# Health and Safety in Employment – National Employment Standards and the KiwiRail MECA

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## *A Introduction*

The workplace has always been a common source of injury, infections, and diseases. It is estimated that each year there are also approximately 700-1000 deaths from occupational disease and 100 deaths from occupational injury. In addition, each year there are approximately *"17,000 – 20,000 new cases of work-related disease … and 200,000 occupational accidents resulting in ACC claims*".[1]

As there are inherent risks in a work environment, the Government has developed legislation, regulations, codes, and sets of guidelines to promote and protect the health and safety of workers.

## *B National Employment Minimum Standards – Legislative Background*

### *I Legislation*

#### *1 Health and Safety in Employment Act*

The Health and Safety in Employment Act 1992 ("the HSE Act") is described as an "*Act to reform the law relating to the health and safety of*

[1] Driscoll, T. et all. The Burden of occupational disease and injury in New Zealand: Technical Report, *National Occupational Health and Safety Advisory Committee* Wellington (2005) at 5.

*employees, and other people at work or affected by the work of other people*."[2] The aim of the Act is to promote the health and safety of everyone at work and to achieve this it requires people who are responsible for work and those who do the work to take steps to ensure their own health and safety and that of others. The Act does not tell people how to make particular work situations healthy and safe. Rather, it requires them to approach health and safety in the workplace in a systematic way.

The Act imposes general duties on both employers and employees. For example employers must take all practicable steps to ensure the safety of employees while at work;[3] employers must ensure that all practicable steps are taken to ensure that all significant hazards are eliminated or, failing elimination, isolated, minimised, and monitored;[4] employees are required to take all practicable steps to ensure their own safety while at work, and that they do not cause harm to any other person[5].

Section 7(2) of the HSE Act requires the employer to take all practicable steps to investigate to determine the cause of the accident or harm. The employer must provide employees with a reasonable opportunity to participate in the investigation.[6]

From 5 May 2003, the Health and Safety in Employment Act 2002 (HSE Act) came into effect. The Amendment Act extended the coverage of the Act, and of particular importance to the author, is the extension of the HSE Act to all rail-workers following the TranzRail inquiry in 2000[7]. It also

[2] Health and Safety in Employment Act 1992.

[3] Ibid, s 6.

[4] Ibid, 7 – 10.

[5] Ibid, s 19.

[6] Ibid, s 19B.

[7] Ibid, s 3.

highlighted and specifically made explicit that stress and fatigue and certain behaviours could constitute a hazard.[8]

Part 2A of the HSE Act requires employee participation in matters concerning health and safety in the workplace. Employers have a general duty to involve employees in health and safety matters.

The HSE Act also clarified an employer's obligation to provide suitable clothing and equipment for its employees.[9] An employer does not comply with this requirement if they pay an allowance instead of providing the clothing or equipment. An employer cannot require an employee to provide the clothing or equipment as a precondition or a term of employment. However, an employee may genuinely and voluntarily choose to provide his or her own protective clothing or equipment, although the employer must be satisfied that it is suitable. If an employee previously provides his or her own clothing, he or she may give notice to the employer that the employer must provide it.[10]

The HSE Act also confirms employees' right to refuse unsafe work and the obligation on employers to release health and safety representatives for training related to health and safety for 2 days per year. Schedule 1A, Part 2 set out the key functions of a health and safety representative, which included, amongst other things, promoting the interests of workers harmed at work, including arrangements for rehabilitation and return to work.

The HSE Act also introduced the ability for trained health and safety representatives to issue hazard notices. Private prosecutions for breaches of the HSE Act were permitted.

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[8] Ibid, s 2.

[9] Ibid, ss 10(2) - (6).

[10] Ibid, s 10.

### *2 Employment Relations Act 2000*

There is an overriding duty in the Employment Relations Act 2000 ("the ERA") to act in good faith.[11] A similar duty is also found in the Health and Safety in Employment Act in relation to employee participation.[12]

Section 84 of the ERA also allows for lawful strikes on grounds of safety or health. Participation in a strike is lawful if the employees who strike have reasonable grounds for believing that the strike is justified on the grounds of safety or health.

