

# EMPLOYER BULLETIN

25 November 2024  
A Weekly News Digest for Employers

## EMPLOYER NEWS

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### Next steps for Regulatory Standards Bill

Regulation Minister David Seymour has announced the next steps in the Government's plan to improve the quality of regulation by opening consultation on a proposed Regulatory Standards Bill.

"New Zealand's low wages can be blamed on low productivity, and low productivity can be blamed on poor regulation," says Mr Seymour.

"To lift productivity and wages, ACT's coalition agreement includes a commitment to pass a Regulatory Standards Act.

"The Bill will codify principles of good regulatory practice for existing and future regulations," says Mr Seymour.

"It seeks to bring the same level of discipline to regulation that the Public Finance Act brings to public spending, with the Ministry for Regulation playing a role akin to that of Treasury."

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

### Red Tape Tipline goes live

Minister for Regulation David Seymour has announced that the Ministry for Regulation's Red Tape Tipline is now live.

"We want to hear about your red tape horror stories. From last Friday, New Zealanders will have a say on how they are regulated through an online portal," says Mr Seymour.

The [Red Tape Tipline](#) is an online resource where the public can make submissions on regulation that affects them.

"Billions of dollars are sapped from New Zealand's economy every year from regulatory burden. In 2015, an NZIER study estimated the cost for businesses to comply with tax and regulatory requirements at \$5 billion, or around 1.3% of GDP."

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

## NZ signs trade deal with Costa Rica, Iceland and Switzerland

Trade and Agriculture Minister Todd McClay has signed a pioneering trade agreement that prioritises New Zealand's sustainable exports at a ceremony during APEC in Peru on Friday.

"The Agreement on Trade and Sustainability (ACCTS), between Costa Rica, Iceland, and Switzerland was concluded in July of this year and opens up significant economic opportunities for New Zealand businesses by eliminating tariffs on key sustainable goods and services," Mr McClay says.

"This agreement removes tariffs on key exports including 45 wood and wool products — two sectors that are vital to achieving our goal of doubling New Zealand's exports by value in ten years.

"This new preferential access enhances New Zealand's competitive standing in global markets and backs Kiwi exporters to succeed overseas."

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

## MBIE is helping New Zealanders spot scams through Fraud Awareness Week

During this year's Fraud Awareness Week which is from 18 to 24 November, the Ministry of Business Innovation and Employment (MBIE) is warning that it is more important than ever to learn the signs of online scams.

New data released on Friday from Payments NZ shows \$194,269,962 was lost due to scams in the past year (1 October 2023 to 30 September 2024), according to 11 of New Zealand's largest financial institutions.

"While it is great to see that figure fall slightly compared 2022/23, the fact that it is still high just proves scammers keep evolving to become more complex," says MBIE Business Specialist, Ian Caplin.

"We are working to help New Zealanders learn what scams look like, as we know how hard it can be to identify them."

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

## Business price indexes: September 2024 quarter

In the September 2024 quarter compared with the June 2024 quarter:

- Output producers price index (PPI) rose 1.5 percent.
- Input PPI rose 1.9 percent.
- Farm expenses price index (FEPI) fell 0.2 percent.
- Capital goods price index (CGPI) rose 0.1 percent.

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

### National population estimates: At 30 September 2024 (2018-base)

National population estimates give the best available measure of the population, by age and sex, usually living in New Zealand.

At 30 September 2024:

- New Zealand's estimated resident population was provisionally 5,348,600.
- There were 2,688,800 females and 2,659,800 males.
- The median age of females and males was 39.0 and 37.2 years respectively.

During the year ended September 2024:

- New Zealand's population grew by 64,800 (1.2 percent).
- Estimated natural increase (births minus deaths) was 19,900 (31 percent of total growth).
- Estimated net migration (migrant arrivals minus migrant departures) was 44,900 (69 percent of total growth).

To read further, please click here.

