BusinessCentral

EMPLOYER BULLETIN

30 September 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

Tougher sentences on the horizon for criminals

Sentencing reforms that will ensure criminals face tougher consequences and victims are prioritised have passed first reading in Parliament, Justice Minister Paul Goldsmith says.

"Despite a 33 percent increase in violent crime, there has been a concerning trend where the courts have imposed fewer and shorter prison sentences.

"We must restore confidence in our justice system to denounce and deter criminal activity."

The upcoming reforms will strengthen the criminal justice system by:

- Capping the sentence discounts that judges can apply at 40 percent when considering mitigating factors unless it would result in manifestly unjust sentencing outcomes.
- Preventing repeat discounts for youth and remorse. Lenient sentences are failing to deter offenders who continue to rely on their youth or expressions of remorse without making serious efforts to reform their behaviour.
- Responding to serious retail crime by introducing a new aggravating factor to address offences against sole charge workers and those whose home and business are interconnected, as committed to in the National-Act coalition agreement.
- Encouraging the use of cumulative sentencing for offences committed while on bail, in custody, or on parole to denounce behaviour that indicates a disregard for the criminal justice system, as committed to in the National-New Zealand First coalition agreement.

To read further, please click here.

First of its kind trilateral trade meeting held to celebrate Pacific partnership

Trade Minister Todd McClay hosted Fijian Deputy Prime Minister and Trade Minister Hon. Manoa Kamikamica and Australian Trade Minister Don Farrell for trilateral trade talks in Rotorua over the weekend.

"The meeting was an opportunity to understand how we can all best support each other. As friends and partners, we want to increase the benefits of trade for the people of Fiji and the broader region," Mr McClay says.

"This is especially important given Fiji's Prime Minister Sitiveni Rabuka and New Zealand's Prime Minister Christopher Luxon have set an ambitious goal to hit NZ$2 billion of two-way trade by 2030."

To read further, please click here.

Racing Integrity Board appointments

Racing Minister Winston Peters has announced one new member and the reappointment of two existing members to the Racing Integrity Board.

David Howman is appointed to the Board for a three-year term, joining existing members Dr Patricia Pearce and Brent Williams who are reappointed for a second term. Mr Howman fills the vacancy left by Penny Mudford, whose term expired earlier this year.

Mr Peters welcomes the appointments and says the Board has an important role to play for the racing industry. The Board was established during his previous term as Racing Minister under the Racing Industry Act 2020.

"The Racing Integrity Board is charged with promoting and ensuring high standards of animal welfare, integrity and professionalism by those in the racing industry."

To read further, please click here.

Overseas merchandise trade: August 2024

Overseas merchandise trade statistics provide information on imports and exports of merchandise goods between New Zealand and other countries.

In August 2024, compared with August 2023:

- Goods exports fell by $6.1 million (0.1 percent), to $5.0 billion
- Goods imports fell by $70 million (1.0 percent), to $7.2 billion
- The monthly trade balance was a deficit of $2.2 billion.

To read further, please click here.

Injury statistics – work-related claims: 2023

Injury statistics for work-related claims give information about claims accepted by ACC for work-related injuries.

- A total of 226,600 work-related injury claims were made in 2023 (up 1,200 from 2022).
- The incidence rate for claims related to work-related injuries was 86 claims per 1,000 full-time equivalent employees (FTEs) in 2023. This is the lowest rate since the start of the series in 2002.

- The manufacturing; agriculture, forestry, and fishing; and construction industries had the highest incidence rates of work-related injury claims in 2023.
- Trades workers had the highest number of claims by occupation in 2023, with 39,000 claims.

This release contains provisional statistics for work-related claims for injuries in the 2023 calendar year. It also includes final statistics for work-related claims for injuries in the 2022 calendar year, which are updated from last year's published 2022 provisional data.

To read further, please click here.

