

EMPLOYER BULLETIN

17 March 2025
A Weekly News Digest for Employers

EMPLOYER NEWS

Going For Growth: new procurement rules

The Government is proposing changes to procurement rules to make it easier for New Zealand businesses to win government contracts that are collectively worth more than \$50 billion a year, Economic Growth Minister Nicola Willis says.

“The changes include introducing a new economic benefit test and scrapping 24 rules that put unnecessary obstacles in the path of Kiwi businesses,” she says.

“This is part of our plan to increase jobs and incomes by shifting New Zealand to a faster growth track.

“The new ‘economic benefit’ test will require government agencies to consider the wider benefit to New Zealand of awarding contracts to New Zealand firms when making procurement decisions.

“Doing so will create export and employment opportunities and help New Zealand businesses to grow.”

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

Open for business: new funding to attract international business events

The Government is investing an additional \$3 million from the International Visitor Conservation and Tourism Levy to secure more business events for New Zealand, Tourism and Hospitality Minister Louise Upston says.

“On top of my recent Tourism Boost announcements for a new Australia campaign and a regional fund, we’re giving business events a boost,” she says.

“We know business event participants spend \$175 more per day than other visitors on average, and importantly they often visit in the off-peak period between March and November.

“This funding will allow Tourism New Zealand to increase their annual conference bid development from 90 to 110 bids, attract high-value incentive programmes, and enhance New Zealand’s presence at key international trade events.”

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

Boosting rural connectivity and economic growth

The Government is progressing a suite of regulatory changes aimed at improving telecommunication services for rural communities and promoting economic growth, says Communications Minister Paul Goldsmith.

“World-class connectivity services are vital to Kiwis’ everyday lives. This Government is ensuring we have the right regulatory settings in place for this important market, to support competition, foster innovation and help stimulate economic growth.”

“Better connectivity, especially for rural areas means improved reliability for everyone- businesses, people accessing digital healthcare, and remote learning for kids. More services also improve competition driving down the monthly cost of telecommunications for households and businesses.”

“One of the key changes I am making is removing regulatory barriers for the smaller local fibre companies, enabling them to deliver other wholesale telecommunication services, so they can offer different types of connectivity to people in hard-to-reach areas.”

To read further, please click here.

Faster, fairer land acquisition to speed up infrastructure delivery

The Government will get major infrastructure projects underway faster by speeding up land acquisition and delivering fairer payments for landowners, Infrastructure Minister Chris Bishop and Land Information Minister Chris Penk say.

“The Government is committed to a strong pipeline of critical infrastructure projects to boost economic growth and productivity. While the wider Public Works Act (PWA) overhaul is continuing and on track to be completed by early next year, today we’re announcing some immediate action,” Mr Penk says.

“In the coming months, we’ll be amending the PWA to accelerate the acquisition of land needed for the public projects that are listed in Schedule 2 of the Fast-track Approvals Act, and the Roads of National Significance listed in the Government Policy Statement on land transport 2024. It is intended that amendments will come into force six months before wider PWA review amendments.”

To read further, please click here.

Highly anticipated report shows dramatic growth in Māori economy

Following the pre-release of a snapshot of Te Ōhanga Māori 2023 – The Māori Economy 2023 in late 2024, the Ministry of Business, Innovation and Employment (MBIE) and Business and Economic Research Limited (BERL) are pleased to release the full report and insights.

The report reveals good news on the growth front, with the Māori economic contribution to the New Zealand economy having grown from \$17 billion in 2018 to \$32 billion in 2023.

Informed by key data from census 2023, Te Ōhanga Māori 2023 highlights the significant economic contributions being made within the Māori economy to the New Zealand economy as a whole.

Insights show that the Māori asset base has grown at a significantly faster rate than the overall economy, from \$69 billion in 2018 to \$126 billion in 2023. This growth has outstripped the previously predicted figure of \$100 billion by 2030.

To read further, please click here.

Business financial data: December 2024 quarter

Business financial data provides sales, purchases, salaries and wages, and operating profit estimates for most market industries in New Zealand, and information on stocks for selected industries.