### Latest Quarterly Investment Report released

The Government has released its second Quarterly Investment Report (QIR) which shows substantial work still to be done by agencies to improve investment reporting and meet the Government's expectations, Infrastructure and Acting Finance Minister Chris Bishop says.

"New Zealand has significant infrastructure and investment needs. The Government is determined to get the foundations of our infrastructure system right, to drive improved value for money, a more consistent pipeline of investments, and deliver on-time and on-budget projects," Mr Bishop says.

"The Investment Management System (IMS) and the Quarterly Investment Reporting (QIR) are key mechanisms for Cabinet to hold agencies to account for investment performance, and to pre-emptively intervene to ensure projects are on track to deliver."

To read further, please click here.

## EMPLOYMENT RELATIONS AUTHORITY: FOUR CASES

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### Requiring employee to work in the office held as unjustified disadvantage

Ms Martick was employed by First Credit Union Incorporated (First Credit) until she was made redundant on 14 June 2023. She claimed she had been unjustifiably disadvantaged and dismissed. She sought remedies in the Employment Relations Authority (the Authority).

From the outset of her employment, Ms Martick always worked from home, as commuting to the office was impractical for her. In early 2023, First Credit had problems staffing its branches. On 3 May 2023, the Chief Executive Officer, Mr Scott, informed Ms Martick she would need to return to working at the Avondale branch within three business days. The sudden requirement shocked Ms Martick, as it was the first time she had received notice of such a change. She replied by emphasising that she had always worked remotely, and the “place of work” expressed in her employment agreement was not applicable.

Mr Scott responded by highlighting her employment agreement, which stated any variation to her role must be in writing, and that a key part of her duties involved “over the counter” services. Ms Martick argued her role was designed for remote work, had posed no issues until now, and requested an explanation for the change. She later expressed additional concerns that three business days’ notice was unreasonable, and that “returning” to work was inaccurate, as she had never worked in the office. She outlined being open to discussion and negotiation but believed she could not be directed to work in the office without prior consultation. Following that, Mr Scott invited Ms Martick to a meeting to present a restructuring proposal.

The proposal meeting took place on 18 May 2023 and was followed up in writing. It explained that working remotely no longer suited First Credit’s business needs and that her position may therefore become disestablished. Ms Martick asserted that her role was unique and reiterated that there had been no prior consultation about her working in the office.

In his response, Mr Scott indicated that First Credit had considered her feedback and invited her to another meeting to discuss their preliminary decision to disestablish her role. During this meeting on 30 May 2023, First Credit reaffirmed to Ms Martick that her role may be disestablished and requested further feedback before finalising the decision.

At the final meeting on 2 June 2023, Mr Scott confirmed that her position would be disestablished and informed her of redeployment options available until 6 June 2023. On that date, Ms Martick reiterated that the requirement to work at the Avondale branch conflicted with her employment agreement and history of remote work. Requiring her to come into the office disadvantaged her due to the travelling distances and there was no genuine need for redundancy. Mr Scott acknowledged disagreement over contract terms but reiterated that the company’s needs had changed. He confirmed redeployment options as well as the date when her position would be disestablished.

The Authority first determined whether Ms Martick was unjustifiably disadvantaged. Her offer letter listed the Avondale office as her place of work and her employment agreement allowed First Credit to assign her to any branch, with consideration to reasonable travel distances. Importantly, there was no written variation formalising her remote working arrangement. Despite First Credit’s knowledge and support of Ms Martick’s working from home arrangement, the Authority determined it had not become a term of her employment as such an implied arrangement would be inconsistent with her employment agreement.

However, the agreement did contain a specific clause which required First Credit to consult before making any changes to her employment. That consultation never occurred. The Authority determined that failure violated the terms of her agreement and showed a lack of constructive engagement in maintaining the employment relationship. First Credit was aware of her working from home arrangement and, as per the agreement, should have provided Ms Martick with a reasonable opportunity to comment before proceeding with the restructuring. Because that did not happen, the Authority held that she had grounds for an unjustified disadvantage claim.

