SUBMISSION

Employment Leave Bill

April 2026

Restaurant Association of New Zealand submission
to the Education and Workforce Committee

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Introduction

1. The Restaurant Association of New Zealand (the Restaurant Association) welcomes the opportunity to provide feedback on the Employment Leave Bill (the Bill).

2. Since 1972, the Restaurant Association has worked to offer advice, help and assistance in every facet of the vibrant and diverse hospitality industry, covering the length and breadth of the country. We are passionate about our industry, which is characterised by a wide range of business models and working arrangements.

3. The Restaurant Association broadly supports the intent of this Bill. The Holidays Act 2003 has long been a source of compliance difficulty for our members, and we welcome the Government's commitment to replacing it with a simpler, clearer framework that is more workable for businesses of all sizes — particularly the small and medium-sized businesses that make up the vast majority of our sector. However, we consider that there are a number of areas where further refinement is required to ensure the framework operates effectively in sectors with variable, roster-based working patterns such as hospitality.

Consultation with members

4. The Restaurant Association has actively engaged with members on Holidays / Leave reform over an extended period. This has included the establishment of a dedicated Reference Group, bringing together operators from across the industry — including single-site independents, multi-venue groups, and large hospitality businesses — to work through the practical implications of reform.

5. The views expressed in this submission reflect that consultation process and further engagement with our wider membership. We are pleased to see a number of proposals we have advocated for in the past (including through our Hospitality Summit 2024 recommendations report, available here) are reflected in the Bill.

Hours-based accrual of annual leave and sick leave

6. The proposal to shift to hours-based accrual of annual and sick leave is welcomed. Hospitality businesses employ workers engaged in shift work and

a high proportion of part-time workers. Hours may vary significantly from week to week and season to season, including short-notice roster changes driven by demand volatility. The existing weeks-based entitlement system has consistently failed to reflect the reality of these working arrangements, creating both confusion and compliance risk for employers acting in good faith.

7. Hours-based accrual provides a transparent and logical link between hours worked and leave earned. This will make it substantially easier for our members to explain entitlements to employees, improve transparency and employee understanding of those entitlements, and to administer payroll accurately — a direct improvement on the current position. It also reflects the principle that leave entitlements should align as closely as possible with the hours an employee actually works.

8. We also support the move to a single hourly leave pay rate as a simplification of the current system.

9. Notwithstanding our support for hours-based accrual, under the current Holidays Act 2003, employees become entitled to sick leave after six months of continuous employment. This qualifying period serves an important practical function. Allowing sick leave to accrue from day one enables sick leave to be taken much earlier in the employment relationship. We consider that this earlier access has a material and cumulative cost impact for employers and may create unintended behavioural incentives. We do not consider that the simplification benefits of day-one accrual outweigh these impacts, particularly where it does not reflect typical patterns of workforce engagement in the hospitality sector.

10. The Restaurant Association recommends that a qualifying period before sick leave can be taken is retained, consistent with the current six-month threshold under the Holidays Act 2003, even if accrual were to occur from day one.

Pro-rata sick leave

11. The Restaurant Association has advocated for pro-rata sick leave to be introduced over many years. At the 2024 Hospitality Summit, and through the subsequent Summit Recommendations report, pro-rata sick leave was identified as an industry priority. We are pleased that the Bill reflects this approach.

12. Sick leave accruing in proportion to hours worked is a fair and logical outcome that benefits both employers and employees as it ensures entitlements are aligned with actual working patterns. Employees accrue leave that reflects their working pattern, and employers are not exposed to disproportionate sick leave liabilities relative to the hours an employee actually works.

13. We note that the Bill caps accrued sick leave at 160 hours under clause 75. While this is intended to align with the current 20-day maximum for a full-time employee working standard 8-hour days, the practical effect of expressing the cap as a fixed number of hours is that it will result in different outcomes across the workforce. In particular, for part-time and short-hours workers, the same 160-hour cap translates into a greater number of 'days' of leave relative to their usual working pattern. This reintroduces an anomaly similar to that seen under the current system, where entitlements do not consistently align with actual working arrangements. We recommend that the Government clarify the intended policy outcome of the 160-hour cap and consider whether a more proportionate approach is required to ensure consistency across different working patterns.

