

EMPLOYER BULLETIN

5 May 2025
A Weekly News Digest for Employers

EMPLOYER NEWS

A better path for apprentices and trainees

The Government is making changes to work-based learning so that industries have more influence over how they train apprentices and trainees, Vocational Education Minister Penny Simmonds says.

“Whether you’re a carpenter building the warm, dry homes of tomorrow, or a mechanic working to keep us safe on the roads, it’s important you have the right skills to do your job effectively,” Ms Simmonds says.

“However, industry representatives have made it clear that the current work-based learning model is not delivering because it has become overly centralised through Te Pūkenga. As a result, the training of apprentices and other workers is often disconnected from the realities of the jobs they are working towards.

“We are fixing this by giving industries more control over how they train people.

“Beginning next year, the Government will introduce a new, independent, and industry-led model for work-based learning.

“This means vocational education and training providers will be able to manage all aspects of an apprenticeship or traineeship at an industry level, rather than taking direction from a centralised behemoth.

“This is great for learners because it makes their learning more relevant to their employment, and it is beneficial to businesses who will gain access to more capable workers to boost their productivity and deliver economic growth.”

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

Supporting fintechs to boost competition

A pilot programme that will help financial technology (fintech) firms shake up competition in the financial and banking sectors is now underway, says Commerce and Consumer Affairs Minister Scott Simpson.

“Our Government is focused on improving competition in the areas that matter most to Kiwis. The financial and banking sectors are among the most crucial to our everyday lives and our economic growth – however, they are often criticised as being among the most regulated and, some say, least competitive,” says Mr Simpson.

“We have heard these concerns from the industry and have taken them seriously. I am pleased that the Financial Markets Authority has now announced the six firms that will take part in its pilot ‘regulatory sandbox’ programme, which was announced late last year.

“The sandbox is a testing ground where fintechs can experiment with new products and services in a controlled environment, ensuring they comply with regulations, before doing a full commercial launch.

“The benefits of this programme reach all corners of our economy. For consumers, it opens the door wide for new and innovative solutions that will challenge traditional banks and boost competition, providing more choices about how people manage their money, investments, and day-to-day transactions.

“For fintechs, it means having the freedom and guidance to develop new products and services that will not only benefit customers but also help them supercharge New Zealand’s economic growth. I expect the sandbox will enable firms to save time, reduce costs, and bring innovative products to market sooner.”

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

Physician associates to be a regulated workforce

Physician associates will become a regulated profession that will contribute to New Zealand’s talented workforce of health professionals delivering timely, quality healthcare to New Zealanders, Health Minister Simeon Brown has announced.

“Physician associates are overseas-trained health professionals who can evaluate, diagnose, and treat patients under the supervision of a doctor.

“They work in a range of health settings in New Zealand, such as general practice and hospitals, assisting with both clinical and administrative tasks to ensure patient needs are met.

“About 50 physician associates are currently employed across the country, with the workforce expected to grow over coming years.

“Regulating physician associates under the Health Practitioners Competence Assurance Act 2003 demonstrates the Government’s commitment to patient safety and providing high quality care.”

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

Employment indicators: March 2025

Employment indicators provide an early indication of changes in the labour market.

Changes in the seasonally adjusted filled jobs for the March 2025 month (compared with the February 2025 month) were:

- All industries – up 0.2 percent (3,548 jobs) to 2.36 million filled jobs
- Primary industries – up 0.4 percent (462 jobs)
- Goods-producing industries – up 0.1 percent (453 jobs)
- Service industries – up 0.2 percent (2,762 jobs)

By industry, the largest changes in the number of filled jobs compared with March 2024 were in:

- Construction – down 6.1 percent (12,606 jobs)
- Administrative and support services – down 5.7 percent (6,284 jobs)
- Professional, scientific, and technical services – down 3.1 percent (5,887 jobs)
- Manufacturing – down 2.2 percent (5,198 jobs)
- Health care and social assistance – up 1.7 percent (4,800 jobs)

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

Accelerating building projects with self-certification and inspection targets

The Government is introducing a self-certification scheme for trusted building professionals and a requirement for Building Consent Authorities (BCA) to help reduce inspection wait times.

The self-certification scheme will be a voluntary initiative through which eligible building companies, plumbers and drainlayers can sign off on their own work on simple homes. The scheme is expected to free up capacity in the building consent system by allowing BCAs to focus on higher-risk, complex work.