The ERA also provides the governing legislation for rest and meal breaks. If an employee works 2 to 4 hours, they are entitled to a one 10 minute paid break. If an employee works 4 to 6 hours they are entitled to one 10 minute paid break and a 30 minute unpaid break. If they work between 6 to 8 hours they are entitled to two 10 minute breaks and one 30 minute unpaid break. If the employee works over 8 hours, they are entitled to the same as if they had worked for 6 to 8, and those specified above as if the employees work period had started afresh at the end of the eighth hour.[13]

### *3 Holidays Act 2003*

The author also believes it is relevant to consider the provisions of the Holidays Act 2003 when minimum standards are at issue. The Holidays Act provides for an entitlement to 5 days sick leave for each year of employment.[14] Section 66 of the Holidays Act allows sick leave to be

[11] Employment Relations Act 2000, s 4.

[12] Health and Safety in Employment Act 1992, s 19B(5)(g).

[13] Employment Relations Act 2000, s 69ZB.

[14] Holidays Act 2003, s 16.

carried over to a subsequent year for a maximum for 20 days. The employer may require proof of sickness or injury.[15]

The Holidays Act does not preclude an employer from requiring an employee to establish that there are no relevant health and safety reasons that would prevent the employee from working. However, the Holidays Act does prevent an employer from specifying the medical practitioner that an employee must be examined by.[16]

*4 Privacy Act 1993*

Section 53 of the Privacy Act 1993 provides authority for the Office of the Privacy Commission to publish a Health Information Privacy Code. This Code applies to all agencies providing personal or public health services. In the context of health and safety in employment, the Code is relevant because employers often require medical information about their employees in making decisions about their employment.

The Health Information Privacy Code 1994 stipulates 12 rules. Those relevant to this paper include:[17]

1. Employers must only collect health information if it is "really needed" (i.e. a "lawful purpose");
2. Employers must get health information from the person concerned;
3. Employers must tell employees what they will do with their health information;
4. Employers must take care of the health information once they are in receipt of it;

[15] Ibid, s 68.

[16] Ibid, s 68(4).

[17] Health Information Privacy Code 1994.

5. Employees must have the right to see their health information;

6. Employees must have the ability to correct any health information that is incorrect; and

7. Employers must only disclose health information to the employee, their representative, or to a person authorised by the employee, or consistently with the purpose for which the health information was obtained.

*5 Accident Compensation Act 2001*

The Accident Compensation Act 2001 provides for cover and entitlement for injuries sustained by employees. Employees who are injured have a right to weekly compensation of 80% of their pre-injury earnings, including first week compensation if the injury occurs at work.[18]

Section 71 of the Accident Compensation Act imposes obligations on the employer in relation to rehabilitation of an employee following an injury. Section 71 stipulates that if the Corporation so decides that an employee is fit to return to their pre-injury work, then the employer must take all practicable steps to assist the employee to return to work.

*II Health and Safety in Employment Regulations 1995*

The HSE Act provides that regulations may be promulgated to set minimum standards relating to health and safety. The key regulations are the Health and Safety in Employment Regulations 1995 ("the HSE Regulations"). However, there are also the:

- HSE (Pipelines) Regulations 1999

- HSE (Pressure Equipment, Cranes and Passenger Ropeways) Regulations 1999; and

[18] Accident Compensation Act 2001, ss 97 – 101.

