BusinessCentral

EMPLOYER BULLETIN

29 October 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

NZ joins UK initiative for AI safety

The Government is joining the UK's Bletchley Declaration on Artificial Intelligence (AI) Safety, Minister of Science, Innovation and Technology, and for Digitising Government Judith Collins says.

"AI used responsibly can be a game changer for New Zealand, supporting productivity, innovation, and economic development," Ms Collins says

"The UK's Bletchley Declaration is an important international agreement which affirms the potential that AI offers for society and for economies. To achieve this, AI must be designed, developed, deployed and used responsibly and safely, and in a manner that is people-focused and can be trusted.

"In May we signed the Seoul Ministerial Statement for Advancing AI Safety which, coupled with the Bletchley Declaration and Cabinet's confirmed approach to AI being in accordance with the OECD's AI Principles, solidifies our focus on the responsible use of AI.

"Important safety standards and pressure will be applied on the international stage, and New Zealand is proud to be part of global efforts towards responsible AI."

The Ministry of Business, Innovation and Employment has developed an initial cross-portfolio which focuses on policy changes, while the Department of Internal Affairs' Government Chief Digital Officer is leading work to support public sector agencies to explore safe use of AI for efficiency and service delivery improvements.

To read further, please click here.

Coalition Government's reforms give workers the best chance to succeed and prosper

Minister for Workplace Relations and Safety Brooke van Velden responds to NZCTU's protest across the country and says this Government is delivering for all workers, including the over 85% of New Zealand's labour force who are not union members.

"This coalition Government is focused on delivering for all hardworking New Zealanders as we continue to get spending under control, lift the country's productivity and economic growth and deliver more efficient and effective public services," says Ms van Velden.

"In my own portfolio, I've been focused on getting the labour market settings right in order to ensure New Zealanders have access to more and better jobs," says Ms van Velden.

"At the beginning of my term this Government moved at pace to remove the Fair Pay Agreement legislation before any fair pay agreements were finalised and the negative impacts would have been felt by the labour market. Rather than helping employees, Fair Pay Agreements would have made life harder for businesses, making them more hesitant to employ people, and may have even resulted in business closure."

To read further, please click here.

Overseas merchandise trade: September 2024

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

In September 2024, compared with September 2023:

- goods exports rose by $246 million (5.2%), to $5.0 billion
- goods imports fell by $67 million (0.9%), to $7.1 billion
- the monthly trade balance was a deficit of $2.1 billion.

To read further, please click here.

Open work rights return for partners of high skilled migrants

The Government is ensuring New Zealand attracts and retains the workers and skills it needs by returning open work rights to partners of high-skilled migrants.

"We are committed to growing the economy and our immigration system is critical to that. From 2 December, open work rights will be available to partners of Accredited Employer Work Visa (AEWV) holders working in higher-skilled roles who earn at least 80% of the median wage," Immigration Minister Erica Stanford says.

The same rights will also be available for partners of AEWV holders working in lower-skilled roles who are on a pathway to residence. The changes deliver on the coalition commitment between National and ACT to make it easier for family members of visa holders to work here.

"The previous Government's decision to restrict the settings caused enormous distress amongst our migrant communities. We want high-skilled migrants to see New Zealand as an attractive and supportive place to move with their families. We need to build capacity in sectors facing skills shortages, like healthcare and education."

To read further, please click here.

Anniversary of Equal Pay Act shows we have more to do

The anniversary of the Equal Pay Act is a reminder that we still have work to do to achieve equality for women across this country, Minister for Women Nicola Grigg says.

"Today marks the anniversary of the Equal Pay Act that was introduced in 1972. Over the past few decades, pay equity in New Zealand has improved, but women are still paid on average 8.2 per cent less than men.

"While we have made significant progress, there is still work to do and we must continue to keep the pressure on this issue. My ambitions for the future are that there would be no pay gap in the public and private sector, and that is what we should all work towards.

"Recent data shows that, at 6.1 per cent, the public service gender pay gap is the lowest it has ever been, and has halved since 2018. Across New Zealand the pay gap is trending downwards but while this is a wonderful achievement, we cannot be complacent."

