

133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
+64 4 496 2000

24 September 2019

Hon Michael Woodhouse
National Party Spokesperson for Health
Trish.Wanden@parliament.govt.nz

Cc: Nationaloia@parliament.govt.nz

Ref: H201905988

Dear Hon Woodhouse

Response to your request for official information

Thank you for your request for information under the Official Information Act 1982 (the Act) to the Ministry of Health (the Ministry) on 1 July 2019, for:

"All aides memoire, reports, briefings, memos, texts, emails and any other correspondence provided by the Ministry of Health to the Minister of Health, the Minister for Workplace Relations and Safety or the Committee of Ministers Responsible for State Sector Employment Relations (CMSSER) between 1 January 2015 to 25 October 2017 that contain information on DHBs compliance with the Holidays Act 2003"

Three email chains have been identified in scope of your request. These emails, their attachments, and the Ministry's decision regarding their release, are itemised in Appendix One.

By way of context, in 2016 the Auditor General asked district health boards (DHBs) what they were doing to understand their risk related to Holidays Act non-compliance.

Two attachments are withheld in full under section 9(2)(ba)(i) of the Act. These contain information provided to the Ministry by DHBs. The release of these appendices would be likely to prejudice the future supply of similar information. The greater public interest is in ensuring that the Ministry continues to receive similar information from DHBs in the future.

In addition to these documents, nine items have been identified from the Employment Relations Weekly Report. This report is distributed to the office of the Minister of Health, the Ministry of Health Executive Leadership Team, and representatives from the State Services Commission, the Treasury, and the Department of Prime Minister and Cabinet. The majority of information in these reports is not on the subject of Holidays Act compliance and as such relevant excerpts are provided in Appendix Two.

I trust that this information fulfils your request. Please note that this response, with your personal details removed, may be published on the Ministry of Health website.

Under section 28(3) of the Act you have the right to ask the Ombudsman to review any decisions made under this request.

Yours sincerely

A handwritten signature in cursive script that reads "anna clark".

Anna Clark

**Deputy Director-General
Health Workforce**

Appendix One

#	Date	Title	Decision on release
1	8 March 2016	Emails, 'Re: <i>Holidays Act message to CE's</i> '	Released with information withheld under the following grounds: <ul style="list-style-type: none"> - Section 9(2)(a) of the Act - Section 9(2)(ba)(i) of the Act.
1.1	8 March 2016	DHB payroll compliance table	Withheld in full under section 9(2)(ba)(i) of the Act.
2	31 March 2016	Email, ' <i>Holiday pay payroll issue and DHBs</i> '	Released with mobile numbers withheld under section 9(2)(a) of the Act.
2.1	31 March 2016	DHB payroll compliance table	Withheld in full under section 9(2)(ba)(i) of the Act.
3	3 May 2016	Email, ' <i>DHB Payroll compliance with Holidays Act</i> '	Released with mobile numbers withheld under section 9(2)(a) of the Act.
3.1	8 April 2015	Letter to DHB Chief Executives	Released in full.

Appendix Two: Excerpts from Weekly Reports

5 May 2017:

Holiday Act Compliance

DHBs are working with unions and MBIE to develop a 20 DHB approach to the Holiday Act compliance issues. A terms of reference (ToR) document has been drafted and discussed by DHB Chief Executives and the New Zealand Council of Trade Unions (CTU). A one day workshop took place on 4 May 2017 to engage DHBs in the progress to date and develop a commitment to the process outlined in the ToR.

The proposed ToR sets out two deliverables:

1. A compliance "baseline" which sets out the agreed interpretation and operation of the Holidays Act minima.
2. A "review and remediation framework" which sets out how DHBs and the unions will assess current DHB payroll systems and practices and how remediation will be approached where any non-compliance is discovered.

