

A-Z Guide

KIWISAVER



Contents

Overview	2
Introduction	3
Employees to whom KiwiSaver applies	5
Opting out late	8
Mistaken enrolment	8
Savings suspension	9
Opting in	9
Changing jobs or extra jobs	10
Calculating the contributions	10
Employer Checklist	11
Tax and employer contributions	12
Employment Law and Human Resource implications of employer contributions	13
Frequently Asked Questions	16

Overview

KiwiSaver is a government-initiated savings scheme which involves deducting money from employees' wages as retirement savings.

- Any new employee who is 18 years or older must be automatically enrolled (with some exceptions). The employee can choose a deduction of either 3%, 4% or 8% from their gross wages. From 1 April 2019 an employee may also choose a rate of 6% or 10%.
- If a new employee has not previously opted in to KiwiSaver then that employee can opt out of the scheme if they do not wish to belong to KiwiSaver between day 13 and day 55 of starting their new employment.
- Current employees can voluntarily choose to join KiwiSaver at any time.
- Compulsory employer contributions of 3% must be made on behalf of contributing employees (with exceptions).

Terminology

The KiwiSaver Act has references to 'schemes', 'providers' and 'products'. This guide uses a general term of 'fund managers' which includes all of these.



Introduction

Since 1 July 2007 all new, eligible employees have been automatically enrolled into KiwiSaver. Once a KiwiSaver member, a percentage of their gross wages or salary are deducted by the employer starting with their first pay packet. The employee can choose to contribute 3%, 4% or 8% (or 6% or 10% from 1 April 2019) of their gross salary and wages. However, the employee cannot change between rates more than once every three months.

The money is forwarded to the Inland Revenue Department (IRD) when the employer forwards their PAYE payments. The IRD will then pass that money on to an approved fund manager who will invest that money for the employee.

When contributions on behalf of a particular employee are sent to IRD for the first time, IRD will hold that money for three months to ensure all the administration is sorted out. However, after that initial three-month period the money will be forwarded to the fund manager, and all future contributions will be forwarded to the fund managers as soon as practicable.

These investments are 'locked in' until the employee reaches the age of superannuation (which is currently 65 years), unless the employee is a 'grandparented member'. Funds can be withdrawn under limited other circumstances (see 'Withdrawing Funds' below).

Opting out

If a new employee has not previously opted in to KiwiSaver and they do not want to be a member of KiwiSaver, they can opt out between Day 13 and Day 55 of starting their new job. Any money deducted will be refunded.

An employee who opts out between Day 13 and Day 55 may give the completed form to either their employer or to IRD. If the opt out form is given to the employer, the employer can stop making deductions immediately, but no later than the next time pay is calculated. The opt-out form can be given to the employer any time before Day 55, but the employer cannot cease deductions until Day 13. The employer must send the form on to IRD or advise IRD via their ir-File system.

If the employee sends the opt-out form directly to IRD, the employer continues to make deductions until they are formally advised by IRD that the employee has opted out.

An employee who wants to opt out of the Scheme but applies later than Day 55 of starting their new job and therefore misses the deadline may:

- Still be allowed by IRD to opt out if they meet a specific criteria
- Be treated as being on a holiday from the Scheme only if they meet the holiday criteria

If the employee does not meet either criteria, they are required by law to contribute to KiwiSaver until they meet either the 'holiday criteria' or the criteria under which they can withdraw funds.



Savings Suspensions

An employee can take a “savings suspension” (previously referred to as a “contributions holiday”) from KiwiSaver if they meet the criteria. A savings suspension means no KiwiSaver deductions are made from their wages although an employee may make ad hoc contributions if they wish.

An employee can take a savings suspension after they have been in KiwiSaver for 12 months or more. A savings suspension could be taken sooner if the employee satisfies IRD that they will or are likely to suffer financial hardship.

The minimum suspension period is three months and the maximum five years.