"It requires continuous efforts across the public and private sector to ensure that we can continue to see results. This can be achieved by supporting women into leadership, lifting incomes, and providing businesses with the tools to calculate, understand and address their gender pay gaps.

"In June our Government announced that we are developing a pay gap calculation tool in partnership with business so that there is a consistent method for businesses to calculate their pay gaps and take steps to address them."

To read further, please click here.

Total greenhouse gas emissions rise 1.1% in the June 2024 quarter

Seasonally adjusted industry and household greenhouse gas (GHG) emissions increased 1.1% in the June 2024 quarter, according to figures released by Stats NZ.

"This increase of 224 kilotonnes during the quarter was due to more emissions from industry, particularly from the electricity, gas, water, and waste services industry," environment statistics unit manager Tehseen Islam said.

Over this quarter, industry emissions (excluding households) increased by 1.7% (292 kilotonnes). By comparison, gross domestic product (GDP), which accounts for industry production, decreased 0.2% in the same period.

The largest increase in emissions came from electricity, gas, water, and waste services, up 32% (566 kilotonnes). Emissions from construction were also up 8.4% (35 kilotonnes), and transport, postal, and warehousing emissions increased 0.4% (6 kilotonnes).

"This increase in emissions from electricity, gas, water, and waste services was driven by an increase in the use of fossil fuels (coal and gas) for electricity generation," Islam said.

New Zealand experienced dry conditions in hydro-generation areas in the June 2024 quarter. As a result, 81% of our electricity in the quarter was generated from renewable sources compared with 86% in the previous quarter, the Ministry of Business, Innovation and Employment reported in their New Zealand Energy Quarterly.

To read further, please click here.

Dr Derek Johnston reappointed to the Commerce Commission

Dr Derek Johnston has been reappointed to the board of the Commerce Commission for a three-year term, commencing on 1 November 2024 and finishing on 31 October 2027.

Dr Johnston was first appointed in 2019 for his legal background in competition law and around significant commercial mergers and acquisitions, and for his breadth of experience across the energy, telecommunications, information technology and financial markets sectors.

During his first term as a Commissioner, Dr Johnston was Convenor of the Commerce Act Division, as well as a member of the Fuel and Part 4 (economic regulation) Divisions and the Commission's Audit and Risk Committee. He has also been involved in the Commission's market studies into the retail grocery sector and residential building supplies, along with many of the Commission's statutory determinations, including competition merger clearances, authorisations, and determinations for regulated energy networks. Over the past two years Dr Johnston has also held the role of part-time associate member of the Australian Competition and Consumer Commission (ACCC) to support strong connections between the two Commissions.

To read further, please click here.

EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

Constructive dismissal claim successful after employer changes location of work

Mrs Wishart was employed by Idea Services Limited (Idea) as a support worker from March 2008 until she resigned in January 2023. Mrs Wishart was based in the Wairarapa region, with most of her work performed at a residential care facility at a specific address in Carterton – although she also worked at other locations in the Wairarapa.

Mrs Wishart claimed she was unjustifiably constructively dismissed by Idea due to its actions in changing the location of her employment. Idea denied the claim and said it had the contractual ability to change the location that Mrs Wishart worked, and it had followed a fair and reasonable process in doing so. It argued Mrs Wishart had simply chosen to resign.

The Employment Relations Authority (the Authority) made a permanent non-publication order to protect the privacy of the people supported by Idea.

Mrs Wishart said she resigned due to Idea's unfair actions in requiring her to move from the house where she had performed most of her work to another location. While she acknowledged that she had started working at a new location, she said she "felt unhappy and didn't settle down" and claimed that requiring her to move locations was a breach of duty by Idea.

The context for Mrs Wishart's views was a series of matters over the course of 2022 where the evidence from both Mrs Wishart's and Idea's witnesses were consistent. The key question that the Authority needed to consider was whether Idea's actions were fair and reasonable, or whether they amounted to a breach of duty sufficient to cause her to resign.