Next, the Authority considered whether Ms Martick was unjustifiably dismissed by her redundancy. It accepted First Credit’s genuine business need to optimise its resources, which included a focus on

branch support. The redundancy process considered Ms Martick's role, which no longer aligned with business objectives. The Authority focused on whether the initial failure to consult before enforcing change undermined the redundancy process. It ultimately found that redundancy was justified due to a genuine business need. The restructure consultation process had been fair, provided opportunity for input, and redeployment options were offered, despite Ms Martick being unable to accept them.

For Ms Martick's unjustified disadvantage claim, the Authority acknowledged she fulfilled her role requirements and acted in First Credit's interests. She was awarded \$12,000 for hurt and humiliation, with no indication she contributed to the circumstances leading to her grievance. Costs were reserved.

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**Martick v First Credit Union Incorporated [[2024] NZERA 511; 26/08/24; M Urlich]**

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### Employee not dismissed but was unjustifiably disadvantaged

Mr Rosantina was employed by Hospitality Partners Limited, trading as Subway Temuka (Hospitality Partners), as a sandwich artist from March 2023 until his employment ended in disputed circumstances in July 2023. Mr Rosantina alleged his employment had ended in an unfair manner, and during his employment, he had been unfairly treated. This treatment regarded Hospitality Partners' handling of a request for leave, and pressure to make himself available for work while he was unwell.

At the outset of the relationship, Mr Rosantina's employment was casual. He was still at school, so being potentially allocated weekday shifts between 4:30 pm to 8:30 pm suited him. He had no fixed days of work, instead plugging gaps in the roster when he was available, with his weekly hours fluctuating. Despite the employment agreement provision allowing an employee to decline work offered, a problem arose when Mr Rosantina requested time off the roster to attend a forthcoming school camp from 5-10 July 2023. Mr Rosantina was told that was not possible.

As a result of concerns about being pushed to work when needed, Mr Rosantina resigned on 15 June 2023. He texted the director of the company, Ms Kour, and said he would work out a notice period up to 29 June 2023. However, Mr Rosantina then changed his mind. He messaged Ms Kour again on 26 June 2023 and asked if he could keep his job. Ms Kour said that was okay. However, she then discovered that the store manager had already interviewed another worker and offered them a job.

To further confuse matters, on 26 June 2023, Mr Rosantina felt unwell at school and advised Ms Kour by text. When she had ascertained Mr Rosantina was not going to work that day, Ms Kour texted: "Regarding your resignation I am sorry Sylvia has already interviewed another girl. So unfortunately, we cannot keep you. Sorry." Mr Rosantina then asked if he was being sacked. Ms Kour denied he was and referred to his earlier resignation.

After 26 June 2023, Mr Rosantina was not offered further work. On 4 July 2023, Ms Kour emailed Mr Rosantina and invited him to a meeting. Ms Kour advised him that the purpose of the meeting was to discuss his concerns regarding his employment. In the email, Ms Kour brought up an option the manager had given of keeping Mr Rosantina on as a casual, but they had not heard from him. Mr Rosantina never responded to Ms Kour's email as he considered his job had ended by being dismissed and replaced by another worker.

The Employment Relations Authority (the Authority) firstly considered the nature of the employment and by a close margin, found the relationship was better described as permanent part-time rather than casual. The Authority then considered whether Mr Rosantina was dismissed, as in a termination of employment at the initiative of the employer. Despite engaging an additional employee, Hospitality Partners did not terminate Mr Rosantina's employment. Up to 4 July 2023, Mr Rosantina was still notionally employed, and Hospitality Partners and Ms Kour were willing to engage. In contrast, Mr Rosantina treated his employment as at an end. In all the circumstances, Mr Rosantina was not unjustifiably dismissed – he resigned too early without giving Hospitality Partners sufficient time to rectify his concerns.

