BusinessCentral

# EMPLOYER BULLETIN

14 July 2025
A Weekly News Digest for Employers

## EMPLOYER NEWS

### OCR steady as she goes

The Government's responsible fiscal management has supported the Reserve Bank to keep the Official Cash Rate low, Finance Minister Nicola Willis says.

The Reserve Bank of New Zealand announced it would keep the Official Cash Rate (OCR) at 3.25% while continuing to foreshadow further reductions in the OCR.

"There has been a 2.25 percentage point reduction in the Official Cash Rate since August last year – easing the cost of borrowing and delivering much needed cost of living relief for many New Zealand households," Nicola Willis says.

"While many Kiwis are already experiencing lower mortgage repayments off the back of previous OCR reductions, more will benefit when they re-fix their mortgage this year, meaning the positive effects of previous rate drops will continue to flow-through our economy over the coming months.

"Lower interest rates free-up household budgets for spending elsewhere and they ease the path for those wishing to enter the housing market. They also provide relief to interest-rate sensitive sectors of the economy, including building and construction, with lower interest rates often providing a kick-start for big new projects."

To read further, please click here.

### Government AI Strategy to boost productivity

Science, Innovation and Technology Minister Dr Shane Reti has launched New Zealand's first AI Strategy to boost productivity and grow a competitive economy.

"AI could add $76 billion to our GDP by 2038, but we're falling behind other small, advanced economies on AI-readiness and many businesses are still not planning for the technology," says Dr Reti.

"We must develop stronger Kiwi AI capabilities to drive economic growth, and this Strategy sends a strong signal that New Zealand supports the uptake of AI.

"The Government's role in AI is to reduce barriers to adoption, provide clear regulatory guidance, and promote responsible AI adoption.

"We're taking a light-touch approach, and the Strategy sets out a commitment to create an enabling regulatory environment that gives businesses confidence to invest in the technology."

"Private sector AI adoption and innovation will boost productivity by unlocking new products and services, increasing efficiency, and supporting better decision-making.

To read further, please click here.

## Tatauranga umanga Māori – Statistics on Māori businesses: March 2025 quarter

Māori authorities are defined as businesses that receive, manage, and/or administer assets held in common ownership by iwi and Māori. Māori authorities are largely identified through their tax codes as registered with Inland Revenue. Any business within a Māori authority ownership group is also included for the purposes of Tatauranga umanga Māori.

In the March 2025 quarter, around 1,450 Māori authorities and related businesses were in the Tatauranga umanga Māori population.

All figures are actual values and are not adjusted for seasonal effects.

In the March 2025 quarter compared with the March 2024 quarter:

- The total value of sales by Māori authorities was $1,078 million, down $0.6 million (0.1%)
- The total value of purchases by Māori authorities was $742 million, down $18.9 million (2.5%)
- The total number of filled jobs for Māori authorities was 11,870, down 170 jobs (1.4%)
- The total value of earnings by employees of Māori authorities was $212 million, down $8.7 million (4.0%)
- Māori authorities exported $219 million worth of goods, up $10 million (4.9%)

To read further, please click here.

## Consultation begins on the future of Smart EV charging

MBIE is seeking feedback from industry and consumers on options to improve the uptake of smart electric vehicle (EV) chargers in New Zealand.

Across the country, more households and businesses are choosing to adopt EVs and charge their vehicles at home. As EV uptake increases and the wider New Zealand economy electrifies, growing electricity demand from EV charging risks putting pressure on our electricity networks – increasing the cost of electricity for all consumers through expensive infrastructure upgrades.

In the face of energy security and affordability challenges, regulating EV charging offers a cost-effective solution to this problem by giving consumers the option to shift their electricity usage to off-peak times through smart charging. Smart charging can ease the pressure on the electricity system, avoid the costs of expensive infrastructure upgrades being passed on to Kiwis in their power bills, and allow households and businesses to save money through cheaper charging rates at off-peak times.

Modelling suggests widespread use of smart and energy efficient EV chargers could save New Zealand up to $4 billion by 2050, enabling better use of renewable electricity and reducing the need for fossil-fuelled generation at times of peak demand.

To read further, please click here.

## Strengthening trespass laws for businesses

The Government is strengthening trespass laws to make them more effective and practical for businesses, Justice Minister Paul Goldsmith and Associate Justice Minister Nicole McKee say.

"We know our trespass laws are no longer fit for purpose. They're difficult to enforce and often criminals take no notice. They return with impunity and just continue to rob businesses of their livelihoods," Mr Goldsmith says.

"Our plan to restore law and order is working, but there's still more work to be done. Trespass laws are an area we know will make a world of difference to the community.

