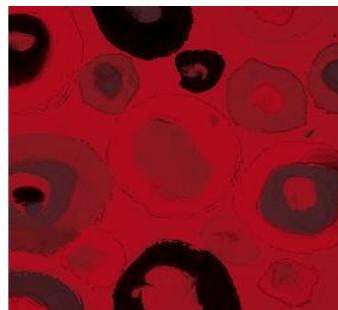


Submission to the Education and Workforce Committee: Holidays (Increasing Sick Leave) Amendment Bill



1. The Office of the Children's Commissioner (OCC) welcomes the opportunity to provide this submission on the Holidays (Increasing Sick Leave) Amendment Bill (the Bill). The OCC's focus is on children and young people under the age of 18-years. We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.
2. We recognise that there is a range of caring responsibilities that people have, as well as conditions that people live with, that mean they are more likely to need access to sick leave. Our submission recognises these needs, and focuses solely on the access to sick leave needed to support and care for children, taking account of the perspectives of children and young people.
3. All children in Aotearoa New Zealand have the right to access the resources required to support them to thrive. When children have what they need, they experience greater wellbeing and have the opportunities to reach their full potential.
4. The OCC supports the intention of the Bill to promote public health of the nation and provide a more appropriate minimum sick leave entitlement for employees. The OCC supports increasing paid sick leave entitlements because paid sick leave can make an important contribution to the wellbeing of children, young people and their parents¹ and whānau.
5. However, the Bill changes the statutory minimum number of days of sick leave available without addressing issues such as the eligibility criteria. It risks increasing inequities between different groups of children and young people, particularly those who are exposed to low paid and precarious work.
6. This submission therefore comments on issues relating to the sick leave provisions in the Holidays Act 2003 that are wider than this specific Bill and makes three recommendations.
7. In this submission we make the following points:
 - > Parents, whānau and caregivers need more paid sick leave - to ensure children are cared for when they are sick.
 - > There is a range of options for providing additional sick leave for parents to ensure they have sufficient sick leave to stay home and still get paid when their children are sick.
 - > Children and young people value spending time with parents, family and whānau – increasing sick leave will allow them to do this when they are sick.
 - > The Bill should make provision for children whose parents, whānau and caregivers currently do not have access to paid sick leave.
 - > Further amendments could be made to the Bill to ensure leave is accessible to employees when they need it.
8. Increasing sick leave will support children's rights to be healthy and cared for under the United Nations Convention on the Rights of the Child (the Children's Convention).

The OCC represents **1.2 million** people in Aotearoa New Zealand under the age of 18, who make up 23 per cent of the total population.

We advocate for their interests, ensure their rights are upheld, and help them have a say on issues that affect them.

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¹ When we say parents in this submission we mean parents, whānau and caregivers of dependent children and young people under the age of 18.

Recommendations

9. We recommend that the Select Committee investigate introducing additional sick leave entitlements for parents, family and whānau members, and caregivers, to be able to care for children when they are sick.
10. We recommend that the Select Committee investigate policy options, such as central payment of sick leave, to ensure all people can access sick leave, including young workers, and parents who are self-employed, in casual employment or have worked for an employer for less than six months. We advocate for all people to be entitled to paid sick leave when they are sick, and additional paid sick leave to care for sick children.
11. We recommend that the Bill is amended so that employees are entitled to 10 days' sick leave sooner than when they next become entitled to sick leave for a 12 month period.