DHBs have commenced pro-active audits of their payroll systems and processes with a focus on the Holidays Act compliance issues. Three DHBs (Auckland, Counties-Manukau, and Canterbury) have been audited by Ministry of Business, Innovation and Employment with ongoing engagement.

The Ministry is currently seeking information on the financial provisions (if any) made by DHBs in case of any liability resulting from internal or external auditing processes.

At this stage, the Ministry's understanding is that there are issues to be addressed but they are not major. The issues should be able to be resolved through the tripartite process described above (DHBs, unions, MBIE).

12 May 2017:

Holiday Act Compliance

DHBs are continuing to work with unions and MBIE to develop a 20 DHB approach to the Holiday Act compliance issues. The terms of reference document is being progressed and another workshop will be scheduled for DHBs to finalise the document.

DHBs are continuing with pro-active audits of their payroll systems and processes with a focus on the Holidays Act compliance issues. Three DHBs (Auckland, Counties-Manukau, and Canterbury) have been audited by Ministry of Business, Innovation and Employment with ongoing engagement.

The Ministry is following up on the request for information on the financial provisions (if any) made by DHBs in case of any liability resulting from internal or external auditing processes.

19 May 2017:

Holiday Act Compliance

The three DHBs that have been audited by MBIE to date (Canterbury, Auckland, and Counties Manukau) have advised that any cost is expected to be minimal and there is no need to make financial provision. The two risks identified at this stage are the distinction between casual and permanent part-time employees, and the treatment of allowances.

16 June 2017:

Holiday Act Compliance

In late 2016 DHB Chief Executives agreed to establish a national process to respond to concerns raised by the Council of Trade Unions (CTU) around compliance of DHB payroll systems with the Holidays Act 2003.

In response DHBs have held two national workshops with payroll and HR representatives to ensure there is broad discussion and buy-in to a 20 DHB view of the Act's requirements and the development of the Terms of Reference (ToR).

The ToR document is now completed and a copy has been provided to the Labour Inspectorate of the Ministry of Business, Innovation and Employment (MBIE) for their review. DHBs are currently awaiting formal confirmation from MBIE that the scope of the DHB process and its relationship with MBIE's own review processes is satisfactory.

The DHB-union joint working group met for the first time on 19 May 2017 and progressed work on the agreed deliverables. The next meeting is scheduled for 19/20 June 2017.

DHBs have been asked to identify areas of potential risk. It is likely that the biggest challenges relate to how annual leave balances are kept and debited, though whether this results in underpayments that would require remediation is unclear.

7 July 2017:

Holidays Act

DHBs have been asked to identify areas of potential risk. It is likely that the biggest challenges relate to how annual leave balances are kept and debited, though whether this results in underpayments that would require remediation is unclear. Further meeting dates have been scheduled for 19/20 July to progress the identified work by 31 July 2017.

28 July 2017:

Holidays Act

The joint DHB and NZBS-health sector union review of the Holidays Act requirements has been concluded. Areas of disagreement on specific requirements of the Act are being raised with the Labour Inspectorate to assist in resolving the parties alternate views.

The "baseline" compliance document to be used as the audit tool for local reviews of DHB payroll systems and the framework of these reviews themselves is being drafted. DHB Chief Executives will be asked to endorse the baseline and the framework at their September meeting.

4 August 2017:

Holidays Act Compliance

The joint DHB and NZBS-health sector union review of the Holidays Act requirements has been concluded. Areas of disagreement on specific requirements of the Act are being raised with the Labour Inspectorate to assist in resolving the parties alternate views.

The "baseline" compliance document to be used as the audit tool for local reviews of DHB payroll systems and the framework of these reviews themselves is being drafted. DHB Chief Executives will be asked to endorse the baseline and the framework at their September meeting.

DHBs are awaiting a response from the Labour Inspectorate.

11 August 2017:

- Holiday Act Compliance – DHBs awaiting response from Labour Inspectorate

18 August 2017:

- Holiday Act Compliance – DHBs awaiting response from Labour Inspectorate