BusinessCentral

EMPLOYER BULLETIN

4 November 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

Security advice for start-ups welcomed

Minister responsible for the security and intelligence agencies, Judith Collins, has welcomed new guidance that aims to protect New Zealand's start-up and emerging technology sector from the threat of economic espionage.

The advice - Secure Innovation: Security Advice for Emerging Technology Companies – is published by the New Zealand Security Intelligence Service and the Government Communications Security Bureau's National Cyber Security Centre (NCSC).

"New Zealand's technology sector is our third largest exporter," Ms Collins says, "with $10.7 billion of goods and services exported last year and the sector contributing $23 billion to our gross domestic product."

To read further, please click here.

Have your say on changes to NZ Post's mail service obligations

The Ministry of Business, Innovation and Employment is seeking feedback on how changes to the minimum obligations on NZ Post's mail service could impact New Zealanders.

As mail volumes continue to decline, changes to NZ Post's service obligations (set out in a Deed of Understanding) are being proposed to ensure the ongoing commercial sustainability of mail delivery, says MBIE's General Manager, Communications Infrastructure and Trade, James Hartley.

"The Deed of Understanding includes mail delivery frequency and the number of postal outlets available," says Mr Hartley.

"Compared to 20 years ago, we send around 813 million fewer mail items, and this is expected to further decline by 2028.

"We recognise the importance of the mail service, particularly to rural and older New Zealanders, and would like to hear feedback."

Consultation is open until 5pm, 10 December 2024.

Read the full proposal and have your say here.

Feedback wanted on better protecting people and property from fire

The Government is seeking feedback from the building and construction sector on key issues they have experienced or identified in the Building Code related to fire safety.

The Ministry of Business, Innovation and Employment has commenced a review of Aotearoa New Zealand's fire safety requirements in the Building Code. The review aims to address issues regarding clarity and effectiveness of current fire safety provisions to support more timely and consistent decision-making.

The review opened for public comment runs until 5pm, Friday 6 December 2024.

To read further, please click here.

Feedback wanted on ACC's occupational diseases list

The Ministry of Business, Innovation and Employment is seeking feedback on proposed additions to the list of diseases covered under ACC where there is a link to workplace exposure.

Accident Compensation Policy Manager Bridget Duley says ACC's list of occupational diseases, known as Schedule 2, provides a more direct route to accessing cover where it is highly likely the disease is caused by workplace exposure.

"Before making changes to Schedule 2," says Ms Duley, "all New Zealanders are invited to have their say during the consultation which runs from today until 27 November 2024."

Schedule 2 may lead to a person receiving their claim decision faster, as less evidence is required of the claimant when a link between the illness and workplace is already indicated in the Schedule 2 list. The list was last updated over 15 years ago.

For more information and to make a submission, please click here.

Employment indicators: September 2024

Averaged out across all industries, in September 2024 there was no seasonally adjusted change in the 2.36 million filled jobs in New Zealand (compared with the August 2024 month). Specifically, primary industries were down 0.8 percent (872 jobs) and goods-producing industries were down 0.2 percent (759 jobs). Service industries were up 0.1 percent (2,711 jobs).

Filled jobs were 2.35 million – down 20,839 (0.9 percent) – compared with September 2023. The regions of New Zealand that experienced the largest changes in filled jobs all trended downward by 1-2 percent. Actual gross earnings on an accrual basis for the September 2024 month were $15.2 billion, compared with $15 billion for the September 2023 month.

By industry, the largest changes in the number of filled jobs compared with September 2023 were in health care and social assistance, which was up 3.9 percent (10,574 jobs). Other industries, like construction, administrative and support services, accommodation and food services and manufacturing, all experienced downward trends.

In September 2024 compared with September 2023, the number of filled jobs fell by 1.6 percent (18,801 jobs) for men and fell by 0.8 percent (8,991 jobs) for women.

The age group that experienced the largest changes in the number of filled jobs, compared with September 2023, were in the 15–19 years age range, who were down 13 percent (17,604 jobs). Other age ranges experienced stability in comparison, with changes between 3 to 5 percent.