Withdrawing funds

An employee can withdraw their funds or part of their funds:

Upon reaching the age they qualify for superannuation; or for ‘grandparented members’ (those who first became a Kiwisaver member before 1 July 2019), the later of the date the person qualifies for superannuation and the 5-year anniversary of the person becoming a Kiwisaver member;

- Significant financial hardship (Note: Holiday criteria is only financial hardship)
- Serious illness
- One year after permanent emigration
- Purchase of a first home and have been in KiwiSaver for three years (other criteria may also apply)
- An order under the Property Relationships Act
- Death

Significant financial hardship means difficulties that arise because the employee is unable to meet:

- Minimum living expenses
- Mortgage payments on principal family residence
- Cost of modifying residence for special needs arising from a disability for themselves or a dependant
- Cost of medical treatment for themselves or a dependant
- Cost of palliative care for themselves or a dependant
- Cost of a funeral of a dependant

Serious illness is an injury, illness or disability that:

- Results in the employee being unable to engage in work for which they are suited by reason of experience, education or training or combination of those things
- Poses a serious and imminent risk of death

Employees to whom KiwiSaver applies

Automatic enrolment

Automatic enrolment rules apply to every employee (except those in temporary employment as defined in the KiwiSaver Act, and those working for an exempt employer) who:

- Starts *new employment* with an employer that is not an exempt employer
- Is aged 18 years or over, but less than the qualification age for New Zealand superannuation

New employment means any employment that is started on or after 1 July 2007, but excludes:

- Temporary employment
- Employment in respect of which the employee remains on the same payroll
- Employment with an employer that carries on the same business, for example, there is an amalgamation, sale or transfer of the business (**note:** The employer must give notice to the IRD)

Enrolment for temporary or casual employees:

Temporary employees employed for 28 continuous days or less are not enrolled automatically but can opt in to KiwiSaver. Additionally, casual employees engaged on an irregular and intermittent basis and who receive holiday pay with their wages are also not subject to automatic enrolment. Temporary or casual employees can join either through advising their Employer or by contracting directly with a KiwiSaver scheme provider.

Note: The 28 continuous days refers to the period of employment and calendar days thereafter, not the days or hours worked. For example, if an employee has a two-week contract but only works Tuesdays and Thursdays, this counts as 14 days' employment not four days. The automatic enrolment rules apply to temporary employees if their employment is extended beyond 28 continuous days. Automatic enrolment applies on the 29th day of employment.

Temporary and casual employment means:

- Is a casual agricultural worker (as defined by the Income Tax Act).
- Employment is under a contract of service that is for a period of 28 continuous days or less.
- Employment as described in Section 28(1)(a)(ii) of the Holidays Act: *"Works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks annual holidays"*.

The IRD defines a temporary employee as an employee who works 'as and when required' without a specific end. Their period of employment starts each time they are engaged to work and stops each time that engagement ends. If an employee is engaged for future work before the last engagement has ended, the combined engagements are considered as one period of employment.

A temporary employee is captured by the automatic enrolment rules when:

- They cease to be a casual agriculture worker
- On the 28th day of employment if their temporary employment is extended past that timeframe

Employment in state or integrated schools

For employees in a state school or integrated school, the Board of Trustees is the employer for the purposes of KiwiSaver. Therefore, a change of schools is treated as new employment and the employee will be subject to KiwiSaver despite the fact they stay on the same payroll.

Other situations

The automatic enrolment rules do not apply if the person is an employee only because they are receiving a payment relating to:

- Working partners (see Income Tax Act)
- Paid parental leave under the Parental Leave and Employment Protection Act
- Certain ACC payments
- Is an election day worker
- Is a private domestic worker
- The employee is not required to have tax deductions from salary or wages

Overseas workers

The automatic enrolment rules only apply to employees who are both:

- Living, or normally living, in New Zealand in person
- New Zealand citizens or entitled to be in New Zealand indefinitely

Secondments

Employees seconded to another organisation are specifically excluded from automatic enrolment both when they start the secondment and when they return to their original organisation, even if they change payroll systems.

Voluntary enrolment

A person may choose to join KiwiSaver at any time. The holiday rules and withdrawing of funds rules will apply to them.