In November 2022, Idea initiated a process for proposing changes to Mrs Wishart's schedule of work and a change to the location she would perform that work. Idea stressed that its proposal was not a punitive measure, but rather because of a business decision to ensure continuity of service could be provided to a person supported by the organisation. However, at that time, Idea was also dealing with a

formal complaint made against Mrs Wishart. She was advised that it had never substantiated, or upheld previous complaints, made against her and wanted to ensure she had a safe working environment.

In December 2022, a union organiser advised Idea that Mrs Wishart did not wish to accept any of the options for a proposed alternative schedule and did not feel she have been given sufficient reasons to warrant changing her location of work. Mrs Wishart also advised that the process had been very stressful, and she believed unfair, and was taking a toll on her health.

Where the Authority considered Idea's actions fell short was in proceeding to utilise the provisions of the employment agreement against a background of unsubstantiated complaints and a live complaint involving Mrs Wishart. The Authority did not consider that a fair and reasonable employer would have utilised that ability in the way Idea did, particularly where Mrs Wishart said she considered broader issues needed to be addressed. Those issues overlapped with the live complaint to such an extent that the Authority considered Idea needed to resolve the full spectrum of issues, including the complaint, prior to invoking its contractual ability to change Mrs Wishart's schedule. The Authority did not accept submissions from Mrs Wishart that she was not aware of the reasons why Idea was proposing she change the location of her workplace.

The Authority considered Mrs Wishart's actions were reasonable in choosing to not continue in her role with Idea at the new location and to instead resign, claiming constructive dismissal. While the Authority did not doubt Idea wanted her to stay, it found Mrs Wishart's resignation was due to Idea's actions in transferring her to another work location. Idea's actions in utilising its contractual power to change Mrs Wishart's schedule or work location were not the actions of a fair and reasonable employer given the background of unsubstantiated complaints and a live complaint involving Mrs Wishart.

Idea's actions were a breach of duty to Mrs Wishart, and it was reasonably foreseeable that she would resign in response. The Authority decided Mrs Wishart was unjustifiably constructively dismissed by Idea. It ordered Idea to pay Mrs Wishart three months' compensation for lost wages, and any associated benefits as well as $15,000 compensation without deduction. Costs were reserved.

Wishart v Idea Services Limited [[2024] NZERA 335; 07/06/24; S Kinley]

Authority finds work was carried out in voluntary capacity

Mr Ko entered into a partnership with Mr Kim and another individual, referred to as Mr C, to set up a bar and restaurant which traded under the name Hive. The business was operated by Hive Group Limited (HGL). Mr Ko carried out work between 3 February and 16 June 2022 to get the business ready for opening. When it opened on 17 June 2022, Mr Ko was employed as the manager under a written employment agreement. Unfortunately, the business went into liquidation in December 2022.

Mr Kim provided most of the funds for Hive's "start-up". From 16 June 2022, he was HGL's sole director and held more than 90% of its shares.

Mr Ko sought a determination from the Employment Relations Authority (the Authority) that he had been employed by Mr Kim, and therefore should receive wages and holiday pay for the 760 hours of work he carried out before the business opened. Mr Ko submitted there was a verbal agreement that, upon the business opening, he would be remunerated for work he had done prior to Hive's opening.

Mr Kim rejected his claim, contending that Mr Ko was a co-investor and had agreed to carry out work to get the business ready for opening without any expectation he would be paid. Mr Kim further contended that the actual number of hours Mr Ko worked were closer to 75.

Mr Ko said his work included developing a menu for the restaurant, finding kitchenware and suppliers for the restaurant and bar, recruiting staff, preparing rosters, helping with the painting of the premises and other preparatory work. He conceded, during the investigation meeting, that he had over-exaggerated the hours he worked before Hive's opening. Mr Kim also conceded he had underestimated the amount of time Mr Ko had worked.

The Authority was not persuaded there was any agreement that Mr Ko would receive wages for the time prior to the business opening. The claim only arose late in the Authority's proceedings, and had only been raised with Mr Kim in September 2022. A text exchange between the parties from January 2022 was produced as evidence, which indicated that, until the business opened, there was no money to pay anyone.

Mr Ko submitted there was an element of control exerted by Mr Kim that was consistent with an employment relationship. However, the Authority was not persuaded by his argument.