To read further, please click here.

Business count indicators: September 2024

Business count indicators provide monthly counts of businesses grouped by industry and region.

The next release for October 2024 will be released on 28 November 2024.

The data can be accessed here.

Changes to accreditation rules for companies involved in a business sale or merger

The Government has made changes to the accreditation and Job Check process to make it easier for employers and people holding an Accredited Employer Work Visa (AEWV) during a business sale or restructure.

From 6 November 2024, if an AEWV holder remains in the same role and location, but their employer changes due to a business sale or restructure, then the AEWV holder must still apply for a Job Change. The new employer will not need to apply for a Job Check unless the AEWV holder's role or work location will change.

If the new employer holds or has applied for accreditation when Immigration receives the Job Change application, it will be able to approve the Job Change before deciding the employer's accreditation application.

Anyone holding an AEWV who transfers to a new employer after a sale or restructure will be counted in the employer's quota of 5 AEWV employees, under standard accreditation. Employers who will exceed this should apply for high-volume accreditation before the workers apply for their Job Change.

To read further, please click here.

Protection of migrant workers taking a back seat to employers' needs

Te Kāhui Tika Tangata, the Human Rights Commission, feels protecting migrant workers from being exploited in Aotearoa New Zealand is taking a back seat to moves to reduce costs.

The Commission recently completed a human rights review of the Accredited Employer Work Visa scheme which found evidence of migrant workers being charged tens of thousands of dollars for fake jobs, not receiving wages and/or wage records and sliding into the unregulated informal economy,

where they are exploited with little or no pay and long hours. They have been evidenced to live in poverty, in crowded, unhealthy, unsafe housing or campgrounds. Their visa being tied to a specific employer makes it hard for them to find legitimate employment elsewhere.

Recently announced changes to the Migrant Exploitation Protection Visa (MEPV) reduced support for migrant workers experiencing exploitation while doing nothing to reduce the risk of it happening, Equal Employment Opportunities Commissioner Saunoamaali'i Karanina Sumeo said.

"We need significant policy changes to ensure that the AEWV scheme includes and protects the human rights of people who work in our businesses and economy… The changes need to include requirements for ethical recruitment and an end to the tying of visas to a specific accredited employer."

The Commissioner welcomed a recent announcement from the Government that from December 2024, more partners of AEWV holders will have open work rights in New Zealand.

"We also need… meaningful business checks, and stronger ways to remedy exploitation," she said. "Because it appears to be difficult to control what is happening offshore we need an immigration system that requires employers to recruit responsibly and ethically so they do not allow exploitation to occur."

The Commission has been told that more resources including labour inspectors are needed.

To read further, please click here.

EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

External delays are not held against employer

Ms Keung and the Board of Trustees of Waatea School (the Board) entered into a Record of Settlement (the Settlement) on 21 February 2022. To follow through with its obligations upon entering into the Settlement, the Board was required to gather certain information. However, the Board experienced difficulties with staffing that process and obtain information. Ms Keung argued that the Board breached the Settlement. She claimed that as a result of the Board's delays she did not receive the benefit of a timely and complete settlement as agreed. She sought compliance orders, repayment of monies owing and penalties.

The Settlement provided that Ms Keung's employment would end on 21 February 2022. Clause 6 stated the parties would jointly instruct a specific staff member to report back "as soon as possible" on Ms Keung's renumeration entitlements and records. These were specified as her salary entitlements for 2020/21 ("base salary not including management units"), the actual days taken off because of sickness in 2020/21, the days taken as leave without pay, and her accrued entitlement to paid sick leave.

The Settlement then required the Board to "reinstate any shortfall" in Ms Keung's "contractual entitlement to salary" and her "entitlement to sick leave". That was to be based off the report from Clause 6 subject to other caveats including that the parties had already agreed on compensation for 27 days of sick leave, and that there was no dispute over her entitlement to management units, with "no extra compensation… in this regard".