Exempt employers

Employees of exempt employers are not bound by the automatic enrolment rules, but those employees may still choose to join KiwiSaver. An employee who joined KiwiSaver with a previous employer under the automatic enrolment rules continues to be bound to make contributions even if they later change jobs and become employed by an exempt employer, unless they qualify for a 'holiday'.



To become an exempt employer, the employer must apply to the Financial Markets Authority (FMA) and show that they have an existing superannuation scheme that:

- Is open to all employees between 18 and 65 years of age except those defined as temporary employees.
- Allows accumulated funds from other superannuation schemes to be transferred to it.
- Is a registered superannuation scheme.
- Allows the withdrawal of funds to another registered superannuation scheme or KiwiSaver.
- Provides for at least 4% of annual gross base salary to be contributed to the Scheme (unless it is a defined benefit scheme that satisfies the FMA it is increasing by at least that amount). Note that the 4% can be made entirely of employee contributions, or entirely of employer contributions, or a combination of employee and employer contributions.

An employer who operates more than one superannuation scheme can have all schemes treated as a whole to establish if they meet the criteria. A superannuation scheme established under a master trust is considered only in so far as the master trust relates to the particular employer and the participation agreement relating to that employer.

The Process

From starting new employment

(or from when temporary staff no longer meet the temporary definition)

Day 1 to 7

Employees subject to automatic enrolment

Employer must give KiwiSaver Information Pack (available from IRD) to employee – EMA suggests as part of induction material.

Pay days falling before Day 13

Employees are automatically enrolled in KiwiSaver and employers must deduct KiwiSaver contributions at the default rate of 3% (or whichever rate is specified) unless the employee gives the employer a notice from IRD confirming they are on a KiwiSaver savings suspension.

When the employer sends the monthly schedule to IRD

Employer must send to IRD the new employee's: **Name , Address , Tax number**

If the employee refuses to give some or all of this information, the employer must send to IRD whatever information the employee has given them.

When employers send PAYE deductions to IRD

Employers must pay the KiwiSaver deductions to IRD when they pay PAYE and must forward the completed IR345 form. Failure to submit the IR345 form will result in no employer contribution entitlement, and will be deemed a short payment.

As soon as practicable

When IRD receives the information about the employee, they must:

- Allocate a default fund to that employee (unless the employer has chosen a fund for all its employees); and
- Send to the employee an investment statement about that default fund.

Day 13 to 55

Employee can opt-out of KiwiSaver by completing an opt out form:

- If the form is given to the employer, deductions stop from the next pay that is calculated after Day 13. The form must be sent on to IRD or IRD advised via the ir-File system.
- If the form is sent to IRD, then IRD will write to the employer and tell them, and deductions stop from the next pay that is calculated after receiving that notification.
- An employee cannot opt out when changing jobs if they have already been captured by the automatic enrolment provisions at their previous job. They can only take a savings suspension or withdraw funds if they meet the criteria.

Up to 3 months after IRD first received contributions

1. Employees can request to opt-out of KiwiSaver late, subject to meeting certain criteria
2. Initial contributions held by IRD in a holding account while administration is sorted out.

Important Notes

1. The date for ceasing deductions, starting deductions or changing the deductions between 3%, 4% and 8% (or 6% or 10% from 1 April 2019) is the next pay to be calculated after receiving notification. This means that if the payroll has already been calculated, but a notice is received before the pay is actually credited to the employee, the changes take effect at the next pay.
2. IRD may use their holding account to retain contributions from some employees for longer than three months if the amounts are small. The fund manager and IRD may agree on a minimum amount for each employee before it is passed from IRD to the fund manager to avoid the fund manager having to administer large numbers of very small investments.
3. IRD will pay interest on any money in their holding account.
4. An employee cannot opt out before Day 13. If the employer has made deductions but not yet paid it to IRD, the employer can refund those deductions to the employee when they receive notification that the employee has opted out. If those deductions have been forwarded to IRD, the employee can request IRD to refund that money to them.
5. An employee who is a member of KiwiSaver, does not have the option of opting out again when they change jobs.
6. The new IR345 form is to be completed by employers and sent at the time of paying PAYE. If this is not done, the payment will be deemed by IRD to be a short payment.

