



# McKONE Consultancy Ltd

for employment relations advice and support

## Summary of Proposed changes to the Holidays Act 2003, Minimum Wages Act 1983 and Wages Protection Act 1983

***A commentary by Tony McKone, Director McKone Consultancy Ltd - 8 January 2016***

The Employment Standard Legislation Bill that is currently under consideration by Parliament proposes changes to the Holidays, Minimum Wages and Wages Protections Acts. These proposed changes are similar across all three Acts and so are explained in this one blog.

The main common change is the proposal to allow an employee to seek a penalty from their employer for non-compliance with legislation. The changes also extend penalties to be applied to “every person who is involved in the failure to comply”, not just the employer.

This could have significant impacts on advisors, and appears to be designed to dis-incentivise collusion to prevent an employee receiving their rightful entitlements under the Holidays, Minimum Wages and Wages Protection Acts.

These three pieces of legislation link directly into a proposed amendment to the Employment Relations Act 2000 that introduces a definition of a person who is involved in the failure to comply. This aspect is one of key amendments relating to the enforcement of employment standards. The proposed new s142V of the Employment Relations Act 2000, Involvement in Breaches, defines a person involved in a breach to be the person who has aided, abetted, counselled or procured the breach; or had induced, whether by threats or promises or otherwise, the breach; or has been in any way, directly or indirectly, knowingly concerned in or party to the breach; or has conspired with others to effect the breach.

This proposed amendment will make company directors, partners, general partners and people holding a position comparable to that of director if not a company, partnership or limited partnership, liable for breaches which they are involved in, whether directly or indirectly.

This means that both an individual and a company could be held liable for a breach. While the employee may pursue a penalty against the company (their employer), only a Labour Inspector may pursue a penalty against an individual.

Individuals and companies will not be able to take out insurance against such penalties.

The Holidays Act 2003 is also proposed to be amended by requiring employers to keep details of the number of hours an employee works each day in a pay period and the pay for those hours.

The Minimum Wages Act 1983 and the Wages Protection Act 1983 changes also propose that a Labour Inspector or a worker may recover any unpaid wages from a person who is not the worker’s employer if that person was involved in the non-compliance leading to unpaid wages, provided the work is entitled to those wages and the non-payment of the wages was due to non-compliance with the Act.

For a worker to take this action they will need the leave of either the Employment Relations Authority or the Employment Court to do so.

In addition to the above, the Wages Protection Act 1983 is proposed to be changed to make it unlawful for an employer to make an unreasonable deduction from a worker's wages. What is unreasonable is not defined and may well result in some interesting cases going before the Authority and Court to determine the boundary between reasonable and unreasonable when it comes to making deductions.

A report back to Parliament and the Second Reading of the Employment Standards Legislation Bill is expected in February 2016. The Bill anticipates being passed into law and taking effect from 1 April 2016.

**Disclaimer:** *The information shared in this blog should not be taken as advice. If you wish to know more about how these proposed changes might impact your business [contact Tony](#) today for an obligation free discussion.*