Ms Keung felt there were issues at every stage of fulfilment of the Settlement. The relevant staff member who was supposed to write the report went overseas, expecting to work on the report remotely. That staff member discovered that Ministry of Education policies prevented her accessing the pay data from an overseas ISP address.

Due to that delay, Mr Osbourne, a member of the Board, took responsibility for compiling the report. He requested information from the Ministry of Education, which he ultimately had to escalate to the Deputy

Secretary for Education. He received a significant volume of pay records in May 2022, which he spent the full subsequent time working through.

In that time, Ms Keung filed a statement of problem on 24 May 2022. While the parties exchanged correspondence, Mr Osbourne continued to work on the pay record analysis. The Board relied on that information to pay Ms Keung a total of $10,993.05 for the 2022 to 2023 period, some being wages for days that Waatea School previously logged as unpaid leave.

Ms Keung argued she did not get to provide joint instruction to the original staff member assigned to the report. She also argued the Board should have acted faster to provide her the information. She claimed she was owed a specific allowance, which resulted in an owing balance of $49,000. She also felt some of her records were not captured correctly. She said she did not know if one other allowance was calculated fully; that five of her recorded days off were due to being sick, and as a result her final sick leave calculation was inaccurate; and her leave without pay was only calculated up to mid-2021.

The Employment Relations Authority (the Authority) found the Board realistically fulfilled the clauses to the best of its ability. Having its staff member blockaded and being delayed was outside of its control, and it took appropriate responsive actions in those scenarios. Ms Keung had the ability to give her joint instruction and feedback to Mr Osbourne instead and was not deprived of any opportunities. Ultimately, the Board indeed delivered the information “as soon as possible”, thereby fulfilling Clause 6.

The Authority found the Board’s calculations were reliable, being based on the data Mr Osbourne obtained. The Settlement expressly specified “contractual entitlement to salary” and excluded “extra compensation”. Therefore, the allowances were excluded. After the payments the Board had already made, the only remaining figure was to pay $2,535.61, which was part of Ms Keung’s salary.

Similarly, the Settlement only required recording Ms Keung’s approved sick leave. Any debates she had on the purpose of other leave did not need to be captured in the report. Finally, the Settlement’s purpose had been to expressly close many of the matters Ms Keung had initially raised, such as clarifying how many days she had had off. Being that settlements are full and final, the Authority would not re-open those questions.

Ms Keung applied for the Board to receive a penalty for its delay in paying the Settlement figure. The Authority weighed both the Board’s continuous best efforts to pay, and that the final figure was in genuine dispute, so could not be resolved until the hearing. It concluded the Settlement was not breached due to the genuine dispute and did not issue a penalty.

The Authority’s outcome was to declare the remaining salary payable to Ms Keung and costs were reserved.

Keung v The Waatea School Board of Trustees [[2024] NZERA 324; 31/05/24; C English]

Employee made redundant without process or genuine reason

Ms Andrews had been employed as a full-time dairy farm assistant by Shanora Limited (Shanora) from August 2022. She claimed that she was unjustifiably dismissed due to a redundancy process that was not fair, reasonable or in accord with good-faith principles. She claimed compensation for distress, lost wages and penalties.

Co-directors Mr and Mrs Hitchcock had texted Ms Andrews on 2 January 2023 to schedule a meeting for the following day. No other information was provided until the meeting itself where she was informed that she was being made redundant. Ms Andrews was also told that she was not eligible for redeployment, her last day would be 18 January 2023 and that her notice period would be paid in lieu. The meeting was brief, had little discussion and was followed up with a letter informing Ms Andrews she had the right to appeal the decision. Shanora claimed the restructure was initiated for genuine business reasons. However, a week after Ms Andrews was made redundant, Shanora posted a job listing for her role as a farm assistant herd manager.

The Employment Relations Authority (the Authority) reviewed whether the redundancy was substantively justified and decided in a procedurally fair way. Given the advertising of the position soon after Ms Andrews' redundancy, the Authority found that no genuine redundancy situation existed. Ms Andrews was deemed to have been unfairly targeted.