Leave Compensation Payment (LCP) for additional and casual hours

14. The Restaurant Association recognises the intent of the Leave Compensation Payment (LCP) mechanism to simplify the treatment of hours that are genuinely irregular or unpredictable, by providing a transparent, upfront payment in lieu of more complex accrual calculations. We support efforts to reduce administrative complexity and improve clarity for both employers and employees.

15. However, we have concerns about how the LCP framework will operate in practice within the hospitality sector. In many cases, employment agreements specify minimum or guaranteed hours that do not reflect actual working patterns, due to the need to accommodate seasonal variation or fluctuating demand. Employees frequently work hours above their guaranteed minimums on a regular and predictable basis (eg between 'Summer' hours and 'Winter' hours). In this context, the distinction between "standard contractual hours" and "additional hours" is not always clear or reflective of real working arrangements.

16. There is a risk that a substantial proportion of hours worked in hospitality could be treated as "additional hours", resulting in the routine application of the LCP to hours that are, in practice, part of an employee's ordinary working

pattern. This would undermine the objective of aligning leave entitlements with actual work performed and risks introducing new complexity rather than reducing it.

17. We also note that the proposed LCP rate of 12.5% is materially higher than the 8% holiday pay loading currently applied in pay-as-you-go arrangements. It is not fully clear how this rate has been derived, or how it is intended to reflect the full range of leave entitlements it is compensating for. Without clear justification, this creates uncertainty for employers and raises the risk of either over- or under-compensation relative to actual leave entitlements.

18. We recommend that the Bill and accompanying regulations provide clear, practical guidance on how “standard contractual hours” should be defined and applied in sectors where variability in hours is a normal feature of employment. This should include worked examples for mixed-hour arrangements common in hospitality. We also recommend that the basis for the LCP rate be clearly explained, and that consideration be given to whether the proposed approach appropriately reflects the working patterns of sectors with variable hours. We note that this concept reflects, in a more formalised way, the assessment employers already undertake under the current Holidays Act, and it is therefore important that the framework remains practical and does not impose unnecessary additional complexity.

The Otherwise Working Day test

19. The Restaurant Association welcomes the introduction of a clearer Otherwise Working Day (OWD) test for public holiday entitlements. The existing test under the Holidays Act 2003 has been one of the most common sources of compliance difficulty and dispute for hospitality operators. A clearer test is strongly supported by our members.

20. The Bill proposes that a day is treated as an OWD if the employee has worked or been on paid or unpaid leave for 50% or more of the same day of the week in the preceding 13 weeks. Our Reference Group debated this test in detail. While members were broadly supportive of the 50% threshold, there was debate about whether 13 weeks is the right reference period. Some members advocated for a shorter window — as few as three or five weeks — to better reflect recent changes in an employee's working pattern, while others acknowledged that a longer period provides greater certainty. One member raised the specific challenge of multi-week roster cycles, suggesting that the reference period should accommodate these where they exist. We

recommend that the Bill either retains the 13-week period or provides flexibility where roster cycles are demonstrably shorter.

21. We note the notional roster mechanism under clauses 9 to 11 as a fallback for workers whose employment agreements do not specify hours with sufficient detail. We support this approach in principle, but ask the Committee to ensure that:
    a. The process for establishing a notional roster is straightforward and does not impose material additional administrative burden on small employers;
    b. Clear guidance is provided on how notional rosters interact with the OWD test in practice, including for workers on irregular or multi-week shift patterns; and
    c. The Labour Inspector's role in determining notional rosters is appropriately resourced to avoid delays that leave employers in a position of uncertainty.

22. We also note that clause 15 requires employers to notify employees whether a day is an OWD and to specify the relevant hours. For small business owners, particularly those with part-time workers that work different shifts week to week, this notification obligation could create meaningful administrative load unless supported by system automation. We ask that guidance addresses how this obligation can be discharged efficiently, and that payroll systems are designed to automate this step where possible.