Milestone for return of petroleum exploration

Legislation reinstating offshore petroleum exploration has been introduced by the Coalition Government, a key step in addressing the significant energy security challenges felt by Kiwis across the country this winter.

The Crown Minerals Amendment Bill reverses the ban on new oil and gas exploration beyond onshore Taranaki, signals the Government's intent to reinvigorate investment in petroleum exploration, aligns decommissioning settings with best practice and provides certainty for potential investors.

"This Bill delivers on commitments in both the National-NZ First and National-ACT coalition agreements and the Government's promise to take urgent action to address energy security and affordability," Resources Minister Shane Jones says.

"Natural gas is critical to a secure and affordable supply of energy in New Zealand – now and into the future. Our gas fields are in decline and without further investment in existing and new fields to increase production, supply issues and high prices will persist when generation from our renewable energy sources is at capacity.

"Limited gas supply doesn't just make it more expensive to keep our lights on and our homes warm, it is squeezing our industrial users to the point that we are seeing production halting and large employers in regional New Zealand having to close their doors.

"On top of removing the exploration ban, this legislation will better balance the regulatory burden, risk of decommissioning and give the regulator more flexibility in how exploration permits are issued, giving the sector confidence to get to work."

To read further, please click here.

Child-care centre guidance on Police vetting for workers

WorkSafe have updated our guidance on the requirements for vetting workers at limited-attendance child-care centres.

The new Regulatory Systems (Education) Amendment Act 2024 means updates have been made to the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 (Regulation 51).

A key point is that Police vetting must be completed for non-teaching and unregistered employees at unlicensed child-care centres before the person begins work. This vetting must be used to assess any risks to the safety of children.

To read further, please click here.

Northland transmission tower collapse report released

The Electricity Authority's report into the collapse of a Northland transmission tower on 20 June 2024 that left 88,000 people without power has been released, Energy Minister Simeon Brown says.

"The report highlights that several key failures led to the transmission tower collapsing and that the economic impact for Northland was substantial. The report shows a range of estimates between $37.5 million and $80 million dollars in lost economic activity and that without distributed electricity generation, this figure would have been even higher.

"As expected, the report found that the removal of the nuts on the tower's baseplates, which led to the towers collapse and the underlying factors that contributed to this, were entirely avoidable.

To read further, please click here.

EMPLOYMENT RELATIONS AUTHORITY: FOUR CASES

Authority confirms contractor status

Mr Mitchell worked for Moore Excavations Ltd (Moore Excavations) from 5 May 2021 until 10 May 2022 as an independent contractor. However, after his work came to an end, he claimed he was an employee of Moore Excavations.

Mr Mitchell lodged a claim in the Employment Relations Authority (the Authority) seeking a declaration that he had been an employee of Moore Excavations and to have debts he incurred as a contractor (taxes to IRD and ACC levies) either extinguished or assigned to Moore Excavations.

In considering the legal test for whether a person is a contractor, the Authority first had to determine what the parties had agreed to when the relationship commenced. On the evidence, it was clear that both parties had intended that Mr Mitchell would be engaged as an independent contractor.

When work commenced, Mr Mitchell would record his hours on a timesheet and invoice Moore Excavations his agreed hourly rate plus GST. He also carried out other contract work for other companies.

Despite the initial and ongoing intention to operate as a contractor, it was important for the Authority to look at how Mr Mitchell carried out his work, to establish if he did in fact operate as an independent contractor.

While the Authority observed that Moore Excavations exercised control over Mr Mitchell's work, it was not satisfied that the level of control exerted over him displaced the independent contractor relationship. The control that came from Moore Excavations related to the jobs Mr Mitchell accepted and not from a need to instruct him daily on what was expected of him (as it would be with an employee). Further, Mr Mitchell was not required to accept any work or jobs offered to him and could choose to work for other companies if he wished.