Parents, whānau and caregivers need more paid sick leave - to ensure children are cared for when they are sick

12. The Bill increases each employee's annual sick leave entitlement from five to ten days, in recognition that five days' sick leave a year is not sufficient. Parents face a multiplied need for sick leave – both for them as individuals and when their children are sick. That is, parents should stay home from work and promote good public health practice when they themselves are sick, as well as having additional sick leave capacity to care for their sick children. The need for additional sick leave to care for dependent children is not recognised in the Bill, and the OCC believes it should be.
13. This recognition needs to extend beyond parents or legal caregivers to enable wider family and whānau members the ability to take paid sick leave to care for children. When they are sick, children may be cared for by a parent, family or whānau member, or caregiver. The Bill should recognise and support whānau to do this.
14. COVID-19 has highlighted the importance of staying home when you are sick to avoid spreading infection, but even before COVID-19 parents struggled to balance sick children and work/sick leave. Before COVID-19, for example, many schools and early childhood education centres required children to stay home for 48 hours after the last symptoms of gastrointestinal illnesses had finished. On top of the usual childhood illnesses, children must now stay home with any potential COVID-19 or cold symptoms, such as coughs and runny noses.
15. Evidence supports what parents already know – children get sick often. Data from Growing Up in New Zealand shows that childhood illness is common. For example, the percentage of children who had experienced ear infections was 23 percent at age nine months, 47 percent from age nine months to two years, 25 percent in the previous year at age four years and 15 percent in the previous year at eight years of age.²
16. Children require access to care when they are sick. Paid sick leave for parents, and for young people who are working, is necessary to fulfil our obligations under the Te Tiriti o Waitangi and the Children's Convention, and in line with the government's Child and Youth Wellbeing Strategy.³
17. The Child and Youth Wellbeing Strategy has an outcome area where children "are happy and healthy". This means having the best possible health, and living in healthy sustainable environments. This strategy underpins, and supports, the rights of children outlined below.
18. Mokopuna Māori have rights as tangata whenua as articulated in the Treaty of Waitangi, and as indigenous children as articulated in the United Nations Declaration on the Rights of Indigenous People. These rights include the right to equal protection and outcomes under the law.
19. The Children's Convention affords all children equal rights to: enjoy the highest possible standard of health (article 24), an adequate standard of living (article 27), life survival and development (article 6), and receive care and support from their parents and caregivers (articles 3 and 5).
20. The Children's Convention states in article 3 that the best interests of children must be a primary consideration in actions affecting them. The United Nations Committee on the Rights of the Child (the Committee)⁴ urges States to place children's best interests at the centre of all decisions affecting their health and development, including the allocation of resources, and the development and implementation of policies and interventions that affect the underlying determinants of their health. The OCC believes that it is in children's best interests for them to be able to stay home when they are sick, being cared for by their parents and whānau, and without families and whānau being put under financial stress as a result of lost income.

² Susan Morton et. al., *Growing Up in New Zealand: A longitudinal study of New Zealand children and their families. Now We Are Eight* (Growing Up in New Zealand, Auckland, 2020) p88

³ <https://www.occ.org.nz/childrens-rights-and-advice/uncroc/uncroc-basics/>

⁴ UN Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art 24) <https://www.refworld.org/docid/51ef9e134.html>

21. The Committee acknowledges that parents play a central role in promoting healthy child development and parents are the most important source of early diagnosis and primary care for small children.⁵ The government is obliged to assist parents in the role of protecting and promoting the wellbeing of their children (articles 18 and 27 of the Children's Convention).
22. The Children's Convention also applies to young people who are working. Article 32 describes the right of children to be protected from economic exploitation and from performing any work that is hazardous or harmful to their health or development. For young workers, being able to take paid sick leave when they are sick (instead of feeling compelled to go to work when they are sick or go without income) upholds their right to be free from exploitation and free from work that is harmful to their health.
23. These rights apply to all children, without discrimination and irrespective of the child's or their parent's status (article 2). Therefore these rights should apply regardless of the employment status (for example permanent, self-employed or casual) of young people or their parents, which is not currently the case under the Holidays Act 2003.
24. The Committee also states that children in disadvantaged situations should be a focus of efforts to fulfil children's right to health. Therefore, to advance the Child and Youth Wellbeing Strategy outcome for 'happy and healthy' children, the government has an opportunity here to address factors that disadvantage and create vulnerabilities for certain groups of children.
25. Māori, Pacific and disabled children are less likely to have access to paid leave for their parents, family, whānau and caregivers to care for them when they are sick. Reducing these inequities should be a priority for this Bill.

