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EMPLOYMENT AGREEMENTS – PAYMENT FOR PUBLIC HOLIDAYS

Individual employment agreements must include a statement that an employee will get (at least) time-and-a-half payment for working on a public holiday – see [section 50](#) of the Holidays Act 2003. This is reflected by [section 52](#) of the Holidays Act, which states that employment agreements must include a provision that confirms the right of an employee to be paid in accordance with section 50 for working on a public holiday.

The wording of s52 has two possible interpretations:

1. The agreement can simply reference s50 of the Holidays Act i.e. *Where an employee is required by their employer to work on a public holiday they shall be entitled to be paid in accordance with s50 of the Holidays Act 2003*; OR
2. The agreement must set out what s50 actually says i.e. *Where an employee is required by their employer to work on a public holiday they will be paid no less than time and a half for working on a public holiday* (or similar wording).

Either interpretation is arguably correct as this has not yet been tested in the Employment Relations Authority or the Employment Court. However, the second interpretation should be the preferred approach to ensure employees understand their right to receive at least time and a half for work undertaken on a public holiday.

The Employment New Zealand website refers to the payment of time and a half throughout, including statements in the employment agreement modules and the example clause for public holidays in the Employment Agreement Builder. This is to make it as helpful and as clear as possible to employers, employees and other users what the specific requirements under sections 50 & 52 of the Holidays Act are, rather than simply referring the relevant sections of the Act as with the first interpretation above.

The Labour Inspectorate also follows this approach. However, the Labour Inspectorate does not file for a breach of this provision, but rather point it out to employers and request that they amend any employment agreements accordingly.

This is the approach immigration officers should also follow when assessing whether an employment agreement is compliant with s52. An application that would otherwise be approved should not be declined based solely on a clause for payment on a public holiday that only refers to being paid in accordance with s50. If this construction is used in the employment agreement it should be raised with the employer and requested that it is amended accordingly. However if the employer refuses to change the wording, the application should still be approved given that this is currently untested in the ERA/EC.