

Employment Relations and Holidays Act

Changes to the Employment Relations Act 2000 and the Holidays Act 2003 were passed by Parliament in November 2010.

The legislation introduces a wide range of changes, many of which will affect our employer clients. Some of the changes make employer life simpler, some spell out what should already be best practice, and others will invariably add to the administrative burden of employing staff. This Newsletter highlights those changes and provides some practical solutions for the more far reaching ones.

For a more comprehensive read, refer to the Department of Labour's booklet: "Changes to the laws on employment relations and holidays", at www.ers.govt.nz

Changes to the Holidays Act 2003 at a glance

Please note: All outlined changes will be applicable as of 1 April 2011 (unless otherwise stated)

Calculation of payments for: public holidays, alternative holidays, sick and bereavement leave

- Changes have been made to simplify the calculation of pay for public holidays, alternative holidays, sick and bereavement leave
- A new calculation, 'Average Daily Pay', is based on earnings over the last 52 weeks, rather than the current 4 week formula

Cash up of annual holidays

- Employees can now request that up to one week of annual holidays be cashed up
- Employers can accept or decline requests and can even have a blanket policy that they will not cash up
- Employees may only request 'cash up' on, or after, their anniversary date after 1 April 2011

Transferring the observance of public holidays

- Employers and employees can agree to transfer the observance of a public holiday to another working day, giving people more flexibility

Alternative holidays

- Alternative holidays must not be taken on a public holiday
- If employer and employee cannot agree when an alternative holiday is to be taken, the date will be decided on a reasonable basis by the employer
- 14 days' notice must be given to the employee of the requirement to take that alternative holiday

Proof of sickness or injury

- Employers can now request proof of an employee's or dependant's sickness or injury within 3 days. However employers must pay the costs of such proof, e.g. a doctor's visit

Entitlements during a closedown period - **Applies from 27 November 2010**

- Employees are entitled to be paid for public holidays, alternative holidays, sick or bereavement leave if any of them fall during a closedown, and if the day would have been a working day if it hadn't been for the closedown

Penalties for non-compliance

- For companies, these increase from \$10,000 to \$20,000 • For individuals, from \$5,000 to \$10,000



Changes to the Employment Relations Act at a glance

Main changes and implications

Please note: All outlined changes will be applicable as of 1 April 2011 (unless otherwise stated)



Retention of individual employment agreements - changes apply 1 July 2011

- Employers must retain a copy of every individual employment agreement, even where the employee has not signed the agreement
- Labour Inspectors are charged with enforcing these new requirements. They must give employers seven working days to remedy any breach, failing which, the employer is liable for a penalty
- Employers need to check their employment agreements and ensure that they include compulsory information. Those who provide a defective employment agreement will be liable for a penalty

Trial period provisions

- The current 90-day trial period is extended to all employers.
- Enables all employers to dismiss employees within the first 90 days without the employee bringing a personal grievance challenging the dismissal
- Where a trial period is used, a legally effective clause will have to be included in the employment agreement
- Employment agreement **must** be signed before employee starts work
- Can only be used if the employee has never been employed by the company before

We're here to support you

Employment legislation is complex and at times confusing. We have an experienced HR (Human Resources) Consultant on our team who can provide assistance in these areas.

Call **Ruth** or send her an email and we'll certainly help where required.

P: 876 7159 or **E: ruth@barnesmossmann.co.nz**

We can also assist with wages queries or even complete payroll preparation.

Union access to workplaces

- Unions must seek permission to access a workplace
- Employers must not unreasonably refuse access

Collective bargaining

- Employers may now communicate their proposals directly with employees
- They still however need to ensure that they do so in a way that recognises the union, does not constitute negotiation, and does not undermine the union or the bargaining process

*It is not the employer who pays the wages.
Employers only handle the money.
It is the customer who pays the wages.
- Henry Ford*

Do you have a Key Person that your business' profitability could not do without?

A key person is not only yourself, but also an employee or contractor whose skills and expertise are essential to the functioning and profitability of your business. You and your key people face the risk of major illness, disablement and even death, which can have a serious impact on your business. By protecting yourself with insurance and insuring your key people – whereby the company is the owner of the policy – if you or they should die or become disabled, this protection helps your business survive.

To discuss your Key Person needs, please contact Ian Schofield on ian@barnesmossmann.co.nz

Key Preparation required prior to 1 July 2011

We are concerned that many of our employing clients still do not have documented employment agreements. Given the toughening up of potential penalties for not observing this requirement, as well as the increasing compliance role of Labour Inspectors, we think it's high time that many of you beefed up your employment administration.

The best place to start is to make sure you maintain a comprehensive personal file for each employee. Be sure to create a 'soft' (saved in your computer) file as well. That way you'll be more likely to have natural disaster-proof records.

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