Public holiday payment calculation

23. Our members have expressed a clear preference for a simplified approach to calculating public holiday pay, based on an employee’s base hourly rate only.

24. We note that the Bill provides for leave to be paid at an hourly rate, with fixed allowances — those that must be paid under the employment agreement and do not vary in value — included in leave payments. While this approach seeks to reflect contractual entitlements, including allowances introduces additional complexity and creates uncertainty in distinguishing between fixed and variable components of pay, increasing the risk of inconsistent application and compliance error.

25. We are concerned about how this approach will apply in practice to employees who receive additional pay components such as commission-based incentives, service charges, or performance allowances. The distinction between “fixed” and “variable” allowances will not always be clear, and

requiring employers to make these determinations introduces complexity and compliance risk. This reinforces our view that a base-pay-only approach would provide greater clarity and consistency. If allowances are to be included, the Bill or its accompanying regulations should provide clear, plain-language guidance, with worked examples relevant to common hospitality pay structures, to support consistent application.

Annual leave accrual during non-worked periods

26. We note that the Bill provides for annual leave to continue to accrue during periods of parental leave and other forms of statutory leave. This represents a departure from the principle that leave entitlements should align with hours actually worked.

27. We consider that annual leave should accrue based on work performed, as this provides a simpler and more transparent system that is fair to both employers and employees. Allowing leave to accrue during periods where no work is performed introduces additional cost and complexity, and is inconsistent with the objective of aligning entitlements with actual working patterns. If this approach is retained, we recommend that clear guidance be provided on how this is to be applied in practice, particularly for employees returning to variable or roster-based roles.

Alternative leave

28. The Restaurant Association supports the shift to hours-based accrual of alternative leave for employees who work on public holidays. Hospitality is an industry that operates on public holidays, and a clearer, hours-based approach to alternative leave entitlements is long overdue.

29. Members of our Reference Group have previously questioned whether replacing alternative leave entitlements with a higher penalty rate for working on a public holiday would provide a simpler and more transparent outcome for both employers and employees. The administrative complexity of tracking, managing, and paying out alternative leave across large and variable workforces has been a well-recognised compliance burden in the hospitality sector.

30. While the shift to an hours-based accrual system may address some aspects of this complexity, we consider that the underlying challenges associated with

managing alternative leave entitlements in a highly variable, roster-based environment are likely to remain. Alternative leave balances can be difficult to track and are not always taken, resulting in accrued liabilities for employers and reduced clarity for employees about their entitlements.

31. We therefore consider that the Committee should give specific consideration to whether the alternative leave framework, as currently drafted, achieves the Bill's objective of simplicity, or whether a higher penalty rate model — either as a full replacement, or as an agreed alternative to the default framework — would provide a more practical and proportionate outcome for sectors with variable working patterns.

32. We note and support the provision in clause 64 that an employee who only ever works on public holidays does not accrue alternative leave, and the provision in clause 65 that allows the employer to determine when alternative leave is taken where agreement cannot be reached. We consider both provisions important.

Annual closedowns

33. The Restaurant Association notes that the Bill retains provisions allowing employers to implement annual closedowns, including the ability to require employees to take annual or unpaid leave during a closedown period. This is an important provision for hospitality businesses — particularly those that choose to close over the Christmas and New Year period — and we support its retention.

Bereavement leave and family violence leave for casual workers

34. The defining characteristic of a casual employment arrangement is that there is no obligation on the employer to offer work, and no obligation on the employee to accept it. This mutual absence of obligation is fundamental to the nature of casual employment and distinguishes it clearly from permanent or fixed-hours arrangements. It is this distinction that underpins different treatment of casual workers across employment law more broadly.

35. We recognise the importance of these leave entitlements in supporting vulnerable employees. However, the Restaurant Association does not support the extension of bereavement leave and family violence leave entitlements to casual workers under clauses 99 and 117 of the Bill.