Opting out late

Employees will be reminded to opt out every pay day because KiwiSaver contributions will be deducted from their pay starting from Day 1. However, some may not get around to completing the necessary paperwork before the deadline of Day 55.

The IRD has the discretion to allow an employee to opt out of KiwiSaver if IRD receives an application between the 55th day of starting new employment and three months from the date IRD received the first KiwiSaver contribution. To be eligible to be considered for a late opt-out, one or more of the following must apply:

- The employer did not provide the information pack within 7 days of new employment starting.
- The IRD did not send its investment statement.
- Events outside the control of the employee meant the opt-out notice could not be given within the time limit and it is reasonable in the IRD's opinion to accept a late opt-out notice.

If IRD declines to grant a late opt-out, it will grant a savings suspension from KiwiSaver provided the employee meets the criteria for being allowed a suspension. In practice that means the employee must meet the test of "suffering or likely to suffer financial hardship". A savings suspension would be for three months but may be longer (up to 12 months) if IRD considers that appropriate.

Mistaken enrolment

There is always the prospect of an employee being automatically enrolled or choosing to opt in when they do not meet the mandatory criteria. For example, the living in New Zealand requirement was not met for voluntarily opting in, or the person was under 18 years and was automatically enrolled.



The legislation provides for back dated validation. That means joining KiwiSaver is temporarily validated from the date the person joined to three months after the mistake was identified.

During this backdated validation period it is possible for the employee to opt out if they joined KiwiSaver through being mistakenly automatically enrolled. If the person does not or is not able to opt out, IRD is required to advise the fund manager concerned of the mistake and the money that had been paid is refunded to all parties concerned, including employer contributions.

The legislation only allows this to occur if the mistake was that the person was not eligible to join KiwiSaver. Those who join KiwiSaver and later wish they had not are not able to claim 'mistake'.

Savings suspension

An employee may for a number of reasons wish to stop making contributions to KiwiSaver. This is allowed under limited circumstances by taking a savings suspension. A savings suspension means the employee does not have KiwiSaver contributions deducted from their wages. The minimum suspension period is three months and the maximum holiday is five years.

An employee must meet certain criteria to apply to IRD to take a savings suspension from KiwiSaver. It is up to IRD to grant the suspension, not the employer. The employer should continue to make KiwiSaver deductions until they receive formal advice from IRD that a savings suspension has been granted.

The employer will receive a notice from IRD reminding them to restart KiwiSaver deductions in respect of a certain employee. If the employee has started with you whilst on a savings suspension, IRD will have updated their systems and will remind you.

Opting in

An existing employee can opt in to KiwiSaver at any time. An employee who has opted out and then later changes their mind can also opt in.

To opt in an employee either:

- Completes a form asking for KiwiSaver deductions to be commenced and gives that form to the employer
- Contacts a fund manager and makes arrangements directly with that fund manager.

An employee who voluntarily opts in is then covered by all the rules relating to KiwiSaver. For example, they must comply with the savings suspension rules if they wish to take a break from paying contributions and can only withdraw by meeting the withdrawal rules.

Employees who have more than one job and have opted in to KiwiSaver rather than joining through automatic enrolment, are entitled to choose which employer(s) to have deductions made from.

Changing jobs or extra jobs

Employees not part of KiwiSaver

An employee who is not part of KiwiSaver will be subject to the full KiwiSaver process every time they change jobs or take on a new job.

They will:

- Receive an information pack from their employer
- Have KiwiSaver deductions made from Day 1
- Have to opt out (and ask for a refund of deductions)

An employee who takes a second job and does not opt out during the first 55 days in that second job, will be automatically enrolled in KiwiSaver in respect of all employment. The primary employer will not be aware the employee has been automatically enrolled in KiwiSaver, but IRD will advise the primary employer to commence deductions.

Employees who are part of KiwiSaver

An employee who is part of KiwiSaver remains in KiwiSaver when they change jobs. There is no opting out facility available to them. An employee who takes a second job is automatically part of KiwiSaver in respect of their second job. KiwiSaver savings suspensions continue when the employee changes jobs or starts a second job.