Since Shanora did not fully inform Ms Andrews about its meeting nor give her a proper opportunity to comment, it also failed to follow a fair process. Mr and Mrs Hitchcock already pre-determined the decision when they met with Ms Andrews. The Authority found that Shanora unjustifiably dismissed Ms Andrews.

Ms Andrews also claimed that unlawful deductions were made from her final pay. Without consultation, $719.24 was taken for an alleged overpayment, and she was paid up until 15 January instead of 18 January. Shanora owed Ms Andrews a total of $1,526.84 for the unlawful deduction and the three days' pay.

Shanora was ordered to pay Ms Andrews $4,086 for lost wages, $1,526.84 for wages lost as a result of the grievance, and $14,000 for hurt and humiliation. Costs were not an issue as both parties were not represented.

Andrews v Shanora Limited [[2024] NZERA 415; 11/07/24; D Beck]

Employer suspends without process and unjustifiably dismisses employee

Mr Hakaraia was employed by The Truck Company Limited (TTC) as a tyre technician in August 2021. Mr Hakaraia said he was unjustifiably dismissed by letter on 8 May 2023. He also claimed he was disadvantaged when TTC commenced an unjustified restructure, suspended him from work without notice, and made unfounded allegations of theft against him alongside running an investigation, both without evidence.

In the days leading up to TTC's restructure, an employee made a complaint about Mr Hakaraia. Mr Naidu, sole director and shareholder of TTC, met with Mr Hakaraia to discuss that complaint. The complaint remained unresolved when Mr Naidu gave Mr Hakaraia a letter of the restructure proposal on 24 April 2023. It invited him to meet two days later, on 26 April 2023, to discuss the proposal and how feedback was to be received.

Mr Hakaraia had just begun work on 26 April 2023 when he received a phone call from Mr Naidu's lawyer, Mr O'Connor. Mr O'Connor told him to go home, with further information to be provided. Mr O'Connor followed up by emailing Mr Hakaraia that he had been instructed to carry out an employment investigation into Mr Hakaraia's conduct. TTC alleged that Mr Hakaraia had attempted to procure TTC customers to a new venture and had breached confidentiality by discussing the proposed restructure with others. It alleged his behaviour had disrupted the workplace. The email proposed Mr Hakaraia be suspended from work on full pay until a meeting to discuss the findings on 28 April 2023. If Mr Hakaraia wished to make a submission about his suspension, he was to reply by 9:00pm that night, otherwise the suspension would stand.

On 28 April 2023, Mr O'Connor emailed Mr Hakaraia to say that TTC would run a disciplinary meeting without Mr Hakaraia or the lawyer he had engaged. He asked that Mr Hakaraia return the company truck and tools. That evening, Mr O'Connor sent a further email outlining that Mr Hakaraia had not attended the meeting and the company property had not been returned.

On Friday 4 May 2023, Mr O'Connor emailed Mr Hakaraia's lawyer with new issues. He alleged Mr Hakaraia committed theft by not returning the company property, which TTC considered serious misconduct. That, along with his failure to engage promptly in the investigation, formed the basis for a proposal that he be summarily dismissed. Feedback was requested by 5:00pm that day, or at the latest, first thing the next day.

TTC emailed Mr Hakaraia on 8 May 2023 having found its four allegations were proven and it would dismiss Mr Hakaraia without notice. It also said TTC would deduct $3,000 from his final pay until it could confirm the replacement cost of the missing tools.

Mr Hakaraia denied he took the tools. His employment agreement did not contain non-solicitation clauses. He talked to one employee of TTC about the restructure, thinking all staff were affected by it. The Employment Relations Authority (the Authority) found TTC gave no detail about its allegations, including how it came to have concerns. Mr Hakaraia had requested the original complaint, and it was never provided. The process was rushed. The emails between lawyers evidenced that Mr Hakaraia was not given a genuine opportunity to respond. The Authority found Mr Hakaraia's suspension and dismissal were unjustified. He was also disadvantaged in the workplace when TTC deducted from his wages without consent.