In assessing the degree to which Mr Mitchell was integrated into the business, the Authority concluded there was no clear evidence either way. There were elements of both, but some were just a product of the nature and circumstances of the work being done, not because of some intention to integrate Mr Mitchell into the business.

Finally, the Authority turned to the fundamental test to assess whether Mr Mitchell was operating a business for his own reward. The evidence indicated that he was. Elements included charging GST on invoices and submitting GST returns, lodging claims for business expenses, continuing to seek out business accounting services and not claiming entitlements such as annual leave or public holidays.

Mr Mitchell argued he had been an independent contractor by default. He wanted to work with Moore Excavations, but the terms were dictated by it. He argued he did not have the skills to operate effectively as he had no experience as a contractor. He argued Moore Excavations should never have engaged him under such terms.

In response to his arguments, the Authority did not consider that it changed the nature of the relationship. Even if Moore Excavations should not have engaged Mr Mitchell as a contractor given the circumstances, that did not change the fact that it had. Likewise, Mr Mitchell saying he did not have the experience to operate as a contractor did not change the fact that he operated as one.

In its final analysis, the Authority found that Mr Mitchell had been an independent contractor. Mr Mitchell commenced work with Moore Excavations as a contractor. He operated in this way when he accepted work, completed it and invoiced in a manner consistent with a contractor relationship. He was not compelled to accept any work from Moore Excavations and had some control over the work he did, including accepting work from other businesses. Mr Mitchell was not sufficiently integrated into the Moore Excavations business to indicate he was an employee. He conducted the work he did for Moore Excavations and others as a business which included his accounts and tax obligations. There were no other compelling features of the relationship that indicated he was not a contractor.

Because Mr Mitchell was found to be a contractor, the Authority had no jurisdiction to consider debts he incurred in that capacity. Costs were reserved.

Mitchell v Moore Excavations Ltd [[2024] NZERA 339; 10/06/24; P Van Keulen]

Employee justifiably dismissed for failing to follow training and policy

Mr Williams was employed by Te Toka Tumai, an organisation within Te Whatu Ora – Health New Zealand, as a Senior Health Security Officer (HSO) and team leader at Auckland City Hospital. It employed him from October 2019 until he was dismissed for serious misconduct in August 2022. He contested his dismissal on substantive and procedural grounds, arguing that delays and other issues compromised the fairness of the investigation.

The incident of serious misconduct occurred on 8 May 2022. Mr Williams and another HSO physically restrained an 18-year-old female visitor who had wandered into the wrong ward. Although the visitor initially engaged in conversation and displayed no visible aggression, Mr Williams and the other HSO physically restrained them. This led to a “code orange” call, escalating the situation. A nurse manager expressed concern about Mr Williams’ actions, which prompted a review.

Mr Boyle, Te Toka Tumai’s Security Operations Manager, was tasked with investigating the incident. He reviewed the shift report, examined CCTV footage, and spoke with Mr Williams and other HSOs involved.

On 10 June 2022, Mr Boyle emailed Mr Williams to arrange a preliminary discussion. On 14 June 2022, Mr Boyle met with Mr Williams and his representative. Mr Williams read from a prepared statement to explain his actions, stating the visitor “looked like she was going to do something.” Despite attempts to question him further, Mr Williams only referred to his prepared statement.

On 17 June 2022, Mr Boyle issued a letter to Mr Williams which outlined the process, current findings on the incident, and invited him to a disciplinary meeting. The letter emphasised the seriousness of the concerns and that termination was a possible outcome.

A disciplinary meeting was held on 27 June 2022. However, Mr Williams did not recognise the meeting as disciplinary in nature. Mr Boyle suggested rescheduling, but Mr Williams chose to proceed. Mr Boyle then questioned Mr Williams about his decision to use physical restraint, which Mr Williams justified by claiming the visitor had a “threatening” demeanour. Following the meeting, Mr Boyle allowed additional feedback by email. Mr Williams promptly established he had no further comments to make. Mr Boyle ultimately found no reasonable explanation for Mr Williams’ actions, deeming them to be serious misconduct.