The Authority did however find Hospitality Partners' actions were not ones a fair and reasonable employer could have engaged in all the circumstances. Ms Kour failed to communicate with Mr Rosantina in a timely and reasonable manner. It ignored the provision of his employment agreement allowing him to turn down work and placed undue pressure on him to perform the employment agreement in a manner not envisaged by its terms or casual label.

The Authority found Mr Rosantina experienced disadvantage in that Hospitality Partners' actions caused him detriment when he was employed. Hospitality Partners was ordered to pay Mr Rosantina \$3,000 in compensation for hurt and humiliation.

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### **Rosantina v Hospitality Partners Limited [[2024] NZEA 535; 06/09/24; D Beck]**

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#### **Employer responded fairly and reasonably to employee's dangerous driving**

On 17 September 2022, Mr Fuimaono was driving a bus for his employer, Ritchies Murphy Transport Solutions Limited (Ritchies Murphy). A distressed young man tried to get on the bus pleading that a group on the bus had stolen his phone. The situation rapidly deteriorated with the man being assaulted by the other passengers and then dragged along the road while holding on to the bus.

Mr Fuimaono did not report the incident to his bus depot call centre, seek police assistance, get off the bus to check the condition of the prone man, or call for an ambulance. After being shown CCTV footage of the incident, Mr Fuimaono resigned. However, Ritchies Murphy did not accept his resignation and continued to investigate the matter, which ultimately led to Mr Fuimaono's employment being terminated in October 2022 due to serious misconduct.

Mr Fuimaono raised a personal grievance. He claimed Ritchies Murphy had not fairly investigated the incident and not honoured an arrangement where, if he resigned, he would get his job back in two months' time once any publicity had died down. Ritchies Murphy denied that any arrangement had been made about reinstatement and said they had carried out a fair process. The matter came before the Employment Relations Authority (the Authority) for a determination.

The video recordings provided compelling evidence that Ritchies Murphy had a reasonable basis for concluding Mr Fuimaono's actions or inactions amounted to serious misconduct. Mr Fuimaono claimed he did not know how to request assistance using the bus handset, but he had previously requested assistance for seemingly less serious incidents.

The Authority observed that Mr Fuimaono failed to disclose all the circumstances of the incident to Ritchies Murphy prior to the discipline meeting, which would reduce Ritchies Murphy's trust and confidence. Ultimately, Ritchies Murphy's conclusion of serious misconduct resulting in dismissal, was within the range of responses open to a fair and reasonable employer.

The Authority found that Ritchies Murphy had provided procedural fairness. It placed the full allegations before Mr Fuimaono, gave him an opportunity to comment, and considered that feedback in good faith before making a decision.

Mr Fuimaono criticised this process. He first claimed he had not been told of the outcome of the disciplinary process by phone and mail as Ritchies Murphy said it would. The Authority preferred the version of Ritchies Murphy's witnesses that, on the balance of probability, Mr Fuimaono had been notified of the outcome.

The second criticism centred on the alleged deal where Mr Fuimaono would be rehired after two months. While it was possible a supervisor did suggest to Mr Fuimaono that he should resign and could return to work later, there was no evidence that such a proposition was endorsed by a representative of Ritchies Murphy who was authorised to make such a commitment.

Finally, Mr Fuimaono said when he asked Ritchies Murphy about being employed again in December 2022, he was given an application form to complete, when Ritchies Murphy had no intention of rehiring him. The Authority found Ritchies Murphy acted in a misleading way, but this was done outside an

existing employment relationship, so was not subject to the good faith obligations of openness and honesty that would otherwise apply. It did not make the disciplinary process and its outcome unjustified.

Mr Fuimaono's personal grievance application was declined. Ritchies Murphy's decision to dismiss him for serious misconduct, and how that decision was reached, were what a fair and reasonable employer could have done in all the circumstances at the time. Costs were reserved.