For all business financial data (BFD) industries, in the December 2024 quarter compared with the December 2023 quarter:

- sales were \$200 billion, up \$122 million (0.1%)
- purchases were \$139 billion, down \$801 million (0.6%)
- salaries and wages were \$33 billion, up \$890 million (2.8%)
- operating profit was \$28 billion, up \$33 million (0.1%).

When adjusting for seasonal effects, in the December 2024 quarter compared with the September 2024 quarter:

- sales in 12 of the 14 New Zealand Standard Industrial Output Classification (NZSIOC) level 1 industries increased
- electricity, gas, water, and waste services (down \$3.1 billion); manufacturing (up \$836 million); and construction (down \$457 million) industries had the largest movements in sales.

The business financial data release covers most market industries in the New Zealand economy, using survey and tax data.

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

Business employment data: December 2024 quarter

Business employment data includes filled jobs and gross earnings, with breakdowns by industry, sex, age, region, and territorial authority area, using a combination of data from two different Inland Revenue sources: the employer monthly schedule (EMS) and payday filing. Both are associated with PAYE (pay as you earn) tax data.

Total actual filled jobs in the December 2024 quarter were 2.28 million.

In the December 2024 quarter (compared with September 2024 quarter):

- total seasonally adjusted filled jobs were down 0.3% (6,248 jobs).

For the year ended December 2024, compared with the year ended December 2023:

- total gross earnings were up 4.5% (\$7.68 billion).

An annual comparison is used for earnings to account for payroll timing differences between quarters.

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

New Chair appointed to NZTE

Trade and Investment Minister Todd McClay has announced the appointment of Charles Finny as Chair of the Board of New Zealand Trade and Enterprise (NZTE).

NZTE is the Government's international business development agency tasked with supporting Kiwi businesses to export more and grow international markets.

"The work of NZTE is critical to enabling economic growth through trade that will raise living standards, create higher-paying jobs and deliver more opportunities for New Zealanders," Mr McClay says.

"Charles Finny will bring strong international trade and business experience to the NZTE Chair role."

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

EMPLOYMENT RELATIONS AUTHORITY: FOUR CASES

Absence of fair process during restructuring leads to unjustified dismissal

Mr Witana raised an unjustified dismissal claim in the Employment Relations Authority (the Authority). He argued that Jayu Developments Ltd (Jayu), a Whangārei building construction company which traded as Virgo Homes, had run its restructure unfairly. At 17 years old, he began working part-time for Jayu. In January 2023, he was offered a full-time job and started work as an apprentice carpenter.

In January 2024, Mr Witana received an email from Jayu's director, Mr Pickering, which stated that Jayu was short of work and therefore needed to make cuts to the team, with Mr Witana's position no longer being viable. The email stated that his two weeks' notice of termination came into effect that day. Mr Witana was confused because he had worked with Mr Pickering the day before and he had not mentioned such issues at the time. He then discovered Jayu began advertising for a new apprentice position the day after he was given notice.

Jayu's response was that staff were kept regularly updated on the state of the business, that it had been under immense strain, and that Mr Pickering had done his best to mitigate its losses, but in the end, he had to let go of several staff members which included Mr Witana. Jayu ceased trading shortly after Mr Witana left. Jayu further submitted that it was pressured to advertise for the new apprentice role on behalf of its main contractor.

Mr Witana knew the company had held meetings. However, those meetings were often held in a venue that served alcohol, which he could not attend because of his age. He denied having any knowledge that the business was dealing with financial difficulties.

To ensure a redundancy is enacted in a procedurally fair manner, an employer must abide by good-faith obligations. There is a positive disclosure obligation on the employer to provide affected employees access to information supporting the reason for the redundancy and details about how it would be implemented. An employee must be afforded an opportunity to comment on any redundancy proposal prior to a decision being finalised.

In this case, Mr Witana was clearly dismissed by Jayu on 16 January 2024. If Jayu was unable to provide work to Mr Witana, then it was required to undergo a fair and proper process. Jayu did not give Mr Witana any notice or fair warning of its intention to make changes to the business or that he could possibly lose his employment.