36. Extending bereavement and family violence leave entitlements to casual workers does not reflect this fundamental difference in the employment relationship. A casual worker who has agreed to work a shift has not entered into the same kind of ongoing employment commitment as a permanent worker, and we do not consider it appropriate for the same leave framework to apply in full to casual arrangements.

37. We also note that members expressed mixed views on the move to day-one access for bereavement and family violence leave entitlements more broadly. While some supported accrual from the point agreed hours are established, others considered that a short qualifying period before entitlements can be accessed would better align with existing employment frameworks. This is consistent with the approach outlined above in relation to sick leave. One option that may warrant consideration is a model where entitlements accrue from day one but are not redeemable until a defined period of employment has been completed.

Part-year employees

38. The Restaurant Association notes the provisions in clause 32 relating to part-year employees — those who work standard hours but are not required to work for one or more periods of seven or more consecutive days each year. This provision is directly relevant to seasonal hospitality businesses, including those in tourism-dependent regions that engage staff only for part of the year.

39. We support the inclusion of specific provisions for part-year employees and ask that guidance address how these provisions apply in the context of seasonal hospitality employment, including how annual leave accrual and closedown provisions interact for these workers. In practice, the ability to take annual leave during non-worked periods can provide a practical benefit for both employees and employers. For employees, this can result in a more consistent income profile across the year, while for employers it provides flexibility in managing leave without requiring additional time off to be provided during peak operating periods.

Payroll provider compliance and record-keeping

40. A recurring theme in our member Reference Group was the burden that falls on employers when payroll software does not keep pace with legislative requirements, which can undermine confidence in the accuracy of

entitlements for both employers and employees. Members expressed frustration that compliance failures under the current Act have often stemmed not from employer intent but from the limitations of payroll systems — and that the cost and reputational consequences of those failures have nonetheless fallen on employers rather than providers.

41. Our position is that the Bill presents an opportunity to address this structural problem. We strongly support the inclusion of requirements or expectations — whether in the Bill itself, in regulations, or through a formal industry engagement process — that payroll software providers ensure their systems accurately implement the new framework from the commencement date. The Government should work directly with payroll providers during the transition period to verify system readiness, and that this is explicitly recognised as a mitigating factor in any compliance or penalty assessment. More broadly, the success of the new framework will be highly dependent on system readiness and the availability of clear, practical guidance.

42. Members of our Reference Group also raised concerns about the record-keeping requirements under the Bill more broadly. Our principle of simplification applies here: we ask the Committee to ensure that record-keeping requirements reflect those necessary to support compliance and enforcement, and that they are capable of being met through standard payroll software without significant manual intervention or duplication of records.

Penalty regime

43. The Restaurant Association notes that clause 140 provides for penalties of up to $10,000 for individuals and $20,000 for companies for non-compliance with specified provisions of the Bill. We consider that penalties play an important role in supporting compliance with employment standards. However, given the scale and complexity of change introduced by this Bill, there is a heightened risk that employers acting in good faith may make inadvertent errors — particularly during the transition period and early implementation phase.

44. We ask the Committee to consider whether the Bill adequately recognises good-faith efforts by employers to comply — particularly during the transition and early implementation period — and to ensure the remediation process under subpart 4 is sufficiently accessible and well-defined to provide practical protection for small businesses.

Remediation process

45. The Restaurant Association welcomes the inclusion of a voluntary remediation process under subpart 4 of the Bill, allowing employers to resolve outstanding liability under the Holidays Act 2003 by electing into the process. Given how widespread inadvertent non-compliance has been under the current Act, a practical and accessible remediation pathway is important.

46. We note that the detail of the remediation process will be set out in regulations yet to be developed. We ask the Committee to ensure that the Restaurant Association has the opportunity to contribute to the development of those regulations, and that the process — when finalised — is straightforward enough to be used by small businesses without requiring specialist legal or accounting assistance.

Transition provisions and implementation support

47. The Restaurant Association supports the 24-month transition period given the scale of system, payroll, and process changes required across the sector. However, we are concerned about the readiness of small hospitality businesses to implement the required employment agreement, rostering, and payroll changes without adequate support.