There is a range of options for providing additional sick leave for parents to ensure they have sufficient sick leave to stay home and still get paid when their children are sick

26. There are overseas examples of sick leave provisions to care for children, and these vary across countries. For example, in Sweden parents receive up to 120 days' paid leave a year to care for a sick child;⁶ in Austria, employees have an individual entitlement to two weeks leave per year to care for a child; and in the Netherlands, employees can take 10 days per year to care for a sick child.⁷
27. Some New Zealand employers have trialled unlimited sick leave and found staff have not abused the entitlement, only taking sick leave when they need it.⁸ The Office of the Children's Commissioner is considering the above options as part of a new wellness policy for its staff.
28. There is a range of policy options and methods which could be considered in more detail. For example:
 - > Parents could be allocated additional days of paid sick leave for their children.
 - > Workplaces could be encouraged to implement unlimited sick leave provisions.
 - > Sick leave could be centrally paid by the government (not the employer) in a similar way to the COVID-19 Leave Support Scheme, Accident Compensation, or the New Employment Transition Grant.⁹ Sick leave that is paid centrally could ensure all workers

⁵ UN Committee on the Rights of the Child, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art 24) <https://www.refworld.org/docid/51ef9e134.html>

⁶ www.forsakringskassan.se

⁷ OECD Family Database www.oecd.org/els/family/database.htm OECD - Social Policy Division - Directorate of Employment, Labour and Social Affairs 1 Updated: January 2020 PF2.3: Additional leave entitlements for working parents www.oecd.org/els/soc/PF2_3_Additional_leave_entitlements_of_working_parents.pdf

⁸ www.stuff.co.nz/business/121707827/companies-offering-uncapped-sick-leave-say-workers-dont-abuse-it
www.nzherald.co.nz/business/julia-shallcrass-curbing-your-staffs-sick-leave/DNBTYAJXK7UO4NNFRLHWOVWRLQ/

⁹ The New Employment Transition Grant is currently only available to New Zealand citizens or permanent residents who have *stopped getting a benefit within the last six months*, and need to stop working because of lack of sick leave, in order to care for a child, where a partner or child's other parent cannot care for the child.

can get access to it (including self-employed and casual workers) and criteria could include care of sick children.

29. **We recommend that** the Select Committee investigate introducing additional sick leave entitlements for parents, family and whānau members, and caregivers, to be able to care for children when they are sick.
30. **We recommend that** the Select Committee investigate policy options such as central payment of sick leave, to ensure all people can access sick leave, including young workers, and parents who are self-employed, in casual employment or have worked for an employer for less than six months. We advocate for all people to be entitled to paid sick leave when they are sick, and additional paid sick leave to care for sick children.

Children and young people value spending time with parents – increasing sick leave will allow them to do this when they are sick

31. Listening to the views of children on matters that affect them is a right that children have under the Children's Convention (article 12) and is a core part of the OCC's role. Ensuring children and young people are 'involved and empowered' is an outcome in the Child and Youth Wellbeing Strategy.¹⁰
32. Children and young people have told us that to help them, we need to support their parents and whānau. Parents and whānau are a critical factor in the wellbeing of children and young people. When we asked children what having a good life means to them, they said that the people who care for them also need to be well.¹¹ Paid sick leave is one way that parents can maintain their own wellbeing, in order to support the wellbeing of their children.

"If the parents are good then the kids are good."

-Rangatahi from Rotorua¹²

33. Children and young people want to be able to spend more time with their parents and whānau. This was a finding from What Makes a Good Life? and from the OCC's survey of children and young people's experience during the COVID-19 lockdown, reported in: Life in Lockdown.¹³ Children and young people again told us that relationships with parents and family are critical. The one positive thing from lockdown that children and young people most commonly talked about was spending time with family.¹⁴ Parents need to have enough paid sick leave to be able to stay home and spend time with their children when they are sick.

