

# EMPLOYER BULLETIN

11 November 2024  
A Weekly News Digest for Employers

## EMPLOYER NEWS

### Prime Minister congratulates Donald J. Trump on election win

Prime Minister Christopher Luxon has congratulated President-elect Donald J. Trump on his victory in the US presidential election.

“The relationship between our two countries is strong and enduring. I look forward to developing even closer relations with the incoming Trump Administration.

“The US is one of our most important partners, our second-largest export destination, and a major source of global innovation and growth. Our long-standing cooperation both bilaterally and in our region has helped ensure our prosperity and security. We will continue to work in partnership with the US to advance our shared long-term interests, particularly through further enhancing our trade and economic relationship and building security and resilience in the Indo-Pacific.”

To read further, please [click here](#).

### Beefing up red meat marketing in China

The Government is joining the next phase of the ‘Taste Pure Nature’ campaign that will position New Zealand beef and lamb as the highest-quality red meats of choice for Chinese consumers, Agriculture and Trade Minister Todd McClay announced at a signing ceremony in China last week.

“I am announcing that we will co-invest \$8 million to boost New Zealand beef and lamb exports to the Chinese market.

“New Zealand is currently the second-largest source of international lamb for Chinese consumers behind Australia, and the sixth-largest supplier of beef.

“Together with the sector we have set a joint target of making New Zealand lamb the number one preference with Chinese consumers replacing Australia as the largest lamb exporter to China,” Mr McClay says.

“The ‘Taste Pure Nature’ campaign is a partnership between the Government and the red meat sector that will strengthen our red meat brand in China, differentiating it from our competitors, and driving better returns for Kiwi farmers and processors.”

As of June this year, 29 percent of our total red meat exports went to China valued at \$2.86 billion, including \$1.27 billion in beef and \$1.05 billion in sheep meat.

To read further, please [click here](#).

### Unemployment rate at 4.8 percent

Unemployment continues to grow, with more people remaining unemployed for longer periods and a declining employment rate, while wage growth slows, according to figures released by Stats NZ.

In the September 2024 quarter:

- Unemployment rate was 4.8 percent
- Employment rate was 67.8 percent
- Annual wage inflation was 3.8 percent
- Average ordinary time hourly earnings were \$41.98.

To read further, please [click here](#).

### Government's creative sector strategy released

The Government's creative sector strategy is designed to increase Kiwis' engagement with culture and creativity and to boost its economic contribution, Arts Minister Paul Goldsmith says.

"Amplify has been released for public consultation and I encourage people to read the strategy and to share their feedback.

"There's an opportunity to increase the impact of our arts and culture here and on the world stage, and significantly increase the sectors' contribution to GDP and export revenue by 2030.

"Our creative and cultural sectors also face many common challenges, so Amplify uses the levers the Government has to help."

Amplify proposes four key targets:

- New Zealand ranks among the top 25 nations in the world for culture and heritage 'soft power'.
- The median income for creative professionals more closely matches the median wage/salary income.
- The GDP contribution from the arts and creative sector increases to at least \$20 billion.
- More New Zealanders are actively engaging with New Zealand arts, culture, and heritage.

To read further, please [click here](#).

### Anonymous information leads to IR visits

Inland Revenue (IR) staff are making unannounced visits to hundreds of businesses who it believes are not meeting all their tax obligations as employers.

The visits are another round in IR's Hidden Economy suite of work and follows on from the successful liquor store campaign in the past year.

The businesses which will be visited have been identified from the list of nearly 7,000 anonymous tipoffs the department receives each year.

The volume of tipoffs has grown over previous years indicating an increased sense of frustration by the community in general with businesses who are not doing the right thing.

IR has analysed the anonymous information at a high level. That has shown the tax risks overwhelmingly relate to taking the cash for personal use without recording sales and/or paying employees in cash.

To read further, please [click here](#).

### Todd McClay to lead large trade mission to China

Trade and Agriculture Minister Todd McClay will lead a large trade delegation to the 7th annual China International Import Expo (CIIE) in Shanghai next week, followed by a visit to Guangzhou.

This year, almost 70 New Zealand companies will participate in CIIE, to interact with over 3,400 exhibitors and 410,000 visitors.

"This visit is part of the Government delivering on its promise to lead more trade missions than any previous administration during this term of parliament", Mr McClay says.