To reduce wait times for building inspections, BCAs will be required to carry out 80% of inspections within 3 working days. MBIE will produce new guidance for BCAs to help them meet this requirement.

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

Record growth in research and development to drive a stronger economy

Science, Innovation and Technology Minister Dr Shane Reti has welcomed a significant milestone in New Zealand's research and development (R&D) sector, with new figures showing total expenditure on R&D has climbed to \$6.4 billion – a 21 percent increase since 2022.

Dr Reti says the strong rise in R&D expenditure demonstrates growing momentum and reflects the Government's commitment to backing science, innovation and technology as core drivers of economic growth and supports its global trade and investment agenda.

"Using new ideas, knowledge and technology to develop better ways of doing things helps the New Zealand economy grow," Dr Reti said.

"R&D is how we lift productivity and create high-value jobs. It's also critical to opening opportunities in global export markets, helping build a resilient economy that can thrive on the world stage."

According to data released by Stats NZ, between 2022 and 2024, the business, government, and higher education sectors reported:

- Total R&D expenditure rose to \$6.4 billion – up 21 percent since the 2022 survey
- Average R&D expenditure per entity increased 24 percent to \$2.8 million – an average increase of \$524,000
- The number of R&D FTEs increased by 9 percent to 42,000
- R&D expenditure as a proportion of GDP rose from 1.49 percent to 1.54 percent

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

EMPLOYMENT RELATIONS AUTHORITY: FOUR CASES

Employee making secret recording is deemed breach of good faith

Ms Downer was employed by LM Architectural Builders Ltd (LM Architectural) from October 2022 until March 2023. She raised claims of unjustified dismissal and disadvantage in the Employment Relations Authority (the Authority) based on alleged bullying and an unfair suspension. LM Architectural argued it had grounds to dismiss her after she attempted to secretly record private conversations with Mr Meredith, the company's director.

Although the employment relationship began well, concerns arose on 14 February 2023 when Mr Meredith met with Ms Downer to address her deteriorating performance. Struggling with the feedback, she decided to look for another job.

On 17 February 2023, Ms Downer expressed dissatisfaction with Mr Meredith's support and confirmed she was seeking alternative work. Mr Meredith recalled the conversation differently, claiming she never raised issues about support. He offered her the option of leaving immediately, which she declined. Over the weekend, Mr Meredith noticed Ms Downer had deleted large numbers of files and used her work computer for personal tasks, including updating her CV and saving personal photos.

On 20 February, Mr Meredith spoke with Ms Downer about his concerns, which she secretly recorded. After she left work for the day, Mr Meredith discovered her work phone on a desk outside of his office set to recording audio.

The following morning, Mr Meredith suspended Ms Downer due to her computer usage and phone recordings. She also recorded that conversation.

That afternoon, Ms Downer emailed Mr Meredith, claiming she felt “sacked” after being accused of serious misconduct and given the option to resign with two weeks' pay or face disciplinary action. Mr Meredith clarified that she had been suspended, and her employment had not yet been terminated.

A disciplinary meeting was held on 1 March 2023, and Ms Downer was dismissed on 2 March 2023. Mr Meredith cited her secret recording attempts as a serious breach of good faith. The Authority first considered whether LM Architectural had justifiably dismissed Ms Downer. It had to determine whether a fair and reasonable employer could have made the same decision in the circumstances.

The Authority acknowledged prior cases where an employee had covertly recorded conversations. It observed that such behaviour was capable of irrevocably destroying an employer's trust and substantively justified summary dismissal. However, it noted the importance of context, including privacy expectations and the nature of the workplace.

The Authority considered it reasonable that an employer could potentially summarily dismiss an employee for attempting to make such a recording. Given Mr Meredith's expectation of privacy in his own office after hours and the small size of the business, LM Architectural could reasonably expect employees to respect confidentiality, especially in relation to commercially sensitive matters.

Ms Downer claimed she wanted to protect herself from what she believed was Mr Meredith setting her up for dismissal. However, the Authority deemed it reasonable that she had breached her duty of good faith, and that her actions constituted serious misconduct. Dismissal was within a range of responses deemed fair and reasonable.

The Authority then assessed whether LM Architectural had followed a fair process. Mr Meredith had offered Ms Downer two weeks' pay if she resigned to avoid a disciplinary process. That in itself was not inappropriate, but given her stated intention to resign, LM Architectural created unnecessary pressure by telling her a disciplinary process would follow if she refused. Nonetheless, it was not unreasonable for Mr Meredith to address his concerns formally, following his discovery of her computer usage.