There was an inequality in the relationship but, on an assessment of the evidence overall, that reflected a difference in the level of investment and the parties' intended roles when Hive opened.

Mr Kim brought the bulk of the funds to the enterprise, thereby bearing the greater degree of risk. He was to be the director of the company who ran the business, whereas Mr Ko and Mr C would provide their hospitality experience.

The evidence did not support a conclusion that Mr Ko was a naïve person drawn into someone else's scheme. He had completed four years of secondary and tertiary education in New Zealand and had worked full-time for two years. The idea and initiative to set up the business came from him and Mr C. Only later did they decide to invite Mr Kim to assist them with opening the business and to secure the knowledge and money they needed from him – it was not Mr Kim's idea to open the business. The Authority found it was not an equal business relationship, largely because of the respective level of financial risk each bore – but that did not mean it was therefore an unequal employment relationship.

They each expected to benefit from the fruits of that effort but there was insufficient evidence, assessed on the balance of probabilities, of any mutual intention that they would be paid as employees for hours they each worked in the setup period.

Mr Ko's application for a finding that Mr Kim was his employer was declined. Equally, Hive was not found to be his employer until he signed an employment agreement and commenced work on 17 June 2022. The company was not his employer before that date and was not liable to pay him for work done in setting up Hive's premises and business prior to 17 June 2022. No cost orders were made.

Ko v Kim [[2024] NZERA 486; 16/08/24; R Arthur]

Authority considers whether salaried employee is fairly compensated

Mr Patel worked for the Dunedin Community Care Trust (DCCT) as a full-time salaried service manager between 8 November 2021 and 31 October 2022. He claimed he was effectively on call at all times, including public holidays, and so should have been paid an on-call allowance.

DCCT submitted there was no express expectation that Mr Patel would have to make himself available outside his core working hours and there was no provision in his individual employment agreement (the agreement) to pay an on-call allowance.

The Employment Relations Authority (the Authority) was asked to make a determination as the parties had been unable to resolve the matter themselves.

Mr Patel gave evidence of the extent he had gone to provide services and support to clients outside his agreed hours of work. He said that his agreement set out that he was to work no less than 80 hours per week. The Authority noted that his letter of offer, and other clauses in his agreement, made it quite clear that his expected working hours of work were 40 hours per week. The Authority determined that the hours set out in the agreement were a mistake.

The Authority observed that a fundamental issue with Mr Patel's agreement was the lack of defined working days and hours, which is a requirement under the Employment Relations Act 2000 (the Act).

Counsel for DCCT sought to rely on the part of the agreement which set out that "Staff shall not be rostered more than 40 hours a week, with 2 consecutive days off each week and at least an 8-hour

break between full 8-hour shifts, unless by mutual agreement. A week shall be defined as Monday to Sunday." The Authority did not find this clause helpful as it was clearly meant to cover rostered employees rather than salaried staff, such as Mr Patel.

DCCT submitted that, while acknowledging Mr Patel may on occasions have covered a shift, "he was able to do so during his normal working hours or adjust his hours to compensate for the shift cover time".

Counsel for DCCT cited the agreement, which stated: "There is no provision for overtime and all hours worked will be paid at the standard remuneration."

The Authority observed that, while that might appear to resolve the issue, the expectations placed on Mr Patel were not precisely described in the agreement. It also noted that it was somewhat of an incongruous state of affairs, despite the "no overtime" clause, to include Mr Patel on an on-call roster and remunerate him for such from November 2022.

In its finding, the Authority decided Mr Patel had failed to show that his agreed terms of engagement, including the terms of the agreement, required DCCT to pay him an on-call allowance. Further, the relevant provisions under the Act (regarding being compensated for being available) were not found to be relevant or apply in this case. The Authority found the terms of the agreement, while being unclear around the hours and days of work and when such work was to be undertaken, sufficiently provided that Mr Patel's total salary was compensation for all duties he undertook including those outside his normal office hours.

The Authority did not consider that the agreement's salary provision, despite it not providing for the payment of overtime in his normal role, extended to covering the times Mr Patel covered rostered shifts. The Authority considered these were a separate engagement and when Mr Patel undertook what was essentially relief work, he was acting as a care worker and should have been appropriately remunerated at an applicable hourly rate.