- HSE (Mining -- Underground) Regulations 1999
- Amusement Devices Regulations 1978 HSE (Petroleum Exploration and Extraction) Regulations 1999
- HSE (Mining Administration) Regulations 1996
- Geothermal Energy regulations 1961, Amendment No. 6
- Abrasive Blasting Regulations 1958
- Electroplating Regulations 1950
- HSE (Asbestos) Regulations 1998
- Lead Process Regulations 1950
- Noxious Substances Regulations 1954
- Spray Coating Regulations 1962

This paper will specifically address the HSE Regulations. The HSE Regulations are couched in terms of general duties and obligations on employers and employees rather than specific obligations. The general duties detail the kinds of facilities that must be provided at a workplace, e.g. toilets, hand washing facilities, first aid facilities, lighting and ventilation, clean air, and clean drinking water.[19]

There are also some specific standards included in the HSE Regulations regarding maximum noise levels,[20] working at heights,[21] excavations at

[19] Health and Safety in Employment Regulations 1995, cls 4 – 6.

[20] Ibid, cl 4.

[21] Ibid, cl 21.

depth,[22] and qualification/competence requirements job types such as scaffolders.[23]

### *III Codes and guidelines*

There are many codes and guidelines applying to health and safety in the workplace. Of particular relevance to this paper are the Guidelines for the Provision of Facilities and General Safety and Health in Commercial and Industrial Premises ("the guidelines"). This Guideline expands on the Health and Safety in Employment Act and Regulations.

The guidelines reiterate the general duty of safety found in both the legislation and the regulations: "*No person engaged or employed in any place of work should, without reasonable cause, do anything likely to endanger themselves or any other person."* The guidelines also require all persons engaged or employed in any place of work to ensure their safety and health and obey instructions given to them for the purposes of securing their health and safety. All defects in a process, procedure, equipment, gear, or any other thing provided to ensure persons health and safety must also be reported.[24]

The guidelines require an employer to provide and maintain health services, first aid facilities, and appliances. The employer must keep a first aid box stocked with appropriate materials for the work being undertaken and it must be clearly identified and readily available. An employer should encourage first aid training, and where more than 50 persons are employed, a registered nurse or the holder of a certificate issued by the Order of St

[22] Ibid, cls 23 – 25.

[23] Ibid, cl 35.

[24] Guidelines for the provision of facilities and general safety and health in commercial and industrial premises: to meet the requirements of the health and safety in employment act 1992 and Regulations 1995, at 26.

John, the NZ Red Cross, or a trainer with qualifications approved by the Secretary of Labour is required. Where there are more than 100 employees, a first aid room is required.[25]

In relation to alcohol and drug dependence, the guidelines require employers to take all practical steps to deal with this problem; including having in place policies and procedures for dealing with such issues before and as they arise, as well as having in place procedures to provide help and advice to employees who may have a dependence on alcohol or drugs.[26]

### *C KiwiRail, NZ Railways Corporation, ONTRACK Ltd: MECA*

The Rail & Maritime Transport Union ('the Union'), KiwiRail, NZ Railways Corporation, and ONTRACK Ltd ('the parties') MECA confirms that, at a minimum standard, the parties agree to comply with the HSE Act and guidelines made pursuant to the Act, as well as any other legislation relevant to health and safety in the workplace.[27]

The MECA also explicitly lists the employer and employee obligations in respect of health and safety management. On top of those obligations contained in the legislation, regulations, codes, and guidelines, the MECA affirms the commitment to achieving excellence in health and safety management in the workplace and the commitment to work together in a spirit of good faith.

## *I Consultation*

[25] Ibid, at 13.

[26] Ibid, at 70.

[27] KiwiRail & RMTU Multi-Employer Collective Agreement, 1 July 2010 – 30 June 2012, cl 21.1.3.