"I loved spending time with my family because I feel I could relate to them more than I could before."

-12 year old girl.¹⁵

34. Some children and young people have also told us that life is really hard for them.¹⁶ Children worry about money and feel the impacts of poverty. The Growing Up in New Zealand study found

¹⁰ childyouthwellbeing.govt.nz/resources/child-and-youth-wellbeing-strategy

¹¹ The OCC undertook a large engagement with children and young people to inform the development of the *Child and Youth Wellbeing Strategy*, reported in *What Makes a Good Life?* Office of the Children's Commissioner and Oranga Tamariki *What Makes a Good Life?: Children and young people's views on wellbeing* (Office of the Children's Commissioner and Oranga Tamariki, Wellington, 2019) www.occ.org.nz/publications/reports/what-makes-a-good-life/

¹² *Ibid.* p6

¹³ Office of the Children's Commissioner *Life in Lockdown: Children and young people's views on the nationwide COVID-19 level 3 and 4 lockdown between March and May 2020* (Office of the Children's Commissioner, Wellington, November 2020) www.occ.org.nz/publications/reports/life-in-lockdown/

¹⁴ *Ibid.*

¹⁵ *Ibid.* p25

¹⁶ Office of the Children's Commissioner and Oranga Tamariki *What Makes a Good Life?: Children and young people's views on wellbeing* (Office of the Children's Commissioner and Oranga Tamariki, Wellington, 2019) www.occ.org.nz/publications/reports/what-makes-a-good-life/

that 39 percent of children aged 8 years old “always” worry about how much money their family has.¹⁷ The Child Poverty Monitor shows that 20.8 percent of children live in low-income households and 13.4 percent of children live in households experiencing material hardship.¹⁸ Evidence shows that growing up in an environment of toxic stress affects the health and wellbeing of young children, especially in the crucial ‘first 1000 days’ from conception to age two years, and the impacts are felt into adulthood.¹⁹

35. This is critical. Paid sick leave needs to be available to all parents and young workers, especially those who need it the most, so that being sick or having sick children and being without income does not add additional pressure and financial stress to families that are already struggling. This may require investigating options for centrally-funded sick leave for these workers.

The Bill should make provision for children whose parents and caregivers currently do not have access to paid sick leave

36. Without being able to take paid sick leave, parents have to choose between sending sick children to school and going to work when sick themselves, or taking unpaid leave and losing income.
37. A recent Cabinet paper considering the COVID-19 Leave Support Scheme stated that self-employed people and contractors generally have no paid leave entitlements, and are therefore very likely to be without income for the duration of any illness or self-isolation requirement including to look after dependents. People who are not eligible for sick leave, or do not have sufficient paid sick leave, may feel compelled to go to work when sick or face a financial penalty due to staying home. “This is especially likely for the lower paid, more vulnerable workers, where they are less able to meet ongoing costs of living.”²⁰
38. The Bill as currently written will increase inequities for those children whose parents and caregivers do not have access to paid sick leave. Article 2 of the Children’s Convention states that the government should ensure children are protected against all forms of discrimination including on basis of the employment status of their parents and caregivers. The groups of children and young people most likely to be negatively impacted by lack of access to sick leave are: young workers, tamariki and rangatahi Māori, Pacific children and children who are living in or close to poverty. These children are also more likely to have high health needs²¹ and therefore need sick leave the most. Their families are more likely to be already struggling financially and least able to cope with losing income. The sick leave provision for parents to care for sick children needs to be considered in the context of our high rates of child poverty. Many children with disabilities have higher health needs, but the increased sick leave will only benefit them if their parents are in permanent/secure employment.
39. We appreciate that employees and employers have the potential to negotiate sick leave entitlements beyond the legal minimum, but those in low paid and insecure work – who need paid sick leave the most – are in a more vulnerable position to negotiate. It is reported that insecure work affects at least 30 percent of New Zealand’s workforce.²² Solving the problem of