Upon reviewing its process, the Authority determined that LM Architectural sufficiently investigated its concerns about Ms Downer, put concerns to her for feedback, provided a reasonable opportunity to respond and genuinely considered her explanations, even if it did not accept them. Her claim of unjustified dismissal failed.

The Authority went on to consider whether Ms Downer was unjustifiably disadvantaged following alleged bullying and an unjustified suspension. Whilst Ms Downer and Mr Meredith were involved in undoubtedly uncomfortable conversations, the Authority did not accept that any bullying occurred because of them.

However, the Authority ruled the suspension was unjustified. Mr Meredith went into a discussion with Ms Downer with a pre-determined decision to suspend her. The suspension caused Ms Downer to leave suddenly with little understanding about why. As LM Architectural failed to engage in any meaningful consultation, its actions caused Ms Downer to be unjustifiably disadvantaged.

Having succeeded in her unjustified disadvantage claim, the Authority awarded her \$7,000 as compensation for hurt and humiliation and declined to award any penalties or an order for repayment of holiday pay. Costs were reserved.

Downer v LM Architectural Builders Ltd [[2025] NZERA 55; 03/02/25; L Vincent]

Wage and record-keeping breaches lead to significant penalties

Mr Nair began working for Modern Auto Repair Centre Ltd (Modern Auto) as a full-time panel beater on 9 February 2021. He took some time off in mid-2021. Throughout his employment, there was no set pattern as to when he got paid. Sometimes he would have to ask his employer for wages that were owed to him.

Issues came to a head in disputed circumstances on 26 August 2022 when Mr Nair approached the company's sole director, Mr Sharma, seeking payment for five weeks' wages owing to him. Mr Nair said Mr Sharma verbally abused him and threatened to call the Police if he wouldn't leave the premises. Mr Sharma described the incident differently, saying that Mr Nair had been asked to leave the premises after allegedly threatening him.

On 14 September 2022, Mr Nair emailed Mr Sharma claiming that he had been told not to come back to work on 26 August 2022. Mr Nair needed Mr Sharma's cooperation because the Ministry of Social Development wanted to know why he had been asked not to return to work. Mr Nair sought an explanation from his former employer as to what happened and that he had not heard from him about his outstanding wages and holiday pay. Mr Sharma did not respond to Mr Nair's email.

Mr Nair raised a claim with the Employment Relations Authority (the Authority) alleging he had been unjustifiably dismissed.

After a significant delay in the provision of wage and time records from Modern Auto, the Authority reviewed them and identified that Mr Nair's wages would often be paid two weeks in arrears and sometimes not at all. The total amount of outstanding wages was \$9,888.76.

The Authority was heavily critical of the wage and time records kept by Modern Auto and observed that it lacked the level of detail specified under the Employment Relations Act 2000 (the Act). The Authority also found that holiday and leave records for Mr Nair were deficient and non-compliant with the Holidays Act 2003. While Mr Sharma claimed Mr Nair took annual leave, the Authority was not happy with the records he provided. Therefore, it decided that Mr Nair was not provided with annual leave, the unpaid figure amounting to a total of \$4,401.17.

The Authority assessed the unjustified dismissal claim. There was no evidence to support Mr Sharma's assertion that Mr Nair had threatened him. Equally, there was no evidence suggesting that Mr Nair had resigned. Mr Nair's email from 14 September 2022 to Mr Sharma made clear that he was asked to leave work "and not come back", which on a plain reading supported a dismissal rather than a resignation.

Mr Sharma could reasonably be expected to follow up or set the record straight with Mr Nair even if he had purportedly resigned. However, by not responding to Mr Nair's emails, Mr Sharma merely confirmed matters in Mr Nair's mind that he had been summarily dismissed. The Authority observed that, even for a small employer such as Modern Auto, there was no process followed whatsoever. Therefore, it could not be said that the company's actions were those of a fair and reasonable employer. The claim of unjustified dismissal was upheld.

Mr Sharma, being the sole director of Modern Auto, was declared a person involved in breaches of employment standards under the Act. Therefore, if Modern Auto was not able to make good on the arrears, Mr Sharma could be ordered to make good on them personally. However, his possible liability was limited to the payment of wage arrears, annual leave arrears and interest. The award for lost wages and compensation for hurt and humiliation was the liability of the company rather than its director.