"China is our largest export market accounting for \$38 billion in two-way trade. This is a significant economic partnership for both countries. It's important we continue to invest in this relationship and grow the New Zealand economy by assisting our exporters to sell more.

"The CIIE will showcase New Zealand's safe, high-quality and innovative products and our world-leading service sector to China's growing middle class of over 500 million consumers."

To read further, please [click here](#).

### Results reinforce importance of growth

The Government's financial results for the first three months of the year are weaker than forecast and reinforce the need to drive growth and maintain careful spending, Finance Minister Nicola Willis says.

The financial statements for the three months to 30 September 2024 show key fiscal indicators were weaker than forecast at the Budget in May with the total Crown operating balance before gains and losses (OBEGAL) deficit \$0.7 billion larger than expected at \$4.2 billion.

Net core Crown debt was also \$0.7 billion larger than expected at \$177.6 billion.

"The numbers reinforce the need to continue exercising fiscal restraint, get better value for money and drive growth," Nicola Willis says.

"They also highlight the uncertainty and potential risks associated with forecasting.

"The results show that we have slowed the growth of government expenditure, however, it is going to take time to repair the damage caused by the previous government's financial mismanagement."

To read further, please [click here](#).

## EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

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### Improper use of trial period leads to unjustified dismissal

Ms Lamond was initially employed by Mr Watt, the sole director/shareholder of Recharge Enterprises Limited (Recharge), to work at his newly established health food business in Cromwell. She started working on 13 October 2023. At the time, Ms Lamond was not provided with an employment agreement and was paid in cash. The PAYE component of her wages was paid by Mr Watt into a business account and not remitted to Inland Revenue.

However, the business did not really take off, and so Ms Lamond was moved to Mr Watt's other hospitality business, a café/juice bar based in Clyde, on 24 October 2023. Difficulties emerged in the employment relationship as Mr Watt struggled to manage Ms Lamond's requests for flexible hours to accommodate her childcare commitments. Also, he tried to pressure her to work Mondays and weekends, despite that not being what was agreed.

On 18 January 2024, Mr Watt presented Ms Lamond with an employment agreement dated 20 November 2023 and encouraged her to sign it right away. That agreement set out Ms Lamond's employment would be casual in nature with no agreed hours of work. It also contained a 90-day trial provision clause. Ms Lamond signed the agreement after twenty minutes.

On that same day, Mr Watt gave Ms Lamond a letter terminating her employment under the 90-day trial provision with no reasons given.

Ms Lamond applied to the Employment Relations Authority (the Authority) claiming that she was unjustifiably dismissed. Mr Watt responded that he was entitled to rely on a 90-day trial provision within the employment agreement to terminate Ms Lamond because of performance concerns.

However, in giving evidence to the Authority, Mr Watt conceded that he struggled to handle what he perceived as inflexibility from Ms Lamond. He believed he was lawfully entitled to end the employment relationship using the trial period.

The Authority found that Mr Watt could not rely on the trial provision. First, for a trial period to be valid, Ms Lamond would have had to agree to be bound by it, which she had not. Further, at the time Ms Lamond signed the employment agreement, she had already been working for Mr Watt for three months.

The Authority acknowledged Mr Watt's difficult business circumstances but was heavily critical of the dismissal process he had undertaken. The summary dismissal on an ill-informed reliance on the 90-day trial provision, as well as how he obtained Ms Lamond's assent to the employment agreement, was dealt with in a procedurally unfair manner that caused Ms Lamond significant and unnecessary distress. His conduct was not considered the actions of a fair and reasonable employer.

The Authority accepted there were tensions in the employment relationship but said there was nothing apparent that reached the level of a complete breakdown in trust and confidence of the kind that would require Ms Lamond to be summarily dismissed. She had not engaged in any misconduct, serious or otherwise, and was entitled to insist that her hours and days of work be as had been originally agreed.

The Authority found due to a failure of Recharge to adhere to good faith and fair dealings during her brief period of employment, Ms Lamond was both unjustifiably disadvantaged as well as unjustifiably dismissed.

Ms Lamond's advocate sought a series of penalties against Recharge. However, the Authority declined to consider those applications because Recharge had not been put on notice that Ms Lamond would seek such penalties. The Authority stressed it did not intend to condone the inappropriate actions of Mr Watt, which included failing to provide an employment agreement when Ms Lamond first began working, failing to agree upon her hours of work, and paying her in cash while withholding her PAYE contributions.

