obligations.



KPMG's Holidays Act Remediation Framework broadly covers six key areas and is designed to be pragmatic and practical to ensure a fair outcome to all parties:

- 1. Process understanding:** We develop a good understanding of your payroll environment including systems, processes, practices and key employment related documents.
- 2. Compliance assessment:** This is to establish your compliance position and can be performed at a high-level by taking a risk-based approach through discussions or a detailed review through testing of your payroll transactional data and configuration.
- 3. Data normalisation and analysis:** This is one of the first stages of the remediation phase and involves data validation and cleansing to enable recalculations.
- 4. Remediation methodology:** This is critical to the whole remediation and involves making key decisions based on data driven insights to determine the approach for resolving the issues. The methodology covers a historical view (compensating for historical non-compliance – back-pay) and forward view (enhancing payroll systems and process to ensure go-forward compliance). This stage may also include engagement with the regulator depending on your individual circumstance.

5. Holiday pay recalculations and quality assurance: Iterative holiday pay recalculation is performed using a tailored model which is driven by the remediation methodology. Ongoing quality assurance, analysis, data cleansing and model enhancement is performed over the results until the results are robust.

6. System enhancement, payments and handover: We work closely with your payroll team and provider to enhance the overall payroll environment to ensure you are compliant and mitigate the risk of future non-compliance. We also guide you through the payment of back-pay to current and former employees, assist with regulator engagement (if required) and, handover the project to payroll in a business as usual state.

Central to our approach is regular communication and the delivery of practical solutions and services to help you identify and address holiday pay vulnerabilities in your business, investigate and quantify the under-payment and provide detailed guidance on the remediation steps. We also highlight any historical over-payments and work with you to prevent it on a go-forward basis.

KPMG's **multi-disciplinary team** brings together deep experience and expertise including Holidays Act (and related employment legislation), employment tax, risk assurance, and payroll data analytics.

Our **experience** allows us to provide practical advice in relation to your obligations under the Act and employment agreements.

Proven data analytics modelling approach to calculate exposure provides the **assurance** you need to take proactive action.

Flexibility in our ways of working means we adapt our scope and approach to your unique requirements.

Whether you are considering your compliance position or are embarking on a remediation project, KPMG is ready to assist you to achieve your payroll outcomes.

We have a proven track record of working successfully with clients across a number of payroll systems by providing pragmatic subject matter expertise on Holidays Act matters.

Our collaborative approach to partnering with you will ensure we minimise disruption to business to allow you to focus on more strategic matters that is impacting your business.

Contact us



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