The MECA requires the employer to consult on all matters that may affect conditions of employment.[28] An overarching requirement of the MECA is the requirement of consultation. The employer must consult with the Union on proposed changes that may affect conditions of employment, and the Union may call for formal paid meetings to discuss such matters. The parties must also co-operate in the introduction of new and improved work methods, arrangements, processes, equipment, and technology.[29]

*II Rehabilitation and the IMP*

Rehabilitation is also expressly provided for in the MECA. Clause 21.3 confirms that rehabilitation is important in ensuring an injured person (whether the injury or illness occurred at work or not) returns to work. Under the MECA, employees have access to what is called the Injury Management Programme ("the IMP"). The IMP is an effort to reduce the "*human and economic costs of injury and work-related illness for all concerned*". The IMP sets out objectives and processes for the management of the IMP. The IMP has several main objectives; one, to assist workers in an early and safe return to work following injury or illness (work or non-work); and two, to assist in maintaining workers at work wherever possible, which may include the same job with the same duties, the same job with modified duties, or another job.

The IMP also has a broader objective to reduce the human and economic costs of injuries and occupational illness to both KiwiRail and its employees and to assist seriously injured employees to maintain their independence and a full family and community life.

The IMP requires KiwiRail to work with injured employees and with the union. The return to work programme must be negotiated with the Union.

[28] Ibid, cl 13.1.

[29] Ibid, cls 13.1, 13.5, 13.9.

KiwiRail must also notify the employee of their right to have a union representative or support person involved in the IMP process, including ensuring the representative is notified if appropriate. The IMP recognises the Union's role of raising concerns in relation to individual cases.

The IMP also seeks to establish an organisational culture which reinforces active injury prevention through the identification of hazards, hazard management and early reporting, supporting KiwiRail's emphasis on reducing work related injury and incapacity. Also under the IMP, KiwiRail's Third Party Accident Compensation Administrator ("the TPA") is required to provide monthly reports to KiwiRail and the Union on work injury statistics for the purpose of improving the programme. The IMP also requires the TPA to work with the Union in returning an injured employee to work.

The IMP also states that if an injured person returns to work other than 100% fit, it may be necessary for them to return on a supernumerary basis, i.e. that if ten people are normally required to do the task, the injured person will return as an eleventh person.[30]

*III Accident Investigation*

The MECA requires KiwiRail to "*ensure that any accident is promptly investigated so that it can be learnt from and it can be avoided from reoccurring"*. This duty is encompassed by the legislation, however, the MECA also requires an employee to "*participate in any re-enactment and/or review with his/her manager at a mutually agreed time".*

*IV Drug and Alcohol*

The MECA establishes a drugs, medication, and alcohol policy. The possession, consumption, sale, or storage of alcohol and/or unauthorised

[30] KiwiRail and RMTU Injury Management Programme, June 2009, at 9.

drugs is prohibited in all KiwiRail workplaces, including company vehicles. KiwiRail confirms its commitment to "*the rehabilitation of employees who have drug and/or alcohol problems*" and encourages employees to "*voluntarily enter rehabilitation when they have a drug and/or alcohol problem*".[31] Random drug and alcohol testing will only be used during rehabilitation.

KiwiRail funds rehabilitation for drug and alcohol dependence if it is appropriate for the worker. KiwiRail also undertakes to ensure all contractors hired have drug and alcohol polices that are consistent with the MECA.

*V Hours of work parameters*

The MECA sets out maximum work periods, rest requirements, and maximum consecutive workday requirements:

| | **Desired** | **Absolute** |
|---|---|---|
| Maximum work period | 12 hours | 14 hours |
| Rest between work periods | 12 hours | 10 hours |
| Number of consecutive work periods before an off duty day | 10 days | 12 days |

Clause 24.4.2 prohibits the employer from requiring a shift worker to return to work for at least 10 hours after their work period is finished.

If a worker is "called back" to work following their shift within 10 hours, the manager will allow the employee time off to make up the 10 hours without deduction from pay. Also, if the employee is called back 11:00pm

[31] As above n 27, at cl 21.5.5.

and 5:30am, the manager must allow the employee the equivalent time off from the work period due to commence that morning.

### *VI Sick leave*

The MECA allows for 6.5 days sick leave per year. In addition, unused leave is accumulated from year to year (there is no 20-day limit). Additional sick leave may also be granted by negotiation, particularly in a case of serious illness or fatigue/stress that may affect the health and safety of the employee.