DCCT was ordered to, in consultation with Mr Patel, identify and agree on the rostered cover shifts Mr Patel undertook while in their employ and provide remuneration for them based on the prevailing care worker's hourly rate for the time worked. Costs were reserved.

Patel v Dunedin Community Care Trust [[2024] NZERA 484; 16/08/24; DG Beck]

Employer mistakes probationary period with trial period

Mr Wynd was employed as an operator/site supervisor on 4 July 2022 at a Cambridge site for RM Civil Limited (RMC). RMC is part of the Hamilton-based Stratton Group. Mr Wynd's son-in-law, Mr Cobham, joined him on 18 July 2022 as a site drain layer/machine operator where they were working on preparing a former farm site for subdivision construction. Prior to Mr Wynd's employment, a large landfill had been discovered on the property. RMC was confident that all necessary assessments had been conducted for development approval but was open to further testing.

On 15 July 2022, problems emerged when Mr Wynd raised concerns about potential contamination, particularly regarding asbestos, citing evidence of hazardous materials on-site. During a staff event, he expressed strong worries about the contamination, leading to a meeting with RMC manager Mr Sutton and director Mr Polzleitner. Following the meeting, Mr Wynd consistently followed up with Mr Sutton about when testing would occur, but there seemed to be no urgency on RMC's part to address the situation.

Throughout that week, Mr Wynd's concerns for immediate testing conflicted with RMC's view that work on-site should continue without disruption. RMC expressed frustration, feeling that Mr Wynd was overly focused on the asbestos and soil contamination issue instead of progressing with other tasks. Despite this, there were no disciplinary actions or warnings issued to either Mr Wynd or Mr Cobham.

Not wanting to get RMC into trouble, or himself to be the fall guy if anything went wrong, a frustrated Mr Wynd contacted his former employer, which specialised in dealing with contaminated materials,

to help remove soil from the site. His previous employer, alarmed at the presence of asbestos debris, recommended arranging for an independent consultant to assess the site.

On 22 July, after the environmental consultant had left the site, Mr Wynd messaged Mr Sutton about insufficient staffing and the discovery of more asbestos. He indicated that they were stopping work for the day due to weather and staffing issues. However, Mr Sutton's reply did not address Mr Wynd's and Mr Cobham's finishing early for the day.

On that same day, Mr Wynd messaged Mr Sutton urging that all operations should stop until a thorough investigation could be completed due to ongoing findings of asbestos and that they should talk on Monday. Mr Wynd did not mention to RMC that the environmental consultant had visited, and samples had been taken. RMC interpreted his message as a refusal to work without seeking clarification.

On 24 July, the environmental consultant informed Mr Wynd that laboratory results confirmed the presence of asbestos and recommended stopping all operations until a detailed investigation was carried out. The consultant also notified WorkSafe.

A decision over the weekend was made by RMC to terminate Mr Wynd and Mr Cobham, based on Mr Wynd's message to Mr Sutton on 22 July. RMC were under the understanding they were employed on a 90-day trial period, and that 90-day trial periods and probation periods were the same thing. On Monday, 25 July, Mr Mason called Mr Wynd to advise that he and Mr Cobham were being made redundant due to financial reasons. Mr Wynd was advised to let Mr Cobham know due to Mr Mason not having his contact details.

Mr Wynd and Mr Cobham were dismissed by RMC under probationary periods, allegedly due to financial constraints. Mr Wynd's employment agreement contained a three-month probationary period clause. However, there was no specific notice period identified in the probationary clause and the termination clause provided for four weeks' notice to be given. Both Mr Wynd and Mr Cobham filed claims for unjustified dismissal, with Mr Wynd also raising concerns about site contamination, particularly the presence of asbestos.

The Employment Relations Authority (the Authority) had to determine whether the dismissals were unjustified, and if so, what remedies should be provided. RMC made some attempts to portray Mr Wynd and Mr Cobham as collaborators on the asbestos concern, even though Mr Cobham was largely uninvolved in raising these issues. He was unfamiliar with the process for detecting asbestos and was found to have simply been following the site supervisor's instructions.