"Businesses need extra tools to better protect their properties, keep offenders away, and stop them from coming back."

To read further, please click here.

## Targeting criminals, not Kiwi businesses

Associate Justice Minister Nicole McKee announced further steps in the Government's overhaul of the AML/CFT regime, strengthening efforts to combat serious financial crime.

"This Government is serious about targeting criminals, not tying up legitimate businesses in unnecessary red tape," Mrs McKee says.

"Cabinet has agreed to introduce a bill to strengthen enforcement powers for Police and regulators to crack down on those involved in money laundering.

"It will also establish a new financial sanctions supervisory regime and initiate engagement on a sustainable levy to fund AML/CFT system improvements.

"The new approach will deliver more clarity and consistency for businesses while maintaining a strong focus on preventing criminal misuse of the financial system."

To read further, please click here.

## EMPLOYMENT COURT: ONE CASE

### Court upholds Authority ruling on interim reinstatement order

Mr and Mrs Lowe were employed at Vegepod NZ Ltd (Vegepod) as general managers. They were also shareholders in the company. Vegepod undertook a restructure in late 2024 and, consequently, the Lowes were both made redundant. Around that time, the Lowes were also involved in a shareholder dispute with the company which resulted in that issue being brought to the High Court.

The Lowes also made a claim to the Employment Relations Authority (the Authority) and argued they were unjustifiably dismissed and disadvantaged. They sought permanent reinstatement as well as an order for interim reinstatement. In its preliminary decision, the Lowes were successful, and the Authority ordered interim reinstatement.

Vegepod applied to the Employment Court (the Court) to challenge the Authority's order of interim reinstatement. The Court set out the established framework for considering reinstatement applications. An applicant must establish that there was a serious question to be tried both in relation to the unjustified dismissal claim as well as the permanent reinstatement claim. It must then decide where the balance of convenience lay and then consider the impact on the parties if interim reinstatement was or was not granted. The impact on third parties will also be relevant to the weighing exercise. Finally, the overall interests of justice would be assessed.

The threshold for an arguable case was low, and the Court found there were significant procedural deficiencies with the process relied on by Vegepod to terminate the Lowes' employment. Vegepod also conceded that there was an arguable case for unjustified dismissal.

Nevertheless, Vegepod submitted that reinstatement was neither possible nor practicable. The roles in question were said to no longer exist, and it argued that the employment relationship was broken beyond repair. Further, it submitted it had concerns about the Lowes' conduct which occurred before they were terminated. It said that if the Lowes were reinstated, they would likely face disciplinary action.

The Court found that a significant portion of the relationship issues had been caused through Vegepod's actions. While reinstatement would be a challenge for all parties, the Lowes, as shareholders, had good reason to make the employment relationship work and were unlikely to intentionally "damage" the company, as was suggested by Vegepod. While Vegepod submitted the roles in question had been moved to Australia, the Court found the work still remained, and Vegepod had been placed on notice early about reinstatement being sought. Vegepod was also a well-resourced employer with access to specialist HR support.

When weighing the balance of convenience, Vegepod directed the Court to consider case law which established that if interim reinstatement was being considered by the Court as a potential outcome, and the employee in question was likely to face disciplinary action to address misconduct if they were to return, that factor would weigh against the granting of interim reinstatement. The Court's response was that potential disciplinary matters would be dealt with upon the Lowes being reinstated. It was noted that the Lowes had a strong case to dispute the disciplinary allegations.

Through their separate High Court proceedings, the Lowes were seeking a pathway which would enable their shareholding to be bought out. Counsel for Vegepod argued that such proceedings were at odds with their application for reinstatement. While such an argument would usually be persuasive, in the case at hand, the Lowes were seeking to protect their investment in complicated circumstances. The evidence strongly suggested that the restructuring and disestablishment of the Lowes' positions was significantly motivated by a desire to get rid of the last shareholder from what was otherwise a family-owned business.

Weighing the balance of convenience and the overall justice of the matter, the Court agreed with the Authority and found in favour of interim reinstatement. While the Court considered Vegepod's submission for a return to the payroll only, that submission was not supported largely because full reinstatement was the default position.

The Court dismissed Vegepod's challenge to the Authority's decision. The parties were ordered to undertake urgent mediation with a view to a managed return to the workplace no later than three weeks after the judgement date. The Lowes were to be immediately returned to the payroll.