The Authority made an order for 12 weeks' lost wages amounting to $2,789.36. The employer made sudden actions with no warning. It changed from a claim of redundancy to misconduct investigation and relied on a flawed process. Due to those issues, the Authority awarded compensation for Mr Hakaraia's hurt and humiliation. It awarded him $22,000 for the dismissal and unjustified suspension and $1,000 for the unlawful wage deduction. Mr Hakaraia was also awarded a reimbursement of the $3,000 unlawful wage deduction. Costs were reserved.

Hakaraia v The Truck Company Limited [[2024] NZERA 454; 26/07/24; S Martin]

Pattern of employment law breaches leads to constructive dismissal

Ms Brooker was employed by Japanese Car Parts Limited (JCP) from 1 August 2022 until 7 November 2022 when she resigned. She raised a claim with the Employment Relations Authority (the Authority) alleging that, through JCP's actions, she had been constructively dismissed. She also advanced claims for various disadvantages and sought penalties against JCP for these.

The claims largely centred on the actions of Mr Hassani, JCP's sole director. Ms Brooker alleged that he unfairly targeted her in a way that other employees, including her manager, had noticed and commented on, but failed to stop.

Ms Brooker had not been given a written employment agreement prior to starting work. When she wanted to discuss the terms of her employment some weeks later, JCP suspended her and told her that if she did not sign the new agreement it provided, her employment would be terminated. Upon receiving a written agreement, Ms Brooker signed the document.

The Authority found that JCP breached the Employment Relations Act 2000 (the Act) in many ways. The Act required JCP to have provided Ms Brooker with a copy of the intended employment agreement, discussed its proposed terms and conditions before she started work, advised her of her right to take independent advice and given a reasonable opportunity to seek such advice.

Ms Brooker claimed JCP disadvantaged her when it suspended her. JCP claimed the suspension was justified based on health and safety issues. However, the Authority rejected that defence. At the time of the suspension, Ms Brooker had been working for several weeks and no health and safety concerns had been raised with her.

JCP also paid Ms Brooker a "training" wage for her first two weeks of employment, which was below the minimum wage. In the third week, it paid her less than the agreed hourly rate. The unjustified suspension and underpayment of wages were all breaches of her employment agreement.

The Authority found JCP repeatedly did not show good faith. That included unilaterally changing Ms Brooker's hours of work without any consultation and failing to be responsive to reasonable requests for information. At one point, Ms Brooker privately chatted with a colleague and disclosed private medical information. Her colleague then disclosed that private information to others, which JCP learnt about and sought to use in a disciplinary meeting.

The Authority also criticised JCP's handling of rest breaks. For the first two weeks of Ms Brooker's employment, she was not allowed to take them at all. If she insisted upon taking them, they had to be while she was at her desk. Her employment agreement did not include any clause relating to statutory breaks as required by law. The Authority also found this breached the Act.

The Authority then turned to whether Ms Brooker had a claim for unjustified constructive dismissal. It considered a disciplinary meeting that Ms Brooker was invited to attend on 27 October 2022. She was accused of writing a letter about health and safety concerns, which she ultimately did not author. JCP also accused her of taking 12 days off work. The disciplinary invitation went on to suggest that termination might be an outcome.

Three days before the disciplinary meeting, JCP also held an informal meeting with Ms Brooker about her timeliness. The matter improved as a result. In light of this, there was no justification to hold a disciplinary meeting with termination as a possible outcome.

The Authority found that Ms Brooker's resignation was a constructive dismissal. The initiative for ending her employment came from JCP, in particular its director. Had JCP met its employment law obligations, Ms Brooker would not have resigned. However, Ms Brooker's lateness to work contributed to the situation, so the Authority reduced compensation for this by 15%.

JCP was ordered to pay Ms Brooker $3,000 compensation for failing to provide a written employment agreement and $11,040 for her lost remuneration. She was also compensated $7,000 for being unjustifiably suspended and $21,250 for the constructive dismissal. Finally, it was to pay $13,000 in penalties to the Authority, with $8,000 of that going to Ms Brooker. Costs were reserved.