The Authority decided that RMC did not follow fair process and failed to meet the requirements necessary to properly exercise the probationary period clauses, and thereby failed to follow due process in terminating the employees. RMC had relied on a mistaken belief that its probationary periods were the same as 90-day trial periods and dismissed Mr Wynd and Mr Cobham without allowing them the chance to comment on the decision. Both Mr Wynd and Mr Cobham's safety concerns were deemed valid, and their proactive actions regarding environmental safety were not deemed blameworthy.

The Authority concluded that RMC's inadequate communication and lack of suitable responses to Mr Wynd's concerns contributed to the quick decision to terminate their employment, instead of properly investigating the situation.

RMC was ordered to pay Mr Wynd $865.38 in lost wages and $15,000 compensation for hurt and humiliation. It was ordered to pay Mr Cobham $4,302.45 in lost wages and $17,000 compensation. Costs were reserved.

Wynd & Cobham v RM Civil Limited [[2024] NZERA 242, 26/04/24; N Craig]

Employee fails to prove employer unilaterally varied employment agreement

Mr Chen worked as a chef for Chulongji NZ Limited (Chulongji). He applied to the Employment Relations Authority (the Authority) and claimed Chulongji had unilaterally changed his employment agreement. He also argued he was owed wage and holiday pay arrears on the basis that he was not properly paid for all the hours he worked.

Mr Chen started working on 11 June 2018 and ended on 5 March 2020. He claimed that early on in his employment, he had a meeting with Mr Yang, the company director at the time. He said he was asked to sign certain parts of his employment agreement. He then claimed Mr Yang changed the parts of the agreement that Mr Chen signed, after the fact, to make it look like he had agreed to the variations. These alleged imposed changes included increasing his hours of work from 40 to 56 per week and removing the requirement to pay overtime rates. Mr Chen said had been cheated “in a dirty way” by Chulongji.

The Authority disagreed with how Mr Chen characterised what occurred, and ultimately preferred Mr Yang’s explanation about what really happened. It found Mr Yang had not unilaterally changed the agreement. Rather, it found Mr Yang had proposed changing the agreement at the meeting. Mr Chen was then sent a draft copy of the agreement with the relevant amendments included. The accompanying cover letter explicitly provided Mr Chen with the opportunity to seek legal advice on the proposed changes. The documents were signed and dated by Mr Chen, showing he was fully aware of the variations he had agreed to. The Authority decided no unilateral change had been imposed by Chulongji.

Mr Chen also argued he was owed wage and holiday pay arrears on the basis that he was not properly paid for all the hours he worked. During his employment, he claimed to have worked 66 hours per week. However, his agreement stated he was only required to work 54 hours per week. He also produced a variety of evidence to support the claim he worked more than his contracted hours. The Authority was not persuaded by Mr Chen’s argument. It decided the evidence he produced was insufficient to prove he had in fact worked beyond his contracted hours. It also noted that he was employed on an annual salary of $55,000 – meaning he was compensated for all hours worked regardless of whether he worked beyond his contracted hours.

It ultimately decided that Chulongji had not breached employment standards and declined Mr Chen’s application for wage and holiday arrears. Costs were reserved.

Chen v Chulongji NZ Limited and Anor. [[2024] NZERA 427; 15/07/24; Fuiava P]

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: Eight Bills

Arms (Shooting Clubs, Shooting Ranges, and Other Matters) Amendment Bill (29 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)

Dairy Industry Restructuring (Export Licences Allocation) Amendment Bill (17 November 2024)

Budapest Convention and Related Matters Legislation Amendment Bill (28 November 2024)

Statutes Amendment Bill (4 December 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

ENTERPRISE SERVICES

0800 800 362
advice@businesscentral.org.nz
www.businesscentral.org.nz

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.

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.

ENTERPRISE SERVICES

0800 800 362
advice@businesscentral.org.nz
businesscentral.org.nz

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.

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.

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.

For regular training updates in your area, subscribe to our Training Update newsletter.

04 470 9930, training@businesscentral.org.nz, businesscentral.org.nz

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.