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**Fuimaono v Ritchies Murphy Transport Solutions Limited [[2024] NZERA 563; 20/09/24; R Arthur]**

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**Employer jumps too quickly to perceiving resignation**

Ms Rawlin worked as a beauty therapist trainee for Absolute Beauty Limited (Absolute) until 23 March 2023. In a discussion about taking time off work, Absolute believed Ms Rawlin resigned. Ms Rawlin applied to the Employment Relations Authority (the Authority) arguing that she had been unjustifiably dismissed. Absolute argued that Ms Rawlin's employment had come to an end by mutual agreement.

On the day before Ms Rawlin's employment ended, she had a meeting with Absolute's director, Ms Robb. The purpose of the meeting was for Ms Rawlin to explain that her doctor had recommended she take time away from work, because of an adverse skin reaction she was having to the massage oil used. However, Ms Robb interpreted what she had said as submitting her resignation. The day after the meeting, Ms Robb notified her that her resignation had been accepted. Ms Robb then reallocated all of her client appointments to other staff. When Ms Rawlin sought clarification around what was going on, considering she had not intended to resign, Ms Robb reconfirmed that her employment had ended.

The Authority had to determine whether the employer's decision to dismiss Ms Rawlin was justified, based on what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. That involved looking both at whether the employer's substantive reasons were sufficient to justify the decision and whether the procedure it followed when it made the decision was fair. Generally, defects in a disciplinary process do not render the process unjustified if the defects were minor and did not result in the employee being treated unfairly.

The Authority ultimately decided that Ms Rawlin had been unjustifiably dismissed. It looked at what occurred at the meeting on 22 March 2023. Ms Robb had been taking a break between appointments when Ms Rawlin approached her. Ms Robb said it had been a busy day for her. Ms Robb had not been told what the meeting was going to be about beforehand. The Authority characterised the meeting as a "rushed conversation", likely having taken only five to ten minutes. Ms Rawlin was quite anxious in the meeting considering Ms Robb was older, the successful owner-operator of her own business and described as forthright. The Authority found Ms Rawlin had been "on the back foot here."

Ms Robb would have also been concerned about Ms Rawlin taking leave at that time, as she had intended for her to cover another staff member who was soon to begin parental leave. Ms Rawlin told Ms Robb that she would "stand down if you need to get someone else to do the parental leave." That statement was what Ms Robb relied on as Ms Rawlin submitting her resignation. The Authority did not think those words could reasonably have confirmed that Ms Rawlin had clearly and unequivocally resigned. At the least, Ms Robb was expected to have had a fuller discussion with Ms Rawlin, to better clarify what was communicated during a short discussion between clients on a busy day. It found Absolute had breached its duty of good faith by not constructively engaging with Ms Rawlin about whether she had intended to resign. Instead, it had attempted to latch onto words that could not reasonably be construed as an unequivocal resignation.

Absolute was ordered to pay Ms Rawlin \$12,000 as compensation for hurt and humiliation. It noted that such compensation would not necessarily be lessened because the successful claimant only worked part-time hours. It was also ordered to pay her \$1,181.70 for lost wages. Absolute also claimed that after Ms Rawlin's employment ended, it was discovered that she had been working with Absolute's clients privately while employed, which was in breach of her employment agreement. It argued that as a result remedies should be heavily reduced. The Authority found little evidence of the claim, but in any case, such an action did not contribute to the situation that gave rise to the personal grievance and the relevant remedies. Costs were reserved.

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**Rawlin v Absolute Beauty Limited [[2024] NZERA 567; 23/09/24; A Baker]**

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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: Twelve Bills**

[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)

[Responding to Abuse in Care Legislation Amendment Bill](#) (11 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)

[Principles of the Treaty of Waitangi Bill](#) (7 January 2025)

[Disputes Tribunal Amendment Bill](#) (16 January 2025)

[Crimes \(Countering Foreign Interference\) Amendment Bill](#) (16 January 2025)

[Employment Relations \(Employee Remuneration Disclosure\) Amendment Bill](#) (23 January 2025)

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



#### ENTERPRISE SERVICES

0800 800 362  
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[www.businesscentral.org.nz](http://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  
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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.

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

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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.**