Mr Witana was not given any information about Jayu's financial situation or the pressures it was under. Jayu's explanation of why it advertised roles the day after giving notice to Mr Witana was unclear. If it was information relevant to the decision not to continue Mr Witana's employment, he should have been given access to that information.

There was no evidence Jayu considered any alternatives to termination, which could have maintained the employment relationship through redeployment. The only alternatives Jayu referred to in evidence were its approaches to other potential employers about hiring Mr Witana, about which Mr Witana was not made aware.

The Authority observed that the defects in the process followed were significant and resulted in Mr Witana being treated unfairly. Jayu was unable to show it discharged its obligations and ultimately decided that Mr Witana's dismissal was clearly unjustified. Jayu was ordered to pay Mr Witana \$15,000 as compensation for hurt and humiliation, \$13,260 for lost wages and \$2,250 in costs.

Witana v Jayu Developments Ltd [[2024] NZERA 745; 16/12/24; S Blick]

Authority declines application for interim reinstatement

DQJ claimed the Commissioner of the Inland Revenue Department (Inland Revenue) unjustifiably dismissed her when it terminated her employment on 25 September 2024. Inland Revenue submitted it fairly and reasonably dismissed DQJ on notice, after a fair process to address ongoing concerns about DQJ's conduct at work.

DQJ went to the Employment Relations Authority (the Authority) and applied to be reinstated on an interim basis until the Authority could deal with the substantive matter in a future investigation meeting. The Authority referred to the Employment Court's opinion regarding the restorative aims of the Employment Relations Act 2000 (the Act) and explained the established approach for considering interim reinstatement.

An applicant must establish that there is a serious question to be tried. Consideration must be given to the balance of convenience, and the impact on the parties of the granting of, and the refusal to grant an order. The impact on third parties will also be relevant to the weighting exercise. Finally, the overall interests of justice would be considered by standing back from the assessment undertaken in the earlier steps.

In considering if there was a serious question to be tried, the Authority reviewed the circumstances that led up to DQJ being dismissed. Shortly after DQJ commenced her employment in March 2023, issues arose. They largely centred around being frequently late, falling asleep at work, losing her driver's licence and interpersonal issues with colleagues. At no time was any formal discipline or performance management process implemented to address those issues.

Eventually, on 16 September 2024, Inland Revenue wrote to DQJ inviting her to a meeting on 19 September 2024. The letter set out the various concerns Inland Revenue held and proposed to end the employment on a no-fault basis indicating that its view was that the employment relationship had become frustrated. DQJ engaged a representative who submitted that sleep apnoea was a possible reason for the issues and suggested Inland Revenue should await a specialist view, which was being sought by DQJ on 9 October 2024.

DQJ's representative also challenged the use of "frustration" and submitted that a medical incapacity process may be more appropriate. Inland Revenue indicated it did not think that would materially change the circumstances and confirmed its decision to terminate DQJ's employment on 25 September 2024.

The Authority was critical of Inland Revenue using a "no-fault" and "frustration" basis for its decision to terminate DQJ. It observed that Inland Revenue ought to have adopted an alternative process to the one it did and that failing to do so was unfair and unreasonable under the Act. Alternative processes would have included the medical incapacity process, a formal performance management process involving progressive warnings, or a disciplinary process that would address specific concerns raised.

Failing to follow any of those processes created a situation where DQJ had an arguable case for unjustified dismissal. That was supported by the additional argument that frustration of contract is a rarely invoked doctrine.

Upon assessing whether there was an arguable case for reinstatement, the Authority observed that DQJ's situation was not a strong case. While DQJ submitted that she was willing to make the necessary changes to her attendance and behaviour, Inland Revenue was not convinced. Adding to that were the real challenges of broken interpersonal relationships in the workplace.

Medical advice presented to the Authority also suggested reinstatement might be problematic as it would likely require implementing flexible working arrangements. Inland Revenue indicated that, if DQJ were to return, she would likely face an employment process relating to a recent conviction she received.

In assessing the balance of convenience, the Authority heard that DQJ felt that returning to work would help her turn her life around and that she was willing to make the required changes. Inland Revenue submitted that it had very real health and safety concerns about how DQJ related to other staff and at least one staff member had threatened to resign if DQJ was reinstated.