### *VII Accident Compensation Pay*

If a worker is injured and unable to return to work due to a work related injury, the employer is required to make up the 20% of the employees pay not met by the Accident Compensation Corporation without any deductions from the employee's sick leave entitlement. If a worker is injured in a non-work related accident, the employer will make up the 20% of the employees pay from his or her sick leave entitlement.

### *VIII Health Assessments*

The MECA states that where health of an employee is to be assessed by a doctor nominated by the employer, the employee must be consulted first about the choice of doctor. The MECA states "*[w]here practicable, the employee will be offered a choice about which doctor they assessed by*".[32]

If an employee is in a "Safety Critical Occupation" (a worker whose action or inaction due to ill health may lead directly to a serious incident affecting the public or the rail network)[33], the employer may require them to undergo

[32] As above, n 27, at cl 26.18.

[33] National Rail System Standards 3, Health Assessment of Rail Safety Workers. Issue 1, 18 December 2009, at 9.

a medical examination by a doctor nominated by the employer, at the employers cost.

*IX Termination for incapacity*

If an employee's employment is terminated for incapacity, they will receive 131 days' pay lump sum if they have worked less than 10 years, or 261 days' lump sum payment if they have worked for 10 years or over.

*X Death and disablement*

If an employee dies due to a work related accident, the employer must pay $250,000 to the estate of the employee. If an employee is permanently disabled due to a work related accident, there is a scaled payment for the level of disability.

*XI First Aid*

An employee who holds a current First Aid certificate and who is designated by the employer to be the "*First Aid Attendant*" for more than 20 employees is paid an allowance.

## *D Critique: the Health and Safety Minimum Standards and the Role of the Union*

Health and Safety law has come under much scrutiny lately; in particular with reference to the Pike River tragedy. The CTU notes

> "*From 1992 there were absolutely no mining regulations in place for seven years. It wasn't until 1999 when finally the Health and Safety in Employment (Mining—Underground) Regulations were introduced. However, these regulations are performance-based and simply require the employer to test for flammable gases 'as often as practicable' and in*

*preventing ignition or combustion, they are to take 'practicable steps'.*

*All reference to independent inspectors had been removed and replaced with these vague obligations on the employer. In addition, after the 1992 changes, a Code of Practice for mine safety remained in draft form until 2006."*[34]

This paper demonstrates that a person must turn their minds to a number of pieces of legislation, to regulations, and to guidelines and codes, before it can be established exactly what the minimum standards are. This paper has highlighted the HSE Act, the Accident Compensation Act, the ERA, the Holidays Act, and the Privacy Act. It has focused on the HSE Regulations, but has noted the existence of 12 others. This paper focused on the Guidelines for Commercial and Industrial Premises but has noted the existence of many others. In addition, this paper highlights that to fully establish the minimum standards in relation to a specific employment situation, the employee's Individual Employment Agreement or Collective Employment Agreement is also relevant.

The author notes that the standards are relatively consistent throughout the law (legislation, regulations, and guidelines). The legislation is couched in general terms; however, the guidelines have greater industry specificity. The author also notes that Employment Agreements are used to promote and expand on the legislation, regulations, and guidelines.

The author believes that the guidelines provide the best source of information regarding minimum standards. The guidelines tend to bring some (but not all) of the requirements of the HSE Regulations and the legislation together. However, it does not include reference to minimum standards contained in the Accident Compensation Act, the Holidays Act, or

[34] McIvor, T. "*Side-steps? Health and Safety Regulation and Pike River*" Available online at <http://union.org.nz/policy/side-steps-health-and-safety-regulation-and-pike-river>.

the ERA. It is the opinion of the author that it would be appropriate for the guidelines to be expanded and improved as ultimately entitlements to sick leave, and weekly compensation, the duty to act in good faith, and the right to lawfully strike (all minimum standards) has an impact on health and safety.