Recharge was ordered to pay Ms Lamond \$2,224.50 which combined lost wages and holiday pay arrears, as well as \$15,000 compensation without deduction for hurt and humiliation. Interest was also



ordered to be paid on the wage arrears for a period of six months, commencing from 21 January 2024. Costs were reserved.

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**Lamond v Recharge Enterprises Limited [[2024] NZERA 520; 29/08/24; D Beck]**

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**Employee constructively dismissed after taking special leave**

Ms Treleaven was employed by the respondent, MRZW Limited (MRZW), to work in its café under the sole directorship of Mr Mao. Due to challenging circumstances in her life, she took a period of special leave. Upon her return, her employment conditions worsened, largely due to how Mr Mao began communicating and treating her in relation to the special leave she had taken. Along with how she was made to feel judged by others in the workplace, she felt she had no choice but to resign. Ms Treleaven applied to the Employment Relations Authority (the Authority) and sought compensation, lost earnings, unconsented pay deductions, penalties, interest and costs.

The Authority first examined whether Ms Treleaven was constructively dismissed, which could result when an employee resigns due to an employer's actions that effectively compels them to do so. Ms Treleaven's personal difficulties led her to take special leave from 12 June 2023.

During her last shift, she held a meeting with Mr Mao and highlighted concerns about her upcoming work schedule and childcare obligations. She alleged Mr Mao responded aggressively. He denied such behaviour, but recalled flexibility being mentioned. Ms Treleaven did not report to work for the following two days.

On 15 June, Ms Treleaven texted Mr Mao that she would not return to work due to his behaviour and failure to accommodate. Mr Mao suggested communication was necessary to resolve these issues. A meeting on 19 June included discussions about her final pay and holiday entitlements, but there was no direct reference that her resignation was retracted. Mr Mao later emailed Ms Treleaven, stating her text did not constitute a valid resignation.

The Authority concluded that the meeting's references to final pay indicated acceptance of her resignation, and it was not for Mr Mao to reject this. An employer cannot make an employee remain working if they decide to resign.

On 26 June, Ms Treleaven submitted another formal resignation, reiterating her earlier concerns and provided 2 weeks' notice. Although Mr Mao likely received this, he subsequently initiated a "performance improvement plan" on 30 June due to her continued lateness and warned of possible dismissal.

On 4 July, Mr Mao summarily dismissed her for noncompliance, again failing to acknowledge Ms Treleaven's resignation.

A key issue involved deductions from Ms Treleaven's pay, related to a non-work-related loan Mr Mao had provided. Although he initially agreed to lend her money, he did not clarify repayment terms, leading to deductions from her wages. Ms Treleaven argued she was unaware of these deductions and that they negatively impacted her financial situation, likely contributing to her resignation. Mr Mao dismissed her concern as a "minor issue" – a characterisation the Authority disagreed with, citing the significant emotional and financial toll on Ms Treleaven.

The Authority also looked at how Mr Mao communicated with Ms Treleaven following her two resignations. Although he had offered to discuss her "employment issues", that meeting did not deal with the issues themselves, but rather her lateness. The Authority therefore found that MRZW breached their duty of good faith towards Ms Treleaven, causing her to resign.

It was deemed foreseeable that the behaviour was serious enough for resignation to result, especially as Ms Treleaven's vulnerability was known to the employer. Mr Mao's reactions to Ms Treleaven's communications further supported this, along with his quick dismissal without following any fair process. The Authority found Ms Treleaven to have been unjustifiably constructively dismissed.



Ms Treleaven was awarded compensation for hurt and humiliation at a sum of \$15,000, as employment ending was not something she wanted, and she was met with negativity when trying to organise work hours. Ms Treleaven felt hindered by her summary dismissal as Mr Mao would not give her a positive reference while she sought other employment. She was awarded three months of lost wages, at a sum of \$7,800.

Although Ms Treleaven remained in debt to Mr Mao for most of her employment, this debt was one of financial assistance. Despite Mr Mao's good intentions, he inadvisably used the mechanism of wage deductions to get them repaid. The Authority concluded that debt should not reduce Ms Treleaven's remedies for any contributions.

Ms Treleaven also claimed for various breaches of contract and statute. MRZW failed to provide wage and time records when requested. A penalty of \$500 was ordered. Ms Treleaven also claimed that MRZW breached the employment agreement as they failed to provide adequate notice, which resulted in another penalty of \$500. The overall penalties and fees totalled more than \$23,000. Costs were reserved.