48. Generic guidance will not be sufficient for our sector. The complexity of hospitality employment arrangements — variable hours, split shifts, public holiday trading, seasonal peaks, and mixed casual and part-time workforces — means that industry-specific guidance is essential.

49. At the 2024 Hospitality Summit, the Restaurant Association recommended the development of a Central Hub to consolidate compliance information for the hospitality sector, and committed to promoting the use of industry-specific employment agreement templates. We consider both of these initiatives directly relevant to the transition requirements of the Bill and urge the Government to resource and support them as part of the implementation programme.

50. We urge the Government to commit to developing plain-language, hospitality-specific guidance in collaboration with the Restaurant Association ahead of the Bill's commencement date.

Summary of recommendations

51. The Restaurant Association asks the Committee to:

a. Retain the hours-based accrual framework for annual and sick leave.

b. Retain the pro-rata approach to sick leave accrual.

c. Consider whether a qualifying period before leave can be taken should be retained for sick leave, bereavement leave, and family violence leave, even where entitlements accrue from day one.

d. Clarify the intended policy outcome of the 160-hour sick leave cap and consider whether a more proportionate approach is required to ensure consistency across different working patterns.

e. Review the Leave Compensation Payment framework to ensure it is workable in sectors with variable working patterns, including clarifying the definition of “standard contractual hours” and the basis for the proposed 12.5% rate.

f. Consider whether the Bill should include a mechanism for employers and employees to agree on a shorter OWD reference period where a shorter roster cycle better reflects the employee's working pattern.

g. Ensure the Otherwise Working Day test, notional roster provisions, and employer notification requirements are accompanied by practical guidance developed with input from industry associations, and that payroll systems are designed to automate the notification obligation where possible.

h. Consider adopting a base-pay-only approach to leave payment calculations as a simpler and more consistent outcome, and if allowances are to be included, provide clear, plain-language guidance.

i. Review the approach to annual leave accrual during periods of parental and other statutory leave to ensure alignment with the principle that leave accrues based on work performed.

j. Give specific consideration to whether the alternative leave framework achieves the Bill's goal of simplicity, having regard to the views of the hospitality sector on higher penalty rates as an alternative.

k. Reconsider the extension of bereavement leave and family violence leave entitlements to casual workers, having regard to the fundamental differences between casual and ongoing employment arrangements, and whether the proposed framework appropriately reflects those differences.

l. Ensure guidance addresses how part-year employee provisions apply in seasonal hospitality employment contexts.

m. Work with payroll software providers during the transition period to verify system readiness, and ensure that employers are not penalised for errors that originate in non-compliant payroll software.

n. Ensure that record-keeping requirements represent the minimum necessary to support compliance and can be met through standard payroll software without significant manual intervention.

o. Work with payroll software providers and industry associations to ensure accessible, low-cost pay statement solutions are available to small businesses before the new requirements come into force.

p. Ensure the penalty regime recognises good-faith efforts to comply, particularly during the transition and early implementation period.

q. Ensure the hospitality industry has the opportunity to contribute to the development of remediation process regulations.

r. Commit to the development of hospitality-specific transition guidance, produced in partnership with the Restaurant Association, ahead of the Bill's commencement.

Thank you for the opportunity to provide feedback on the Employment Leave Bill. We would be happy to discuss any part of this submission in more detail and to provide any assistance the Committee may require.

About the Restaurant Association of New Zealand

52. The mission of the Restaurant Association of New Zealand is to be the link between good food and good business so that our Members' restaurants and cafés can succeed. Since 1972, the Association has worked to offer advice, help and assistance in every facet of the hospitality industry. We are the representative body for more than 2,500 hospitality businesses, with Members covering the length and breadth of the country.

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Appendix: Supporting material

- Hospitality Summit 2024 Recommendations Report: https://www.restaurantnz.co.nz/wp-content/uploads/2025/04/Hospitality-Summit-2024-Report.pdf