The KiwiRail MECA demonstrates the shortcomings in the law relating to health and safety minimum standards. It pieces together the complex legislation, regulations, and guidelines and reveals the 'holes' that are yet to be addressed in the law.

*I Rehabilitation*

As previously stated, the MECA provides for the implementation of an Injury Management Programme (IMP). The IMP includes rehabilitation for illnesses (that impact on health and safety, and performance at work) that are not necessarily covered by ACC scheme, such as diabetes, obesity, or drug and alcohol problems.

The legislated minimum standards merely require an employer to provide rehabilitation for injury (such as strains) to return to work. It is the opinion of the author that employers should also have responsibility to return an ill employee to work, particularly where there is a link between an illness and the employees need for rehabilitation.

The KiwiRail MECA also specifically recognises the role of the union in supporting injured and ill workers in a return to work and/or rehabilitation. It is the opinion of the author that there should be explicit reference to the involvement of the union in the health and safety law.

The author also notes the inclusion of the supernumerary clauses in the KiwiRail MECA. These clauses recognise the impact of an injured worker as they return to work partially fit on other workers. The health and safety of other workers can be compromised by the return of a partially fit for

work employee. It is the opinion of the author that the health and safety law should include such considerations.

### *II Accident investigation*

It is the opinion of the author that at present, the governing legislation, regulations, and guidelines are not sufficiently clear regarding accident investigation, and the need to ensure a worker is represented if needed during an investigation. The Pike River tragedy has proven this to be case; the families needed a lawyer during investigation as the employer ensured a lawyer for the company was present during questioning of the family members and other staff.

### *III Drug and alcohol*

The KiwiRail MECA explicitly provides for rehabilitation for drug and alcohol addictions. It is the opinion of the author that the legislation, regulations, and guidelines should also include recognition that rehabilitation should be available and/or encouraged for employee's drug and alcohol problems, particularly where there may be a link to the worker's employment.

### *IV Hours of work and call backs*

The KiwiRail MECA is very specific in its maximum work periods and minimum rest requirements between shifts, and in the number of consecutive days an employee may work. Such prescriptions of requirements acknowledge the impact that fatigue may have on the health and safety of a worker, and the health and safety of other employees working with a fatigued worker. It is the opinion of the author that there should be greater prescription in legislation, regulations, or guidelines of maximum work periods and minimum rest requirements in legislation.

*V Clothing*

The author is of the opinion that, with regard to protective clothing (where necessary), the legislation, regulations, and guidelines should be more specific.

Section 10 of the Health and Safety in Employment Act requires an employer to "*provide, make accessible to, and ensure the use by employees of suitable clothing and equipment to protect them from any … hazard*". An employer does not comply with this requirement by "*paying an employee an allowance or extra salary or wages instead of providing the protective clothing".*

However, the KiwiRail MECA allows for "*reimbursement*" of up to $230.56 for employees who provide their own safety footwear.

It is unclear whether the KiwiRail MECA is consistent with the Act as it is unclear whether "reimbursement" is the same as *"an allowance or extra salary or wages"*. The author acknowledges that "*reimbursement*" has implied connotations that the employee must have already purchased the safety equipment prior to payment being made (unlike the payment of an allowance or salary). However, this is not explicitly clear on the wording of the Act.

It is the opinion of the author that, if reimbursement of money for protective clothing is permitted under the legislation, that the regulations or guidelines should speak to this and explicitly acknowledge that it is a permissible practice.

*VI Sick leave*

The KiwiRail MECA demonstrates that more than 5 days annual sick leave is needed for employees. Moreover, the KiwiRail MECA does not cap accrual of sick leave to 20 days total. This is supported by documentation from *Employment Agreements: Bargaining Trends and Employment Law*

*Update 2010/2011*.[35] The graphs below demonstrate that 82% of workers covered by Collective Employment Agreements are entitled to more than 5 sick days leave per year, and at least 57% were entitled to accrue more than 20 days sick leave throughout their working history. It is the author's opinion that the sick leave entitlements in the Holidays Act should be revised in light of the Bargaining Trends data.