Inland Revenue also drew attention to the medical report, which noted that there would most likely continue to be issues of concern in interpersonal relationships. Inland Revenue submitted the transition and flexible arrangements mentioned would be problematic to establish and maintain. The Authority found the balance of convenience did not support reinstatement.

The Authority was satisfied that the overall interests of justice did not favour interim reinstatement. The substantive issues would be decided in a later case.

DQJ v The Commissioner of the Inland Revenue Department [[2024] NZERA 723; 04/12/24; L Vincent]

Employer unjustifiably dismissed driver who was on sick leave

Mr Morrison was employed as a truck driver and labourer by P M Cassidy (Cassidy) on 29 May 2023. It terminated his employment in December 2023 based on uncertainty of his recovery from an injury. Mr Morrison raised a claim with the Employment Relations Authority (the Authority) alleging he was unjustifiably dismissed.

Mr Morrison's role involved shrink-wrapping pallets of eggs, loading them onto a truck, and delivering them to customers. Shortly after his employment commenced, Mr Morrison said he could not perform the egg wrapping due to it hurting his legs. The activity could be strenuous work, which involved walking and bending down. Cassidy had no issue with that and was pleased to have him perform the role of driver instead.

In November 2023, Mr Morrison suffered an injury to his leg when loading a pallet onto a truck, following which he was absent on sick leave. He produced a medical certificate that stated that he would not be fit to return to work until 3 December 2023.

A further medical certificate received by Cassidy later stated that Mr Morrison would be unfit for another week from 11 December 2023. It became clear from the content of their communication that Cassidy was increasingly struggling with Mr Morrison's absence and so it decided to advertise for a full-time driver. Mr Morrison saw the advertisement but did not raise any concerns.

On 15 December 2023, Mr Morrison and Cassidy exchanged text messages. Mr Morrison noted he was getting better and might be able to return the following week. That day, Cassidy terminated Mr Morrison's employment as it felt it did not have enough assurance that he would return. Ultimately, Mr Morrison was signed off to return to full duties on 18 December 2023.

Cassidy claimed that its decision was reasonable in the circumstances, considering that Mr Morrison was absent on sick leave with no indication of when he would be fit to return to work. The situation was made even more difficult by the fact that it was also a busy time of year for Cassidy.

The Authority found there was no substantive justification for Mr Morrison's dismissal. While Mr Morrison could not physically perform all aspects of his role, Cassidy had chosen to accept his limitation. There had been no disciplinary issues raised with Mr Morrison during his employment.

Mr Morrison was on sick leave on the date of his dismissal. An employer may dismiss an employee who is on sick leave, but that would typically arise in a situation in which an employee had been on sick leave for a significant period of time with no indication of an imminent return. It would also involve discussing the matter with the employee, and an assessment of full medical evidence was expected before any decision to dismiss was made.

Mr Morrison had only been on sick leave for three weeks at the time of his dismissal. He had kept his employer informed throughout by text messages and provided medical certificates. He had texted Cassidy on 15 December 2023 to say that he was hoping to return to work the following week. In fact, he was certified as fit to return to work on 18 December 2023.

Cassidy did not hold any meetings with Mr Morrison to discuss the situation. It did not inform him that his position might be at risk as a result of his continued sickness absence or seek further medical evidence from him to establish his likely date of a return to work. It also did not provide Mr Morrison with the opportunity to provide any further information.

The Authority appreciated that Cassidy was in a difficult situation given the busy time of the year and the corresponding pressure of that, combined with the extra delivery driving by other staff necessitated by Mr Morrison's absence. However, steps that could have been taken to address the situation were not taken. Cassidy did not behave as a fair and reasonable employer could behave in a similar situation.

Mr Morrison was unjustifiably dismissed by Cassidy and was entitled to remedies. Cassidy was ordered to pay Mr Morrison \$2,400 for unpaid notice pay, \$15,017.88 for lost wages and \$15,000 compensation for hurt and humiliation. Costs were reserved.