Calculating the contributions

KiwiSaver deductions made when PAYE deductions are made

The KiwiSaver automatic enrolment rules and therefore the employer's obligation to deduct KiwiSaver contributions are linked to the obligation to deduct PAYE.

If, under PAYE rules, the employer is not required to deduct tax, then the automatic enrolment rules will not apply and the employer is also not required to make KiwiSaver deductions.

Tax on employee deductions

The employer is obligated to deduct PAYE from KiwiSaver deductions made from an employee's pay. The tax status of employer contributions is different and is discussed later.



Each employee will receive a tax credit matching their own contributions up to a maximum of \$521 per annum or \$10 per week. The government will pay that tax credit direct to the employee's KiwiSaver fund. This tax credit is also available to employees contributing to other complying superannuation funds, such as those operated by an exempt employer.

Parts of salary and wages are included

The employer is obliged to deduct 3%, 4% or 8% (or 6% or 10% after 1 April 2019), depending on the amount nominated by the employee, of an employee's gross salary or wages. The compulsory employer contributions are also calculated on gross salary and wages. This includes all payments including overtime, allowances, bonuses, commissions and extra payments that attract PAYE. It does not include redundancy compensation.

Paid parental leave under the Parental Leave and Employment Protection Act and ACC payments are included in the employee contributions, but not in the employer contributions.

Retirement pensions paid by the employer to the employee after they leave work are excluded from both employee and employer contributions. A retiring gratuity paid upon leaving is included in KiwiSaver, but the situation where the employer continues to pay some sort of pension to the former employer is excluded.

Costs or allowances for accommodation or other living costs overseas are excluded from employee and employer contributions, provided that they are calculated by reference to what is reasonable, and actual costs are not included in either the employee or employer calculations.

For complying funds only, bonuses and commissions are not included if they were excluded in the complying fund.

Employer Checklist

1. Consider if an employee is subject to the automatic enrolment rules. If not, there is nothing more for the employer to do.
2. If so, immediately:
 - a. Deduct 3% of gross earnings as KiwiSaver contributions, or the amount nominated by the employee (unless the employee's employment is genuinely casual, casual agricultural or employment is for less than 28 days); and
 - b. Pay the required compulsory employer contributions.
3. First 7 days - give new employees a KiwiSaver information pack obtained from IRD (unless they complete a form saying they are already part of KiwiSaver).
4. Include name, address and tax number details of new employees eligible for KiwiSaver when you send your monthly schedule to IRD.
5. Send KiwiSaver contributions to IRD when you send the PAYE.
6. Provide to IRD all information they require.
7. Advise IRD if you receive a KiwiSaver opt-out form from the employee.
8. If IRD write to you about KiwiSaver in relation to a particular employee, follow those instructions as at the next time you calculate the pay.

If you wish to become an exempt employer or select a fund manager for employees, you need to refer to the section about those topics.



Tax and employer contributions

Employer contributions

From 1 April 2013 the minimum employer and employee contribution is 3% of gross salary or wages. The employer cannot place any conditions on the employee's entitlement to the compulsory employer contribution.

Once an employee reaches the withdrawal age (see 'Withdrawing funds' on page 4 above) employer contributions are no longer compulsory. The IRD will be notifying employers when the employer contributions become voluntary.

Tax

From 1 April 2012 the employer contributions are no longer exempt from employer superannuation contribution tax (ESCT). ESCT will form part of the contribution and not be paid on top of it. The threshold amounts for calculating ESCT are as follows:

ESCT threshold amount:

Up to \$16,800

Between \$16,801 and \$57,600

Between \$57,600 and \$84,000

More than \$84,000

ESCT rate:

0.105 (10.5%)

0.175 (17.5%)

0.30 (30%)

0.33 (33%)

Alternatively, employers can treat the employer contribution as salary or wages and tax your employee, by agreement, under the PAYE rules.

However, where the specified superannuation contribution is treated as part of an employee's total income it will be liable for the ACC earner levy and will affect how much that employee is liable for student loan repayments and child support, and their entitlement to family assistance. There is no tax advantage in this option unless the employee's income is less than \$38,000 per annum including the superannuation contribution.