A follow-up meeting on 18 July 2022 detailed the preliminary decision to terminate Mr Williams' employment, giving him until 22 July 2022 to seek advice and respond. Mr Williams engaged a union representative, and a subsequent meeting occurred on 29 July 2022. Mr Williams claimed his “risk assessment” led him to believe the visitor’s behaviour might escalate. He apologised for his actions. On 2 August 2022, Mr Boyle formally notified Mr Williams of his dismissal.

The Employment Relations Authority (the Authority) reviewed whether its decision to dismiss was what a fair and reasonable employer could have done under the circumstances. Given Te Toka Tumai’s resources, a reasonably high standard was expected.

Mr Williams initially claimed that the presence of a control operator during initial discussions breached his privacy. The Authority did not find Te Toka Tumai acted unfairly in having this.

Mr Williams also questioned the length of the investigation and disciplinary process. Te Toka Tumai’s policy emphasised promptness. Despite some delays due to scheduling issues and Mr Boyle’s leave, the Authority found the process to be practicable in the circumstances. Although Mr Williams’ advocate suggested that fading memories might have affected his case, the Authority found no evidence of prejudice, as Mr Williams did not raise such concerns during the disciplinary process.

The Authority assessed whether Mr Williams' actions constituted serious misconduct. It determined that Mr Williams breached policy by physically restraining someone in the absence of an emergency and without direction from the clinical nurse manager. CCTV footage showed no aggression from the visitor, and Mr Williams’ actions were inconsistent with de-escalation training. Restraint was intended as a last resort option.

Mr Williams defended his actions, claiming to be concerned about the spread of COVID-19. This was never raised during the disciplinary process and did not justify his failure to follow policy.

Mr Williams’ representative argued the matter should have been handled as a performance issue, or at most, a warning. However, the Authority was satisfied that his conduct met the criteria for serious misconduct as defined in the policy. Given his role’s requirement to manage escalated behaviour, the Authority agreed that dismissal was reasonable due to the loss of trust and the critical need to uphold safety standards in a healthcare setting.

The Authority concluded that the investigation and dismissal processes were fair and reasonable. Although Mr Williams suggested there was a disparity in his treatment compared to another guard, he failed to show that the other guard’s conduct was sufficiently similar. His claim of unjustified dismissal was not upheld. No remedies were ordered. Costs were reserved.

Williams v Te Whatu Ora – Health New Zealand [[2024] NZERA 319; 29/05/24; S Blick]

Employee recovers premiums paid for employment

Mr Zhang was the head chef at Panda Restaurant Limited (PRL), known as Panda Restaurant (the restaurant) in Auckland, between April 2018 and early 2021. Ms Feng was the major shareholder and director who oversaw the restaurant. Her husband, Mr Lam, assisted with restaurant operations.

Mr Zhang said before he came to New Zealand from China on his work visa allowing him to work for PRL, he paid what equated to over $90,000 on three occasions to Ms Feng. He also paid for $23,900 worth of supplies and equipment from China for the restaurant.

Mr Zhang claimed he was subjected to serious exploitation including not being paid for the hours he worked. He complained about his employment conditions and, as a consequence, he was induced to resign. When Mr Zhang asked for his money back after leaving, he said he was told there was no money to pay him. He also asked for wage and time details and, aside from a few payslips, there were no other records.

Mr Zhang raised a claim with the Employment Relations Authority (the Authority) seeking to recover the payments he made to PRL. He also pursued claims for unjustified dismissal, recovery of lost wages and multiple penalties against PRL and its owners.

PRL denied the payments Mr Zhang made were a premium for his employment. It claimed the payments were capital contributions and Mr Zhang had become a shareholder in the business. Despite claiming Mr Zhang was not in reality an employee, it claimed he was paid for all hours he worked and received all statutory entitlements. There was contention as to whether Mr Zhang was a shareholder or an employee. In noting a person can be both, the Authority assessed the available evidence. It found Mr Zhang was an employee, confirming he had not become a shareholder, meaning his claim could proceed.