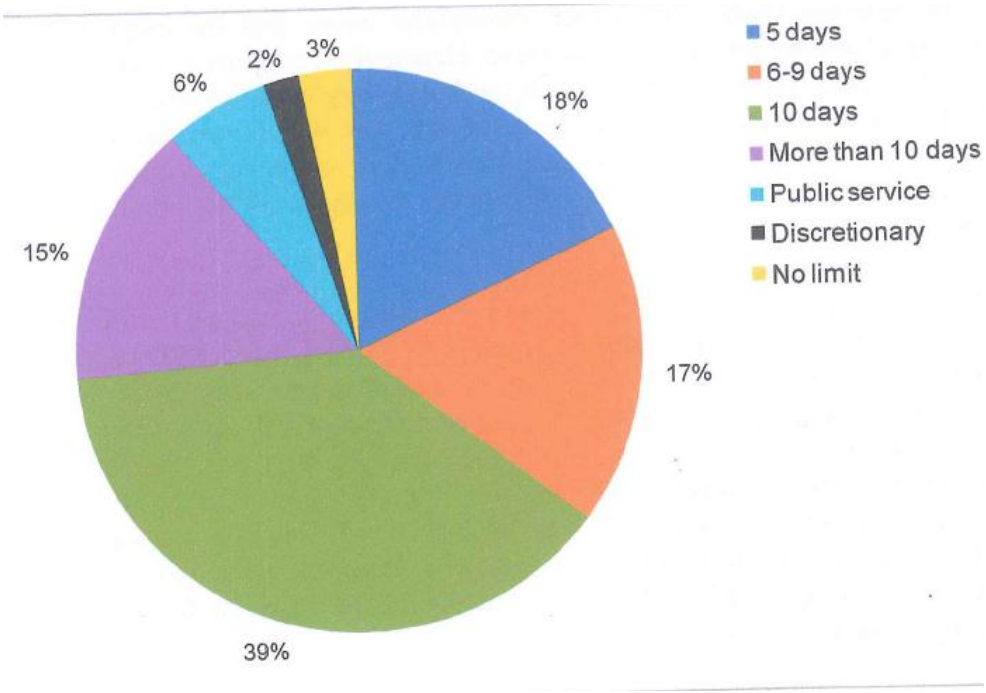


Figure 1: Annual sick leave entitlement[36]

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[36] Blumenfeld, S., Ryall, S., Kiely, P. (2011) *Employment Agreements: Bargaining Trends & Employment Law Update 2010/2011*, at 62.