It has always been an assumption that ESCT is deducted from the employer contributions. However, some important points need to be made:

- The terms of any employment agreement setting out the contribution rate will be important.
- IRD have advised they will accept employer contributions that have had ESCT deducted as long as the ESCT is accounted for in the appropriate return. If the gross amount of KiwiSaver contribution is forwarded to IRD under KiwiSaver, then IRD will be seeking ESCT in addition.

For clarity, employers may wish to include a clause in the employment agreements that states:

"The amount of any employer contributions includes any ESCT the Inland Revenue Department requires to be paid to them"

Employment Law and Human Resource implications of employer contributions

Managing your labour costs

Compulsory employer contributions mean that as soon as an employee exercises their right to join KiwiSaver, the employer is required to make the statutory employer contributions. This creates an uncertain labour cost as it depends how many employees in your workplace join. It also creates remuneration inequities between those employees who join KiwiSaver and those who do not.

From 15 December 2008, an employer can safely include the value of employer contributions in the overall value of employment package. However, there are some conditions attached:

- The agreement to include employer contributions into the total value of the employment package was reached on or after 13 December 2007.
- Any new employee who joins your business on or after 15 December 2008 or existing employee who joins KiwiSaver on or after 15 December must have a contractual term and condition and that contractual term must account for the employer contributions. For example, the employment agreement must have a clause stating the wages and salary includes the value of employer contributions and specifies the employer contribution component in a similar way you must specify the holiday pay component when paying holiday pay as you go.
- An employee who was employed by your business and joined KiwiSaver before 15 December 2008 must still have a contractual term, but you do not have to account for the employer contributions in the same way you do for an employee joining on or after 15 December 2008.

Communicating KiwiSaver to employees

Ensuring pay rates and employer contributions are clear

Many employers have included employer contributions in their employees' remuneration packages. The situation must be clearly spelt out. Employees who have not joined KiwiSaver should clearly understand what will happen to their remuneration if they join. It also needs to be clear to those who do join what happens if they later take a savings suspension.

The following are basic examples of how a total remuneration package may be shown:

Example of total remuneration package:

	Non KiwiSaver member	KiwiSaver member at 3% contribution
Base Salary	50,000	48,543.69
KiwiSaver employer contribution		1,456.31
Potential bonus 3%	1,000	970.87
KiwiSaver employer contribution from bonus		29.13
Vehicle Allowance	12,000	11,650.49
KiwiSaver employer contribution from vehicle allowance		349.51
Total Remuneration	63,000	63,000

Example for waged employee:

Ordinary hourly rate shall be \$21.20 per hour. This can be shown as:

Base wage: \$21.20 per hour

Employer contribution: \$0.63 per hour

Total hourly wage: \$21.83 per hour

Important: It is recommended to have your EMA Consultant or Lawyer help create a total remuneration package. The above are only examples. Your total remuneration package should be tailored to the individual employee.

Remember: you need agreement to have a total remuneration package.

Payslips

Payslips may also need to be reformatted to ensure the pay is clear to the employee. This is especially so where there is variable pay such as overtime and the agreement provides that the overtime rate is inclusive of employer contributions.

Wages Protection Act

The Wages Protection Act has special rules around deductions and plays an important role in influencing how we structure our remuneration to include employer contributions.

Section 5(2) states:

“A worker may vary or withdraw a consent given or request made by that worker for the making of deductions from that worker’s wages, by giving the employer notice to that effect; and in that case, the employer shall -

- a. Within 2 weeks of receiving that notice, if practicable; and*
- b. As soon as is practicable in every other case, -*

Cease making or vary, as the case requires, the deductions concerned”.

What this means, is if you have stated that the employer contributions will be deducted from their pay, the employee has a right to cease those deductions, but the employer is still left with a statutory requirement to make the payments. It is important to ensure that remuneration has been structured so that employer contributions are not a deduction from wages.

Section 12 of the Wages Protection Act 1983 also states that an employer cannot tell an employee how to spend their wages. Having made KiwiSaver employer contributions a deduction from pay may well mean the employer is telling the employee how to spend that part of their pay. The employee contributions do not run this risk because joining KiwiSaver is voluntary. This is another reason why employer contributions need to have been carefully structured, so it is not seen as a deduction from wages.