Mr Zhang gave evidence that he was told he needed to pay $30,000 to be a chef in New Zealand. He said he was told that it is customary for a Chinese chef to pay a contribution to an employer in return for a work visa and job offer. On the question of this alleged premium, the Authority referred to the relevant law from the Wages Protection Act 1983 (WPA) which provides that no employer or person engaged on behalf of an employer shall seek or receive any premium in respect of the employment of any person.

Being that Mr Zhang was not a shareholder, he did not receive any dividend payments he would be entitled to nor was he consulted about a transfer and possible sale of PRL. The Authority was satisfied the $116,854 he paid constituted premiums for employment.

The Authority considered whether the funds should be recoverable from Ms Feng and Mr Lam. All of the material actions undertaken by PRL were carried out by Ms Feng, or with her knowledge. Given her hands-on, day-to-day oversight of the restaurant, she was clearly a person involved in PRL's breaches of employment standards. The Authority found Mr Lam's involvement was to a lesser degree.

PRL was unlikely to be able to repay Mr Zhang the premiums, wages, holiday pay and interest the Authority found was owing. The Authority granted leave to recover the premium amounts paid plus the shortfall in wages, holiday and leave pay and interest from Ms Feng. She was liable to pay those monies to the extent PRL was unable to pay them. Further, leave was granted to recover the premium amount paid and interest on it from Mr Lam.

The Authority turned to the matter of the alleged unjustified dismissal and observed that failure to pay wages in full when due and owing is a serious breach of the duty owed to Mr Zhang. PRL breached this duty because it did not pay Mr Zhang for all hours worked, when the payment for that work fell due.

Mr Zhang's resignation was reasonably foreseeable, given the nature of the breaches and the increasing and demonstrable unhappiness he expressed with not being repaid the premiums amounts he paid. The Authority accepted he was told by Ms Feng on 14 January 2021 that if he was unhappy, he should leave. The Authority found that Mr Zhang was unjustifiably dismissed.

PRL was ordered to pay Mr Zhang $116,854 as a debt for the premium payments, $74,645.60 as arrears of wages, $20,757.73 as arrears of annual holiday pay, $10,413.12 as arrears of public holiday pay, interest on the premium debt and arrears, $10,000 out of its penalties and $18,000 compensation for hurt and humiliation.

The remainder of the penalty, totalling $37,200, was to be paid to the Crown. Ms Feng was ordered to pay Mr Zhang $1,000 and the remainder of the penalty of $7,000 to the Crown. Costs were reserved.

Zhang v Panda Restaurant Limited and Ors. [[2024] NZERA 313; 27/05/24; S Blick]

Employee dismissed by text message

Mr Delahunty was employed by John Wilson Engineering Limited (JWE) as a welder from 6 October 2021 until he was dismissed on 10 October 2023. Mr Delahunty claimed he was unjustifiably dismissed and disadvantaged when he was stood down from work three days before his dismissal.

On 7 October 2023, as Mr Delahunty was getting ready to go to work, he received a text message from the foreperson at JWE saying "don't come in today, stand down and JWE will make contact on Monday." Mr Delahunty was shocked and did not respond to the text. He decided to wait and see what would happen on Monday. He said there had been a conflict of opinion between him and the foreperson on 5 October 2023 about the scaffolding on a project he was working on. However, in his view, it was a minor disagreement.

On 10 October 2023, Mr Delahunty received another text message terminating his employment, effective immediately. The text also stated that he would receive a letter confirming the decision and his final pay. Mr Delahunty assumed the reason why JWE had dismissed him was because of the disagreement he had with the foreperson but that had not been confirmed in the text he received. Upon asking for clarity around why he was dismissed, JWE emailed him an unsigned copy of his employment agreement but not a letter with reasons for the termination.