Morrison v Cassidy [[2024] NZERA 734; 12/12/24; E Robinson]

Authority awards significant wage arrears

Mr Ryan lodged a claim with the Employment Relations Authority (the Authority). He was employed by Playmaker Labs Ltd (Playmaker) as a senior software developer and claimed he was due outstanding wages and holiday pay from 11 January 2023 to 6 September 2023 for 540 hours of unpaid employment. The amount sought was \$29,079 in unpaid wages and \$3,709.85 in holiday pay – a total of over \$32,000. Playmaker largely chose to not participate in the Authority's processes.

The first matter for consideration was whether Mr Ryan was an employee or a contractor. Mr Ryan submitted that he was employed as a senior developer, got paid a salary, worked in Playmaker's offices, and worked 7.5 hours every day up to 37.5 hours per week. His hours of work were contained in his employment agreement with Playmaker. He applied for leave like an employee, and his work for Playmaker was not him conducting his own business or working for himself.

Mr Ryan was able to provide a copy of his employment agreement along with copies of old payslips that set out payments made by Playmaker to Mr Ryan, including the amount of leave he had, deductions for KiwiSaver, PAYE, gross pay and amounts credited into his bank account.

Mr Ryan further provided a spreadsheet, which he obtained from Playmaker's then-chief executive officer, Mr Walshe, on 25 October 2024, setting out details of Mr Ryan's fortnightly pay.

After reviewing the evidence, the Authority was in no doubt that Mr Ryan was an employee of Playmaker in accordance with the definition of employee under the Employment Relations Act 2000 (the Act). Mr Ryan had provided ample evidence that his relationship with Playmaker was one of genuine employment.

In addressing the issue of wage arrears, the Authority observed that the bank statements provided were for the period 15 December 2022 to 11 September 2023. Apart from the fortnightly payments

of 15 December 2022 and 29 December 2022 of \$2,369.78 each, all other salary payments made by Playmaker were of inconsistent one-off amounts ranging from \$293.24 to \$2,115.23.

In the absence of wage and time records from Playmaker, the Authority accepted the claims made by Mr Ryan in respect of the outstanding wages owed to him. It further accepted that during the period of 11 January 2023 to 6 September 2023, he had worked 1040 hours, but was only paid for 540 hours, leaving another 540 unpaid. According to Mr Walshe's spreadsheet of salary owing, Mr Ryan was owed a sum of \$32,788.85.

The Authority found that Playmaker had not complied with its statutory obligations and ordered it to pay Mr Ryan \$32,788.85.

Playmaker was ordered to pay Mr Ryan \$32,788.85 in arrears of wages, which included annual holiday pay and statutory holiday entitlements. No orders were made regarding costs.

Ryan v Playmaker Labs Ltd [[2024] NZERA 755; 17/12/24; D Tan]

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: Ten Bills

[Māori Purposes Bill](#) (27 March 2025)

[Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill](#) (28 March 2025)

[Regulatory Systems \(Occupational Regulation\) Amendment Bill](#) (1 April 2025)

[Consumer Guarantees \(Right to Repair\) Amendment Bill](#) (3 April 2025)

[Regulatory Systems \(Courts\) Amendment Bill](#) (3 April 2025)

[Regulatory Systems \(Tribunals\) Amendment Bill](#) (3 April 2025)

[Auckland Council \(Auckland Future Fund\) Bill](#) (8 April 2025)

[Referendums Framework Bill](#) (17 April 2025)

[Term of Parliament \(Enabling 4-Year Term\) Legislation Amendment Bill](#) (17 April 2025)

[Land Transport Management \(Time of Use Charging\) Amendment Bill](#) (27 April 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 GUIDE TO EASTER AND ANZAC DAY 2025



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A GUIDE TO SHOP TRADING RESTRICTIONS



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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



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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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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



NATIONAL PUBLIC HOLIDAYS 2025

New Year's Day - Wednesday, January 1

Day after New Year's Day - Thursday, January 2

Waitangi Day - Thursday, February 6

Good Friday - Friday, April 18

Easter Monday - Monday, April 21

ANZAC Day - Friday, April 25

King's Birthday - Monday, June 2

Matariki - Friday, June 20

Labour Day - Monday, 27 October

Christmas Day - Thursday, 25 December

Boxing Day - Friday, 26 December

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.