¹⁷ Susan Morton et al *Growing Up in New Zealand: A longitudinal study of New Zealand children and their families. Now We Are Eight* (Growing Up in New Zealand, Auckland, 2020)

¹⁸ Child Poverty Monitor www.childpoverty.org.nz/ “In June 2019 there were an estimated 150,000 children (13 in every 100) living in households unable to afford six or more essential items”

¹⁹ For example, National Scientific Council on the Developing Child (2020) *Connecting the Brain to the Rest of the Body: Early Childhood Development and Lifelong Health are Deeply Intertwined: Working Paper No.15.* www.developingchild.harvard.edu

²⁰ Cabinet Paper: COVID-19 Leave payment scheme (CAB-20-MIN-0105), 16 March 2020 <https://covid19.govt.nz/assets/resources/proactive-release/COVID-19-Financial-Support-Paper-B-COVID-19-Leave-Payment-Scheme.pdf>

²¹ For example, children living in areas with the highest deprivation are twice as likely to end up in hospital than those in areas with the lowest deprivation Child Poverty Monitor www.childpoverty.org.nz

²² *Under Pressure: A Detailed Report into Insecure Work in New Zealand*, New Zealand Council of Trade Unions. 2013. www.union.org.nz/wp-content/uploads/2016/12/CTU-Under-Pressure-Detailed-Report-2.pdf

lack of sick leave for many of these people will have positive impacts for very large numbers of sick children who need care from their working parents.

40. We believe that, for permanent employees, paid sick leave should be available immediately, without people being required to wait six months. Furthermore, for workers who are not currently eligible for paid sick leave, we recommend the government investigate options to ensure they have access to paid sick leave.

Further amendments could be made to the Bill to ensure leave is accessible to employees when they need it

41. While the Bill increases the statutory minimum number of days per year required to be provided for sick leave, this is regarded as a minimum. The Bill should explicitly encourage employers to provide more at their discretion, including carrying over more days for employees in long-term service.
42. Obtaining a doctor's certificate can be a stressful and costly exercise for some parents. Currently an employer can require an employee to provide proof of sickness or injury, such as a medical certificate from a doctor, for sick leave of less than three days. This places stress on parents without necessarily good cause, particularly those on low incomes or with stressful family circumstances.
43. Although the employer would usually reimburse the employee for the doctor's fee, some families do not have up-front money available for doctors' visits (or will go without other necessities such as food to pay doctors' fees). We know that visiting a doctor comes with additional costs and stressors such as arranging transport to a clinic and/or arranging care for other dependents.²³ Adding stress to struggling families has a negative impact on children.²⁴ The Bill could remove this requirement, or could add a provision requiring employers to reimburse people for their actual additional childcare costs and travel costs when a parent is required to attend a doctor to get a medical certificate to present to their employer.
44. The Bill states that an employee will be entitled to the additional days of sick leave when they next become entitled to sick leave for a 12 month period. Our understanding is, this would mean that some employees would have to wait nearly a year from the time the Act comes into effect, i.e. well into 2022. We think this is too long for employees to wait for the additional sick leave, especially considering we are currently in a severe global pandemic.
45. The Bill offers a valuable opportunity to implement this policy sooner, so it can have greater public health benefits during the early stages of this global pandemic.
46. **We recommend that** the Bill is amended so that employees are entitled to 10 days' sick leave sooner than when they next become entitled to sick leave for a 12 month period.

²³ <https://www.hqsc.govt.nz/our-programmes/health-quality-evaluation/projects/atlas-of-healthcare-variation/health-service-access/>

²⁴ For example, The Southern Initiative describes the impact of toxic stress on families in South Auckland. The Southern Initiative *Early Years Challenge: Support parents to give tamariki a great start in life* (Auckland, 2017) <https://static1.squarespace.com/static/5cf74c8f2829e20001db724f/t/5d0dc5ae247fa10001df4e30/1568803263111/Early+Years+Challenge>