The Authority said JWE provided no reasons for either Mr Delahunty's suspension or dismissal, and no fair process was followed. JWE had failed to comply with its good faith obligations or act as a fair and reasonable employer as per its obligations under the Employment Relations Act 2000.

JWE had failed to justify its conduct towards Mr Delahunty, and so the Authority decided Mr Delahunty's claims had been made out. His suspension and dismissal were both unjustified substantively and procedurally. Given the findings and considering the distress and impact experienced by Mr Delahunty, and the general range of awards in similar cases, the Authority considered $20,000 an appropriate award as compensation for hurt and humiliation.

Mr Delahunty also claimed three months' lost wages. There was, however, difficulty with providing further information needed to quantify Mr Delahunty's lost wages. The Authority reserved the issue and set a timetable for the information to come in at the same time as any cost submissions. JWE was ordered to pay Mr Delahunty $20,000 in compensation and wage arrears of $4,200.

Delahunty v John Wilson Engineering [[2024] NZERA 330: 07/06/24; S Kennedy-Martin]

LEGISLATION

Note: Bills go through several stages before becoming an Act of Parliament: Introduction; First Reading; Referral to Select Committee; Select Committee Report, Consideration of Report; Committee Stage; Second Reading; Third Reading; and Royal Assent.

Bills open for submissions to select committee: Ten Bills

Crown Minerals Amendment Bill (1 October 2024)

Smokefree Environments and Regulated Products Amendment Bill (No 2) (4 October 2024)

Social Workers Registration Amendment Bill (6 October 2024)

Taxation (Annual Rates for 2024–25, Emergency Response, and Remedial Measures) Bill (9 October 2024)

Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill (15 October 2024)

Arms (Shooting Clubs, Shooting Ranges, and Other Matters) Amendment Bill (24 October 2024)

District Court (District Court Judges) Amendment Bill (29 October 2024)

Sentencing (Reform) Amendment Bill (29 October 2024)

Parliament Bill (6 November 2024)

Building (Overseas Building Products, Standards, and Certification Schemes) Amendment Bill (14 November 2024)

Overviews of bills-and advice on how to make a select committee submission-are available at: https://www.parliament.nz/en/pb/sc/make-a-submission/

CLICK HERE

A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND

The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations.

If you would like to provide feedback about the Employer Bulletin, contact: comms@businesscentral.org.nz
or for further information, call the AdviceLine on 0800 800 362

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AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.

TRAINING SERVICES

Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.

OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

Health and Safety and the well-being of your employees should be of paramount importance to any employer. To help you along the way, we have a friendly and knowledgeable Health and Safety Consultant.

EMPLOYMENT RELATIONS CONSULTANTS

Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.

LEGAL

When employees test the waters with a personal grievance, Business Central Legal are here to help. We offer representation in all employment law matters.

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ADVICELINE

AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.

This service is 100% inclusive of your membership. There is no time limit to your call, and the team is available 8am–8pm Monday to Thursday and 8am–6pm Friday.

Our Employer Advisors are well trained and comprise a mixture of legal and business backgrounds. They understand your issues and can help advise you on legal requirements and best practices. They are backed up by a large resource base they can call on to support with you with written resources, guides, and templates.

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Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.

Whether it be best practice processes under the Employment Relations Act and the Health and Safety at Work Act, leadership training or personal development, the Business Central training team are dedicated to facilitating your business's professional learning.

For more information about Business Central's public and customised in-house courses, or to register for a course, contact the team today.

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Health and Safety and the well-being of your employees should be of paramount importance to any employer. To help you along the way, we have a friendly and knowledgeable Health and Safety Consultant.

Adrienne has extensive experience with helping companies navigate Health and Safety requirements. She understands companies need to see sound return on investment for their well-being initiatives. Adrienne offers full support with compliance issues such as induction training and hazard identification and management. Additionally she can help with preparation for ACC 'Workplace Safety Management Practices'.