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.

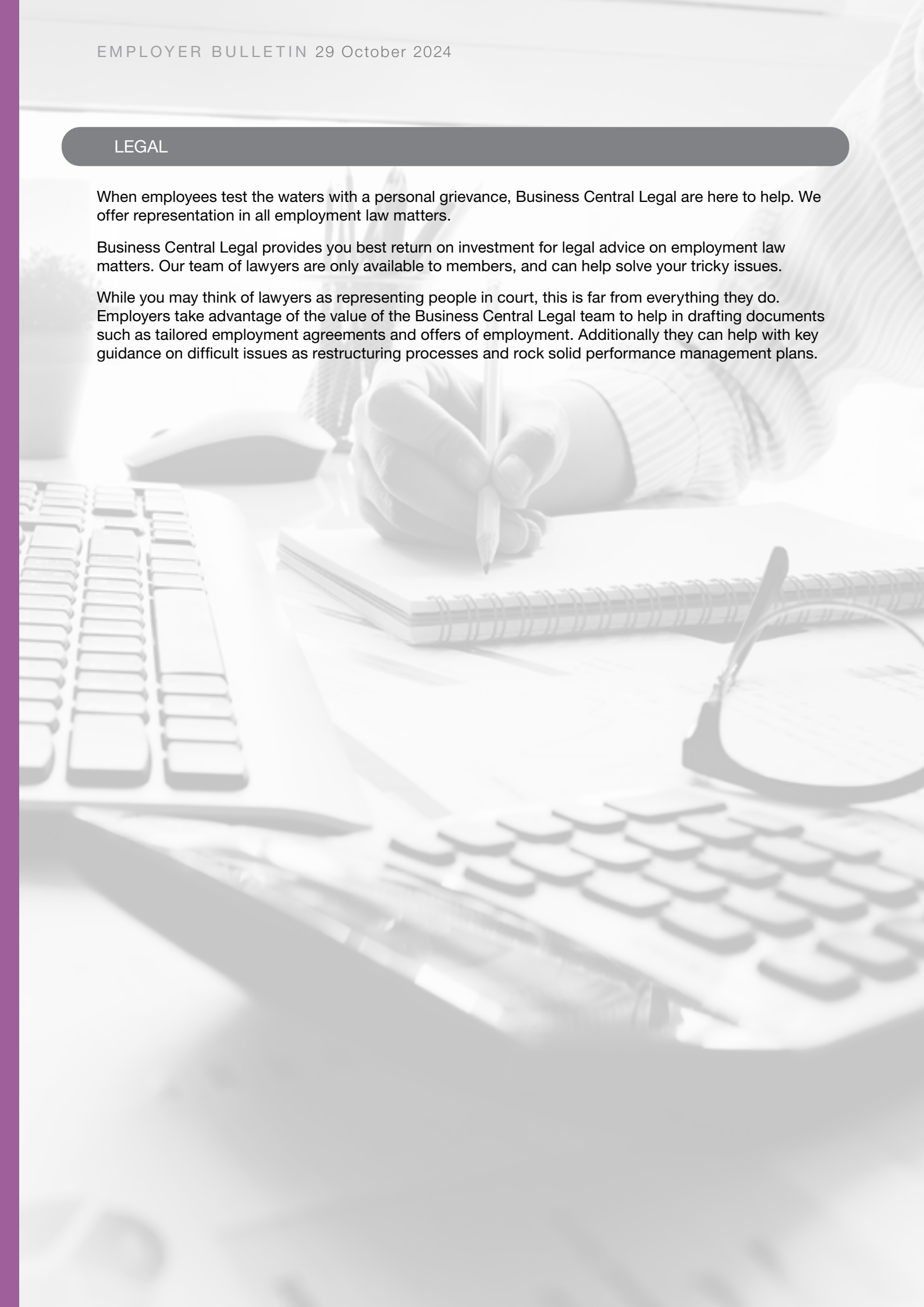
Our Consultants have a wide range of experience and are prepared to help. Whether you need to update your agreements or policies, or embark on performance management, they have the experience to make a difference. There are so many areas they can help; it may be union issues and managing a difficult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