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### **Treleaven v MRZW Limited [[2024] NZERA 440; 23/07/24; A Baker]**

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#### **Nature of employment was full-time, not fixed term or casual**

Mr Kim worked as a labourer for Croatian Tilers Limited (CTL) on the Britomart Rail Development Project between November 2020 and February 2021. He said he was offered a permanent position and started working without a written employment agreement. He claimed he was unjustifiably dismissed in February 2021 when CTL advised it had no more work for him, without any notice or consultation.

Mr Kim applied to recover arrears of wages and leave payments. He also sought penalties for breaches relating to the failure to provide an employment agreement and produce wages and time records when requested.

CTL acknowledged Mr Kim undertook work for it but said he was offered work on a casual or fixed term basis, or alternatively, he abandoned his employment. CTL acknowledged no employment agreement was ever provided. It said its aim was to help Mr Kim out as a favour, by giving him some work.

The Employment Relations Authority (the Authority) found the evidence did not support that Mr Kim's employment was casual or fixed-term basis. While there was no employment agreement, Mr Kim said he needed to be at work when CTL told him to be, and understood he was not able to turn any work down. The evidence amply demonstrated Mr Kim was a full-time employee, not a casual or employed on a fixed-term basis.

A dismissal occurs when there is a "sending away" of a worker, so the termination of employment occurs at the initiative of the employer. The context and content of the communication between the worker and the employer are considered objectively to discern what was more likely than not to have occurred on the facts of any particular case.

Mr Kim said he was left in no doubt that his employment was terminated on 18 February 2021. The exchange of text messages between Mr Kim and CTL amply supported that claim. CTL's expected next contract did not come to fruition and work was not available for Mr Kim. His employment was terminated effective from 18 February.

CTL followed no process or consultation requirements in accordance with the Employment Relations Act 2000 (the Act). The failures of procedural fairness were major defects and resulted in Mr Kim being treated unfairly. The Authority determined the dismissal was unjustified.

The Authority also found CTL breached the Act in failing to provide a copy of an intended employment agreement to Mr Kim, and access to a copy of his wages and time records. Finally, Mr Kim requested leave be granted to raise a personal grievance out of time for unjustified disadvantage in relation to breaks, but The Authority declined this.



CTL was ordered to pay Mr Kim \$16,000 compensation for hurt and humiliation, \$13,980 in lost wages, \$2,998 as arrears of wages, \$1,200 in public holiday pay, \$1,118.40 in annual holiday pay, and \$1,000 as a penalty. CTL was also ordered to pay a penalty of \$6,000 into the Authority, to be paid to the Crown. Costs were reserved.

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**Kim v Croatian Tilers Limited [[2024] NZERA 488; 16/08/24; S Blick]**

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**Flawed redundancy process leads to significant compensation payout**

Mr Do Spirito Santo was employed by Exquisite Tiling HB Limited (Exquisite Tiling). The company commenced a restructure process, with the first meeting scheduled for 31 October 2022. Although Exquisite Tiling said the proposal was based around the company facing bankruptcy, no evidentiary documentation was provided, and on 3 November 2022, Mr Do Spirito Santo was advised that his role was made redundant. Although other staff were offered redeployment opportunities, no such discussions were held with Mr Do Spirito Santo.

When Mr Do Spirito Santo asked questions about the selection criteria and financial information, he was sent home and told he was not required to work out his notice period. Further, he said that during the notice period, his usual pay of 45 hours per week was reduced to 30 hours, so was not paid out his full notice period. He raised a claim with the Employment Relations Authority (the Authority) alleging an unjustified dismissal and sought lost wages and compensation.

Exquisite Tiling responded that their change proposal was legitimate and questioned whether the claim by Mr Do Spirito Santo was lodged within 90 days. The company was given every opportunity to attend the Authority's investigation meeting. However, it chose not to attend.

Exquisite Tiling questioned whether the claim by Mr Do Spirito Santo was lodged within the personal grievance timeframe, but he had raised it by 9 February 2023, well inside the cutoff date of 16 February 2023.

In its analysis, the Authority found that Mr Do Spirito Santo's redundancy was both substantially and procedurally unfair. No selection criteria were given to him, there was at the best very limited consultation, no information was provided in support of the company's claimed financial difficulties and no redeployment options were explored. It followed that Mr Do Spirito Santo was unjustifiably dismissed.