EMPLOYMENT RELATIONS CONSULTANTS

Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.

Having someone equipped to help you do the work can take the stress out of a tricky situation.

Our Consultants have a wide range of experience and are prepared to help. Whether you need to update your agreements or policies, or embark on performance management, they have the experience to make a difference. There are so many areas they can help; it may be union issues and managing a difficult

relationship or it could be confirming a restructuring selection matrix.

LEGAL

When employees test the waters with a personal grievance, Business Central Legal are here to help. We offer representation in all employment law matters.

Business Central Legal provides you best return on investment for legal advice on employment law matters. Our team of lawyers are only available to members, and can help solve your tricky issues.

While you may think of lawyers as representing people in court, this is far from everything they do. Employers take advantage of the value of the Business Central Legal team to help in drafting documents such as tailored employment agreements and offers of employment. Additionally they can help with key guidance on difficult issues as restructuring processes and rock solid performance management plans.

A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND

CHRISTMAS AND NEW YEAR PUBLIC HOLIDAYS 2024/2025

Christmas Day Wednesday 25 December 2024
Boxing Day Thursday 26 December 2024
New Year's Day Wednesday 1 January 2025
2 January Thursday 2 January 2025

PUBLIC HOLIDAYS

All employees for whom the day would otherwise be a working day and do not work on that day, will be entitled to a paid public holiday not worked.

All employees for whom the day would otherwise be a working day and do work on that day, will be entitled to at least time and a half for the hours worked on that day and an alternative holiday.

Employers therefore need to consider whether the day on which the public holiday falls is otherwise a working day for each employee in order to determine public holiday entitlements. The otherwise working day test applies to all employees regardless of whether they are permanent, fixed term or casual employees, or have just commenced employment.

OTHERWISE WORKING DAY

In most situations it will be clear whether the day on which the public holiday falls would otherwise be a working day for an employee.

However, if it is not clear an employer and employee should consider the following factors with a view to reaching an agreement on the matter.

- The employee's employment agreement;
- The employee's work patterns;
- Any other relevant factors, including:
    - whether the employee works for the employer only when work is available;
    - the employer's rosters or other similar systems;
    - the reasonable expectations of the employer and the employee that the employee would work on the day concerned;
- Whether, but for the day being a public holiday, the employee would have worked on the day concerned.

CHRISTMAS/NEW YEAR CLOSEDOWN AND PUBLIC HOLIDAYS

If a public holiday falls during a closedown period, the factors listed above, in relation to what would otherwise be a working day, must be considered as if the closedown were not in effect. This means employees may be entitled to be paid public holidays during a closedown period.

ANNUAL HOLIDAYS, PUBLIC HOLIDAYS, TERMINATION OF EMPLOYMENT

A public holiday that occurs during an employee's annual holidays is treated as a public holiday and not an annual holiday.

An employee who has an entitlement to annual holidays at the time that their employment ends will be entitled to be paid for a public holiday if the holiday would have:

- Otherwise been a working day for the employee; and
- Occurred during the employee's annual holidays had they taken their remaining holidays entitlement immediately after the date on which their employment came to an end.

When applying the provision, you are only required to count the annual holidays entitlement an employee has when their employment ends (not accrued annual holidays). Employees become entitled to 4 weeks annual holidays at the end of each completed 12 months continuous employment.

PUBLIC HOLIDAY TRANSFER

The Holidays Act 2003 allows an employer and employee to agree in writing to transfer a public holiday to any 24-hour period.

This means, with agreement, a public holiday may be transferred:

- By a few hours to match shift arrangements; or
- To a completely different day

In the absence of a written agreement, a public holiday is observed midnight to midnight.

Please note that this guide is not comprehensive. It should not be used as a substitute for professional advice. For specific assistance and enquiries, please contact AdviceLine.