Brooker v Japanese Car Parts Limited [[2024] NZERA 467; 31/07/24; R Larmer]

Employee fails to prove business agreed to additional hours

Ms Jenssen raised a claim with the Employment Relations Authority (the Authority) alleging she had been offered an increase in hours of work by Coro Trading NZ Limited (Coro), at BP Bayview, by its store manager. She sought compensation for a period when she said she should have been offered a higher minimum number of hours.

Ms Jenssen's employment agreement guaranteed her 15 hours of work per week. Her claim was that the store manager verbally agreed to increase her hours to 30 hours per week. Coro contested that it contractually guaranteed Ms Jenssen that increase.

When Ms Jenssen finished school in October 2023, she went from 15 hours a week to 30 hours a week. She said she was told she would receive an updated agreement, but that did not happen. After a couple of weeks, her hours reduced back to 15 hours per week.

The store and trainee managers said Ms Jenssen indicated she could work up to 30 hours per week from September 2023. She had indeed been given extra work from time to time to meet operational requirements. However, no formal undertakings had been made to increase her contractual hours. Ms Jenssen had requested to work additional hours by email. The store manager responded without making any commitments.

The Authority found Ms Jenssen's employment agreement was clear about her working hours, and there was an absence of documentation showing the parties had agreed to increasing Ms Jenssen's hours of work. The employment agreement had a variation clause, which required any changes to be agreed in writing. This would not have prevented an oral agreement if there was clear evidence of a verbal offer being accepted. Such evidence was not found here. The store manager gave a response that stopped short of offering increased hours.

The Authority considered it more likely than not that what the store manager and trainee manager had indicated was only that additional hours were potentially available and had explained the process for seeking those. Ms Jenssen expressed a desire to work additional hours. After that, there was no evidence to confirm that Coro made a verbal offer to her. Ms Jenssen's claim she was offered an increase in hours of work was ultimately unsuccessful. Costs were ordered to lie where they fell.

Jenssen v Coro Trading NZ Limited [[2024] NZERA 493; 16/08/24; S Kinley]

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

Parliament Bill (6 November 2024)

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)

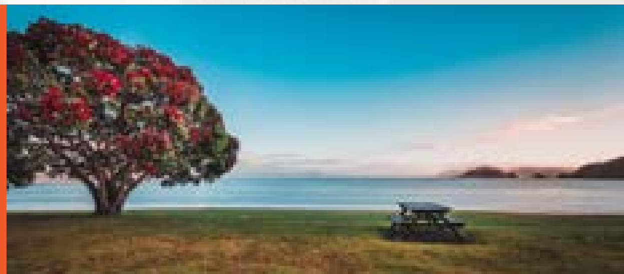
Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill (6 December 2024)

Mental Health Bill (6 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

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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.

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.

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

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

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

EMPLOYMENT RELATIONS CONSULTANTS

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

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

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

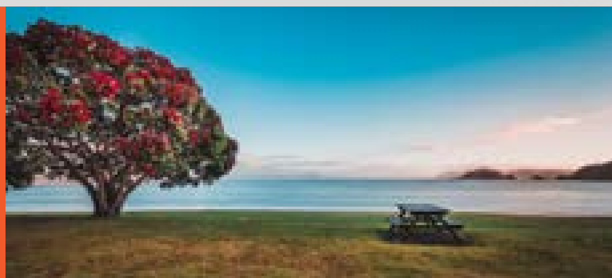
LEGAL

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

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

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

A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND



CHRISTMAS AND NEW YEAR PUBLIC HOLIDAYS 2024/2025

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

PUBLIC HOLIDAYS

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

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

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

OTHERWISE WORKING DAY

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

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

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

CHRISTMAS/NEW YEAR CLOSEDOWN AND PUBLIC HOLIDAYS

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

ANNUAL HOLIDAYS, PUBLIC HOLIDAYS, TERMINATION OF EMPLOYMENT

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

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

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

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

PUBLIC HOLIDAY TRANSFER

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

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

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

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

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