The Authority did not agree with Exquisite Tiling's argument that Mr Do Spirito Santo's personal grievance had been lodged out of time. The evidence established it was raised no later than 9 February 2023 which was well inside the cutoff date of 16 February 2023.

The Authority noted Mr Do Spirito Santo's employment agreement stated that he was to be paid for 45 hours per week. Exquisite Tiling was ordered to make up the difference in his notice period pay. They were also ordered to pay the outstanding four days of his notice period.

Mr Do Spirito Santo was able to pick up a new job fairly quickly. As a consequence, the Authority ordered that Exquisite Tiling pay him for the one month's lost wages.

Noting the impact on Mr Do Spirito Santo of the sudden loss of his employment and how Exquisite Tiling had not properly engaged with him, the Authority made a significant compensation award for hurt and humiliation.

Exquisite Tiling was ordered to pay Mr Do Spirito Santo unpaid wages of \$3,421, unpaid notice of \$1,026, lost wages of \$1,539, and compensation for hurt and humiliation of 20,000. It was also ordered to pay Mr Do Spirito Santo \$2,250 as a contribution towards his costs.

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**Do Spirito Santo v Exquisite Tiling HB Limited [[2024] NZERA 476; 08/08/24; G O'Sullivan]**

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### Authority dismisses employer's claims for repayment of debts

Mr Abonitalla was employed as a full-time farmhand by Stonelou Farming Limited (Stonelou) from 13 May 2022 to 12 December 2022. He raised a claim with the Employment Relations Authority (the Authority) alleging he was unjustifiably disadvantaged and dismissed.

Stonelou rejected the claim and lodged a counterclaim for expenses which Mr Abonitalla incurred and failed to repay.

The expenses claimed by Stonelou included a variation of work visa conditions which cost \$940, air travel fees totalling \$2,816.95, and hours paid but not worked worth \$11,022.76 – the total arrived at being \$14,779.71. Mr Abonitalla denied that there was any agreement to repay these amounts.

Mr Abonitalla did not appear at the Authority's investigation meeting. Prior to going overseas, he had been represented by counsel. The Authority thought it most likely that Mr Abonitalla was advised by his counsel of the investigation meeting date and time, and had agreed he would appear by audio-visual link. However, he never appeared before the Authority to give evidence. As he was seemingly not available to establish his claim, the Authority dismissed his claims against Stonelou. The Authority then turned to Stone Lou's counterclaims.

While there was evidence that Stonelou had paid for the work visa variation, there was no evidence this was a loan that Mr Abonitalla would be expected to repay.

Regarding the airfares, Stonelou paid for a flight that Mr Abonitalla missed. Stonelou had then paid for another flight. A text message exchange between the parties made it clear this was in the nature of a loan.

However, when Mr Abonitalla left Stonelou, his final pay only included two weeks' wages along with payment for wet weather clothing and gumboots. The Authority found he had 79.63 hours' worth of accrued leave which was not paid out. It was not clear if holiday pay was paid out at all. The Authority concluded it was more likely that holiday pay was withheld to offset the cost of the airfares. There was insufficient evidence to show what amounts were owing, if any.

Regarding the issue of the wage overpayments, the evidence showed that Stonelou had been generous to Mr Abonitalla and his family throughout the period of employment. For example, it had paid two weeks' wages when Mr Abonitalla was overseas and became unwell. When Mr Abonitalla returned to New Zealand, Stonelou paid him his ordinary salary payments where he was fit to work.

The Authority concluded the evidence did not show Mr Abonitalla agreed that these payments were loans that he would repay. The payments were not by mistake or under duress which would support a right to some equitable remedy. Arguably they could be seen as a payment in advance of a sick leave or holiday leave entitlement. The basis for any reimbursement was unclear, so Stonelou did not have grounds to reclaim it.

No orders were made relating to costs.

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**Abonitalla v Stonelou Farming Limited [[2024] NZERA 502; 21/08/24; H Doyle]**

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## LEGISLATION

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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**

[Auckland Harbour Board and Takapuna Borough Council Empowering Act Amendment Bill](#) (13 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)

[Child Protection \(Child Sex Offender Government Agency Registration\) Amendment Bill](#) (6 December 2024)

[Oversight of Oranga Tamariki System Legislation Amendment Bill](#) (8 December 2024)

[Evidence \(Giving Evidence of Family Violence\) Amendment Bill](#) (19 December 2024)

[Policing \(Police Vetting\) Amendment Bill](#) (19 December 2024)

[Mental Health Bill](#) (20 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](mailto: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.

