

## More sick leave could deliver a healthier workforce

[Hamish Kynaston](#), [Peter Chemis](#), [Sherridan Cook](#), [Susan Rowe](#), [Nicola Cuervo](#), [Alastair Sherriff](#), [Mere King](#), [Holly Hedley](#), [Shaun Brookes](#), [Lorraine Hercus](#), [Emma von Veh](#)

16 February 2021

The Covid-19 pandemic, which remains a risk for all New Zealand, has highlighted how important it is for people to stay home when they are unwell.

In response, the Government is proposing to increase employees' minimum entitlement to sick leave from 5 days per annum to 10. Such a move, if passed, will bring New Zealand in line with Australia, where all employees are entitled to 10 days' paid sick or carer's leave. In this article we consider what this increase might mean for employers.

Understandably some businesses, especially small to medium-sized enterprises, may be concerned about having to cover the cost of any increase in sick leave entitlement. However, it is important to remember that sick leave is only a contingent liability for employers. If an employee does not take sick leave, there is no cost to the employer. Unlike annual holidays, unused sick leave is not paid out to the employee when their employment ends. The Bill also keeps the current maximum entitlement of any unused sick leave at 20 days annually, which will prevent employees accruing large amounts of sick leave entitlement.

An increase in sick leave entitlement will help to ensure that employees are not coming to work when they are sick owing to financial pressures and worries about having to take unpaid leave. Therefore, the move could actually result in fewer overall sick days being taken across the workforce. Better availability of paid sick leave means employees will be more incentivised to stay at home when they are feeling unwell and are less likely to return to work early before they have fully recovered. As a result, illnesses are less likely to be spread around the workforce. This hopefully will result in less people becoming unwell and needing to take sick leave.

On a national scale, increased availability of paid sick leave could have a significant impact on the spread of disease. For example, people will be less likely to be taking public transport when they are sick if they are not commuting, nor visiting shops and eateries during their lunch break. Parents could also be less likely to send their children to school when a child is unwell if they are not going to be financially penalised from staying at home with their sick child.

As a result, it is possible that there will be no actual increase (and possibly even a decrease) in the amount of sick leave employees take in any given year, despite a doubling of the minimum entitlement.

Covid-19 has been a chief motive for many businesses to change their sick leave policies, despite no current change to the law. Before the Bill was introduced, many businesses had already taken the initiative to increase sick leave entitlements, with some moving to 'indeterminate' sick leave for their employees. These policies put faith in the employees to take sick leave as and when they need it, with the employer having the right to review it as necessary and reasonable. Businesses that have introduced these policies have by and large reported that this additional sick leave has not been abused. Some employers have anecdotally reported an overall decrease in use of sick leave after moving to unlimited sick leave.

Unlimited sick leave will not mean employers have to continue paying employees who are incapacitated for extended periods indefinitely. Employers will still retain the ability to 'cry halt' where an employee has taken long or very frequent periods away from work on sick leave and the prognosis for a return to work and remaining at work is either uncertain or cannot be reasonably accommodated by the employer. Employers should engage with their employees if this situation arises and actively try to assist the employee's return to work (if possible).

There will of course always be those employees who will take advantage of additional sick leave and treat it as an extension of their annual leave. In our experience, this is relatively uncommon. However, employers can monitor patterns of sick leave use, such as the taking of sick leave every Monday, or Friday, and short but frequent uses of sick leave. Under a 2010 amendment to the Holidays Act 2003 employers have the right to require proof of sickness or injury from the first day of sick leave if they have good reason to and are entitled to request medical certificates.

A frequent number of absences may trigger an investigation, and, ultimately, employers do have a right to take disciplinary action against employees who have dishonestly taken or misused sick leave.

While employers may view an increase in employee sick leave as an additional business cost they will need to bear, the proposed increase could result in a healthier and more productive workforce, and it will bring New Zealand into line with the Australian sick

leave entitlement.

## **Auckland**

**188 Quay Street  
Auckland 1010**

**PO Box 1433  
Auckland 1140  
New Zealand**

**P: +64 9 358 2555  
F: +64 9 358 2055**

## **Wellington**

**Aon Centre  
1 Willis Street  
Wellington 6011**

**PO Box 2694  
Wellington 6140  
New Zealand**

**P: +64 4 499 4242  
F: +64 4 499 4141**

## **Christchurch**

**83 Victoria Street  
Christchurch 8013**

**PO Box 322  
Christchurch 8140  
New Zealand**

**P: +64 3 379 1747  
F: +64 3 379 5659**