Modern Auto was ordered to pay Mr Nair \$14,289.93 in wage and annual leave arrears plus interest, \$5,120 for lost wages, and \$13,500 as compensation for hurt and humiliation. Costs were reserved.

Nair v Modern Auto Repair Centre Ltd [[2025] NZERA 28; 21/01/25; P Fuiava]

Applicant's freedom of control means they are not an employee

Ms Squires lodged a claim with the Employment Relations Authority (the Authority). She submitted that she was employed by Playmaker Labs Ltd (Playmaker) and was due outstanding wages from 20 May 2023 to 5 December 2023. Playmaker failed to directly engage with the Authority's process.

In March 2023, Ms Squires pitched a software platform called "Oasis" to Playmaker. She was invited to meet with Playmaker in India, to talk about how the Oasis intellectual property could be used to create a revenue stream for the business.

Ms Squires continued to carry out work for Playmaker and travelled to India in August 2023. Sometime between August and December 2023, Ms Squires said communication with Playmaker ceased, so she left India and stopped working for the company.

Ms Squires submitted that she had been told she would be paid \$50 an hour for her work. However, there was no written agreement between the parties. Ms Squires submitted in evidence an unsigned document titled "Engagement Agreement." That document, in general terms, set out broad tasks that Ms Squires was to complete for Playmaker.

The issue for the Authority was to determine if Ms Squires was an employee or an independent contractor when working for Playmaker. The determination took the form of assessing the degree of

control that Playmaker had over Ms Squires, the degree to which she was integrated into the operations of the company, and the overall intention of the parties.

The evidence indicated that, despite Playmaker setting some work tasks and asking Ms Squires to attend meetings in India, she was largely free to work in a location and time of her choosing. The degree to which Playmaker exerted control was found to be limited. Ms Squires worked using her personal email address and her own laptop.

In assessing the degree to which Ms Squires was integrated into Playmaker's operations, the Authority considered the work Ms Squires did. While she could show the tasks she performed, it was not demonstrative of consistency or continuity that would be indicative of an ongoing employment relationship. While the Authority accepted that the aim of the trip was to successfully obtain a revenue stream for Playmaker, the tasks Ms Squires undertook in furtherance of that aim did not go far enough to establish her as being central to Playmaker's core operations.

The Authority considered the nature of the business relationship leaned more towards Ms Squires acting as an independent contractor. Ms Squires travelled to India to pitch the Oasis platform, which she owned and controlled. That was not the same as an employee who is providing pure labour for their employer solely for the employer's gain in exchange for payment.

In considering the question of economic independence, the Authority observed that Ms Squires appeared to complete tasks and then seek payment from Playmaker, rather than seeking a regular wage. This supported the notion that she did not intend to be an employee. Correspondence between Ms Squires and Playmaker from January 2024 further indicated Ms Squires was seeking a form of payment not typical of employees. Playmaker owed Ms Squires money, but the Authority found it was not money owed in her capacity as an employee.

The Authority found there was no intention of the parties to enter into an employment arrangement. The template agreement provided was an engagement contract for services and not an employment agreement.

Ms Squires may have undertaken work for Playmaker but that did not go far enough to establish an employment relationship. The nature of Ms Squires' relationship with Playmaker was more of a business partner or a contractor. As such, while the Authority did not doubt the work she performed in marketing and developing the business, there was little evidence to suggest that Ms Squires was an employee. Rather, she was found to be an independent contractor. Accordingly, her case was not made out.

Squires v Playmaker Labs Ltd [[2025] NZERA 35; 24/01/25; D Tan]

Employer's advance payments found to be salary instead of bonus

Ms Ryan raised a claim with the Employment Relations Authority (the Authority). She alleged she was unjustifiably disadvantaged and constructively dismissed after resigning from an administrative role with ICCMT Ltd (ICCMT) on 15 June 2023.

Ms Ryan said she had been employed since 20 April 2022, on a salary of \$9,000 a month, but resigned because she was not paid some or all of the salary owed to her for the months from October 2022 to June 2023. Ms Ryan sought orders for arrears of wages totalling \$63,000 and remedies of lost wages and distress compensation for her personal grievance.

At around the time of this claim, Ms Ryan and Mr Campbell (ICCMT's sole director and shareholder) had just ended a ten-year relationship. Mr Campbell submitted that Ms Ryan did casual work for ICCMT and was not a permanent employee.