## 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.

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## 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.

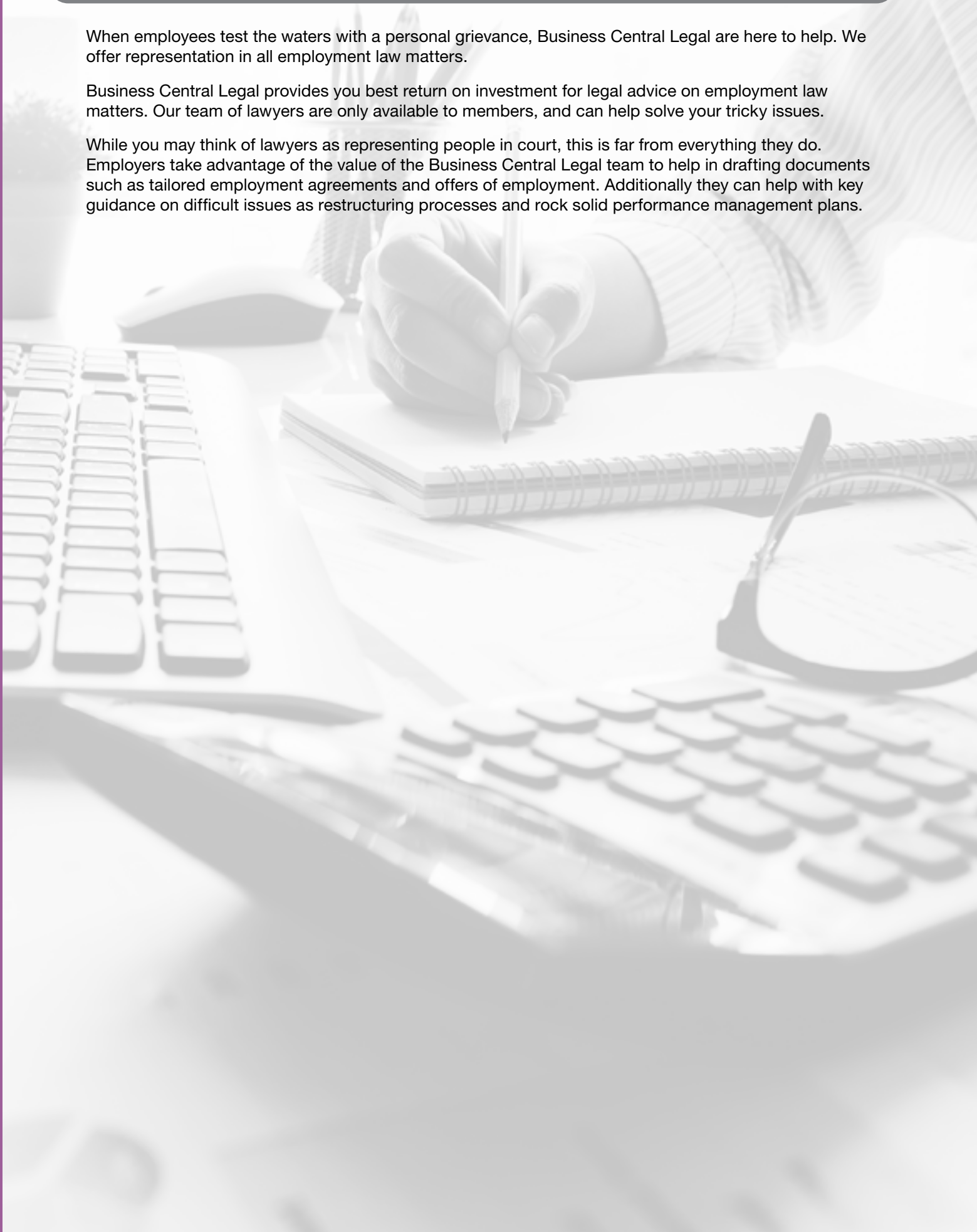
Our Consultants have a wide range of experience and are prepared to help. Whether you need to update your agreements or policies, or embark on performance management, they have the experience to make a difference. There are so many areas they can help; it may be union issues and managing a difficult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

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**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

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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

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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

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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

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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

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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.**