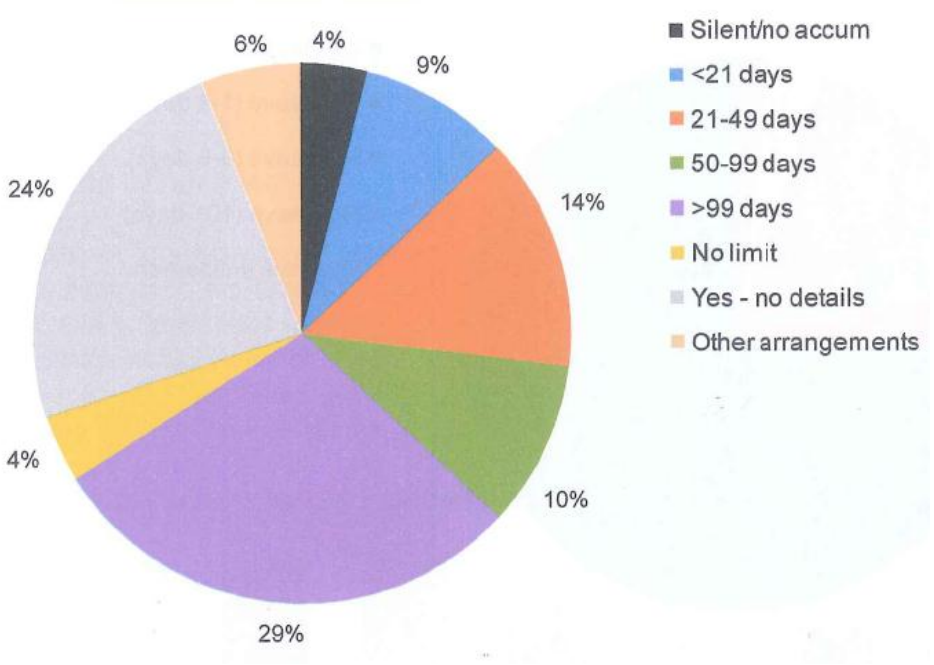


Figure 2: Maximum sick leave accrual.[37]

*VII Health Assessments*

As previously stated, the Holidays Act 2003 precludes an employer from requiring an employee to see a medical practitioner, chosen by the employer, in order to provide proof of sickness for sick leave.[38] The author notes the preclusion on an employer specifying a medical practitioner only applies in relation to sick leave entitlements. The legislation, regulations, guidelines, and the MECA is silent regarding choice of assessors for all other health assessments. Therefore, it is presumed that an employer may specify a choice of assessor in relation to ordinary health assessments in the course of an employee's work. It is the opinion of the author that this anomaly be addressed and incorporated into the governing law. The author suggests that choice of medical assessor is offered to all employees for all medical assessments.

[37] Ibid, at 63.

[38] Holidays Act 2003, s 68(4)(b).

### *VIII First aid*

We note that the KiwiRail MECA stipulates that an employee holding a first aid certificate must be present per 20 employees. The guidelines specify that a first aid certificate holder must be present where there are more than 50 persons employed. The author is of the opinion that where health and safety is an issue (i.e. in high-risk industries such as forestry), the guidelines should specify that a first aid certificate holder should be required per 20 employees.

## ***E Conclusion***

The author notes that this paper is not a comprehensive analysis of all minimum standards. This paper focuses on health and safety minimum standards and has not addressed standards such as annual leave or bereavement entitlements or other allowances such as payment for first aid certification. The author also notes only one MECA has been used to allow the author to closely analyse the minimum standards.

The author has concluded that the minimum standards relating to health and safety are lacking, particular with regard to the lack of enforceable industry-specific regulations. The author also maintains concerns that there is no duty on employers to rehabilitate or accommodate ill workers nor to involve the union or employee representative. The author also maintains concerns that the impact of the partially rehabilitated worker on fellow workers is not addressed at all in any legislation, regulations, or guidelines (although is discussed in the KiwiRail MECA). The author has expressed concern about the need for representation during a work-place accident investigation and the author reiterates the importance of the role of the union in accident investigation and in rehabilitation. Hours of work, call backs, and maximum work periods should be legislated or regulated beyond the paid breaks specified in the Employment Relations Act. The author also believes the statutory sick provisions are in need of revision to allow greater

accumulation and additional days each year. Of particular importance, the author believes that offering a choice of medical assessor ought to be provided (and should be consistent across all legislation) for all work-related health assessments. The author believes that the ration of first aiders to workers should be reduced especially in high hazard work areas.

The author believes that the state of the minimum standards is unclear due to the piecemeal governing laws. The minimum standards are found at four levels of documents; legislation, regulations, guidelines and codes, and employment agreements. These documents are not brought together to codify in one place the relevant health and safety minimum standard requirements. The author believes this is problematic as it makes determining the minimum standards a difficult task. Codification of minimum standards would assist Unions and employers in bargaining, and assist employers seeking to establish whether their health and safety practices are compliant with minimum standards. Codification of health and safety minimum standards would also assist enforcement agencies in upholding or prosecuting for breaches of the minimum standards. Once the minimum standards are codified, further research could easily be undertaken to identify the gaps in the minimum standards, for example around emerging technologies.