Bank records showed that Ms Ryan was paid around \$9,000 for each month from March 2022 until December 2022. In January and February, she received around half this amount from Mr Campbell personally and from a company named Innovate Civil and Construction Limited (ICCL), which was now

in liquidation. ICCL funds were also used to pay \$28,539.29 to Ms Ryan as personal loans in October 2022, and \$39,000 was used to buy an Audi Q7 car in Ms Ryan's name on 15 December 2022. Mr Campbell was the sole director and shareholder of ICCL.

ICCMT submitted there were no arrears owing as it paid Ms Ryan just under \$78,000, at her request, on 7 March 2023, as a year's salary in advance.

There was no documentation about the intentions of the parties before the employment started, nor was there any information about the nature of the employment, such as agreements to submit invoices, or evidence of an employment agreement.

On the nature of the arrangements, in March 2022 Mr Campbell undertook earthworks and drainage work while Ms Ryan completed administrative and accounts reconciliation tasks. Both had agreed to receive around \$9,000 each from the company for each month.

The Authority considered the nature of Ms Ryan's work as indicative of her being an employee. She was entirely integrated with the business of the company and under its control. It was not a situation where Ms Ryan was in business on her own account or free to provide administrative services to other customers.

The nature of the 7 March 2023 payment of \$78,000 was in dispute. Ms Ryan submitted that it was a bonus payment given to her following the successful recovery of a \$280,000 payment from an ICCMT customer. Mr Campbell submitted this was a salary in advance requested by Ms Ryan. She had concerns about her future financial wellbeing, because of the financial challenges ICCL was facing which ultimately led to its liquidation.

The Authority considered, in that context, it was more likely than not that Ms Ryan had sought an advance payment of her salary to provide some security of income. Given she knew that the company had the funds available at that time, but faced uncertainty in coming months, it made sense for her to do so. The Authority determined the March 2023 payment to be in the nature of advance salary from March 2023 to February 2024.

The Authority considered a shortfall in salary owed to Ms Ryan for January and February 2023 was remedied by advance salary payments made to her in March 2023, for a period extending beyond her resignation in June 2023. At the time of Ms Ryan's resignation, there was no deficit in salary payments. Her personal grievance application was declined. Ms Ryan in fact would owe a debt to ICCMT for the salary paid in advance, but ICCMT did not seek to recover this figure. While the Authority took note of the personal loans and car purchased using ICCL funds, they were considered not relevant to the employment relationship and were more appropriately dealt with by the liquidator.

Ryan v ICCMT Ltd [[2025] NZERA 53; 03/02/25; R Arthur]

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: Seven Bills

[Plain Language Act Repeal Bill](#) (14 May 2025)

[Medicines Amendment Bill](#) (19 May 2025)

[Juries \(Age of Excusal\) Amendment Bill](#) (22 May 2025)

[Employment Relations \(Termination of Employment by Agreement\) Amendment Bill](#) (22 May 2025)

[Sale And Supply of Alcohol \(Sales on Anzac Day Morning, Good Friday, Easter Sunday, And Christmas Day\) Amendment Bill](#) (22 May 2025)

[Anzac Day Amendment Bill](#) (22 May 2025)

[United Arab Emirates Comprehensive Economic Partnership Agreement Legislation Amendment Bill](#) (23 May 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



[CLICK HERE](#)

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 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.



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Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.



OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

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



EMPLOYMENT RELATIONS CONSULTANTS

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



LEGAL

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

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ADVICELINE

AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.

This service is 100% inclusive of your membership. There is no time limit to your call, and the team is available 8am–8pm Monday to Thursday and 8am–6pm Friday.

Our Employer Advisors are well trained and comprise a mixture of legal and business backgrounds. They understand your issues and can help advise you on legal requirements and best practices. They are backed up by a large resource base they can call on to support with you with written resources, guides, and templates.

TRAINING SERVICES

Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.

Whether it be best practice processes under the Employment Relations Act and the Health and Safety at Work Act, leadership training or personal development, the Business Central training team are dedicated to facilitating your business's professional learning.

For more information about Business Central's public and customised in-house courses, or to register for a course, contact the team today.

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OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

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

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

EMPLOYMENT RELATIONS CONSULTANTS

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

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

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

LEGAL

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

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

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



A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND



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.