Minimum Wage Order

The Minimum Wage Order sets an amount of money the employee must receive. An employee must receive the minimum wage after employer contributions, not before.

Example

The adult minimum wage is \$22.70 per hour as of 1 April 2023. An employee paid \$22.70 per hour cannot have the entire 3% employer contributions included in their remuneration because the employer contributions of 3% would then mean the employee will be paid less than the minimum wage

For clarity, lawful deductions can be made from an employee on the minimum wage. This includes PAYE, employee KiwiSaver contributions, child support, etc. However, the compulsory employer contributions are not described in the law as a deduction, but as a payment the employer must make. An employer and employee can agree to incorporate that payment in the remuneration but in doing so cannot reduce the employee's wages to below the minimum wage.

The Employment Court confirmed this position in the case *Faitala & Anor v Terranova Homes & Care Limited*. The Court concluded that a deferred payment to an employee of a compulsory employer contribution does not constitute payment for work performed by an employee for the purposes of the Minimum Wage Act. The decision was appealed to the Court of Appeal which again confirmed this position.

Collective bargaining

Collective bargaining poses some additional complexities.

1. Including employer contributions in remuneration

Including employer contributions in remuneration set out in the collective employment agreement requires the agreement of the union. That means the compulsory employer contributions are a direct cost on top of the conditions in the collective agreement.

2. Union Request to Choose the IRIS Scheme

The union movement has its own superannuation fund called IRIS. It is making claims for employers to nominate IRIS as their preferred fund. The section on 'Should Employers Choose a Fund at All' deals with this issue.

Dealing with variable pay

It is more difficult to include variable pay conclusively in remuneration schedules, such as overtime and special allowances. For this reason, many employers have used that a blanket clause to cover off this more difficult area.

Employers should be careful not to create any contractual inconsistencies between a blanket clause in an employment agreement that states all remuneration includes employer contributions and a remuneration schedule which may be silent on whether employer contributions are included or excluded.

Frequently Asked Questions

Q. Automatic enrolment in KiwiSaver applies to people who start new employment but excludes people who change employers because their company is bought or transferred. What happens if it is just an asset sale?

A. People are excluded from automatic enrolment in KiwiSaver if the change in employer is to one that carries on the same business as the business in which the employee was employed immediately before starting this new employment. 'Same business' is defined as including a business that carries on a similar role after amalgamation or sale as a going concern.

Q. If an individual voluntarily opts in, do they have 55 days to change their mind?

A. No. The 55 day opt-out period only applies to those covered by the automatic enrolment rules.

Q. If KiwiSaver deductions are made from the main job, will they automatically be enrolled for any secondary employment?

A. Yes, once employees are in KiwiSaver, they are in for all paid employment unless a KiwiSaver savings suspension is taken or the employee has voluntarily opted in and elects not to have contributions deducted from that job.

Q. How will employees apply for a refund of KiwiSaver money from IRD if they opt out?

A. The opt-out form will ask for bank account details and any money held will be automatically paid to the employee's bank account.

Q. Can IRD take KiwiSaver money that is being refunded from an opt out or when funds are withdrawn from a fund manager and pay off other arrears?

A. No. When money is withdrawn from a fund manager, the money is paid directly to the employee and does not go through IRD. If IRD is holding KiwiSaver money for an employee who opts out, IRD must refund the entire amount. An employee could request the money be paid to IRD to pay off any money owing, but the employee would have to specifically request it.

Q. An employer can refund any deductions made to an employee who opts out if the employer still has the money. Can the employer make the employee wait for the next pay day to refund that money?

A. An employer must pay all contributions to IRD when they pay PAYE. If an employee opts out, the employer can wait until the next pay day to refund that money, but if the date the PAYE is due to be paid falls in the meantime, then those KiwiSaver contributions must be forwarded to IRD notwithstanding you know the employee has opted out and wants a refund. You are advised to make a special payment to refund the money to the employee as soon as you can.

Q. What happens if a contractor is subsequently ruled to be an employee, but the employer has not taken KiwiSaver contributions, as well as no PAYE etc?

A. The employer will be liable for KiwiSaver contributions as well as all the other entitlements such as PAYE, holidays, etc.

Q. Sometimes an employee does not earn enough money to pay all legally required deductions like child support, student loan, court fines. Where does KiwiSaver sit in the priority list?

A. IRD advise they consider that PAYE and an employee's KiwiSaver contributions are the same in order of priority in terms of the KiwiSaver Act.

IRD considers that where a smaller pay was to occur every source deduction other than, for example, a court-imposed deduction, Child Support etc. would reduce commensurate with the smaller pay. This gives greater flexibility to the employer/employee.

To come to this conclusion IRD used the approach taken in Schedule 7 of the Companies Act as a "best guide" (when applied in a commonsense way) for a suggested order of legislative priority when a person's pay is smaller than usual. Of course, this would be subject to Sections 157 & 165 of the Child Support Act regarding Child Support deductions not reducing a person's pay below 60%.

Section 165(1) covers *"Employer shall not reduce net earnings below 60%....to an amount that is less than 60% of the residue that remains after deducting from the source deduction payment the amount of any tax deduction made therefrom under the PAYE rules of the Income Tax Act 2004"*.

Q. With Child Support deductions is the 60% protected net earnings calculated after KiwiSaver deductions, or do the KiwiSaver deductions have to come out of the protected earnings?

A. The 60% protected net earnings is calculated before KiwiSaver deductions.

Example - Employee employed in June 2007. The employee earns \$600 per week. The employee is paid on a weekly basis and is on M tax code. Their gross earnings are \$600.00 Their PAYE is \$122.83. Their resulting net pay is \$477.17.

The employer then receives a child support deduction notice from IRD to deduct \$200 child support per week. The employee still earns \$600 per week. The employee is still paid on a weekly basis and is on M tax code. Their gross earnings are still \$600.00 Their PAYE is still \$122.83. Their net pay before child support is \$477.17. The protected net earnings amount is \$286.30. The child support deduction will then be \$190.87 (\$477.17 less \$286.30). Their resulting net pay is \$286.30.

The employee then opts into KiwiSaver after 1 July 2007 and elects a rate of 4%. The employee still earns \$600 per week. The employee is still paid on a weekly basis and is on M tax code. Their gross earnings are still \$600.00. Their PAYE is still \$122.83. Their net pay before child support is still \$477.17. The protected net earnings amount is still \$286.30. The child support deduction is still \$190.87 (\$477.17 less \$286.30). However, their KiwiSaver deductions will be \$24.00. And their resulting net pay will be \$262.30 (\$286.30 less \$24.00). The further reduction in the take-home pay is a result of their 4% contribution to KiwiSaver.

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Q. Some employers are in the ACC Partnership Programme and pay ACC compensation themselves. Are these payments subject to KiwiSaver contributions?

A. Yes for employee contributions, but they are not included in the calculation of employer contributions.

Q. Have any exceptions been found to the general rule of 'if you deduct PAYE you also deduct KiwiSaver'?

A. Yes. If an employee has a Special Tax Code and that code states "0%", then KiwiSaver is still deducted. It is extremely rare for such a situation to occur.

Q. Can migrants to New Zealand opt in to KiwiSaver?

A. An employee can voluntarily join KiwiSaver if they are:

- A New Zealand citizen
- Entitled to be in New Zealand indefinitely

Q. Is an exempt employer entitled to a tax exemption from ESCT?

A. Not necessarily. Exempt employer status gives an employer an exemption from automatically enrolling any new employees into KiwiSaver. However, if an employer wishes to receive the exemption from ESCT they will need to redirect their contributions to a complying superannuation fund under their current superannuation scheme or to a KiwiSaver scheme. A complying superannuation fund is a section within a registered superannuation scheme that has been approved by the FMA as having met certain criteria similar to KiwiSaver, e.g. KiwiSaver lock-in rules and portability. The criteria to be a complying fund are similar but different to the criteria to be an exempt employer. Contributions made to an existing scheme for existing employees will count toward the compulsory employer matching contribution.

Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

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