**Vegepod NZ Ltd v Lowe [[2025] NZEMPC 76; 14/04/25; Chief Judge Inglis]**

## EMPLOYMENT RELATIONS AUTHORITY: THREE CASES

### Restructure proposal was not pre-determined

TPS New Zealand Ltd (TPS) dismissed Mr Brown from his position as human resources and compliance manager by way of redundancy. On 5 January 2023, at the suggestion of TPS, Mr Brown submitted to his general manager, Mr Taylor, a proposed change to his team. Mr Taylor then invited Mr Brown to a meeting on 13 January 2023 where he outlined his own change proposal which would split Mr Brown's role in two. Mr Brown was offered one of those roles. However, he declined to accept it as it would have involved a loss in salary and benefits. He was advised he might not be a good fit for the other role. Regardless, TPS was open to discussing the matter. Mr Brown took sick leave in January 2023, and did not return to work. On 17 March 2023, TPS confirmed Mr Brown's role was disestablished.

Mr Brown raised a claim with the Employment Relations Authority (the Authority) alleging he had been unjustifiably dismissed. He contended that the decision to terminate his employment was pre-determined. He specifically referred to a report TPS obtained from The Diversitas Group, an external consultancy firm, in August 2022. That report was broadly critical of three managers. The report further set out concerns staff held about shortcomings with the HR department, which Mr Brown was a part of. In the following nine months after the report was published, all three staff managers were terminated. Mr Brown said the report was only shared with him in February 2023 in a heavily redacted form.

Mr Brown submitted TPS had used the redundancy process to address performance concerns it held about him. He considered the outcome to be pre-determined, and the alternative role offered to him was a humiliating demotion.

TPS agreed there were concerns in the nature of performance issues and it had endeavoured to raise them with Mr Brown in 2022. TPS' broad view, which it thought Mr Brown had agreed with, was that its main issue was the fact that Mr Brown's role was too large for one person to reasonably manage. It thought it could not formally raise performance issues in the context of the role size being such a significant factor.

The Authority found that TPS had a genuine reason for its proposal. A need had been established to increase capacity in the HR team and the proposal would increase the capacity. Mr Brown, by his own evidence conceded the role, as it was, had become too large for him to reasonably manage. His own suggested proposal had also sought to increase capacity, albeit in a different way from the proposal made by TPS.

In finding that the predominant reason for the proposal was not to move Mr Brown on, the Authority noted two specific factors. Firstly, in recognition of Mr Brown's work, he had received a significant pay increase in April 2022 which probably wouldn't have happened if TPS had significant performance concerns. Secondly, although Mr Brown saw each of the offered roles as demotions with a loss in remuneration, TPS had been open to negotiations about terms.

Mr Brown submitted that TPS breached good faith obligations by not telling him it was formulating its own proposal when he had been asked to prepare one of his own. The Authority did not agree. There was no evidence to support the view that Mr Taylor had shut his mind to alternative proposals.

However, the Authority considered Mr Brown had been misled about the nature of the meeting held on 13 January 2023. Mr Brown thought it was to discuss the proposal he had come up with, only to find Mr Taylor had drafted one of his own. Mr Brown was only told the proposal would be sent to him later that day and he was not called upon to give any feedback at the time of the meeting. However, the Authority found the procedural issue was only minor.

Although the redacting of information in The Diversitas Group's report was seen as more than a minor flaw, the Authority considered that Mr Brown had not been disadvantaged. If TPS relied on the report recommendations, Mr Brown still had an opportunity to comment on TPS' proposal.

The Authority heard evidence which suggested Mr Taylor commented to staff that the proposal outcome was pre-determined. The Authority found that while there was inevitable gossip and speculation, there was no evidence to establish that Mr Taylor had acted inappropriately.

While Mr Brown sought to paint the offer of an alternative role as a constructed demotion with a lower pay rate and lesser conditions, the Authority found no evidence to support that. The door was open for Mr Brown to enter negotiations about terms and benefits, including transitional arrangements. Mr Brown had access to counsel, so could have engaged on these matters if he wished. However, he ultimately declined to do so. Mr Brown's claim of unjustified dismissal was not successful.

While breaches of good faith were established, the Authority concluded the breaches were not enough to show Mr Brown had been materially disadvantaged, so no penalties were ordered. Costs were reserved.

**Brown v TPS New Zealand Ltd [[2025] NZERA 163; 18/03/25; R Arthur]**

## Business partners found to not have employment relationship

In May 2021, Mr Boyes and Mr Williams agreed to set up a tyre importing and supply business (the Business). The basic premise of their joint undertaking was that Mr Boyes would provide expertise and labour in respect of sourcing, supplying and fitting tyres while Mr Williams would provide the capital and business expertise.

Mr Boyes raised a claim with the Employment Relations Authority (the Authority) alleging that he was in fact an employee of the Business. Mr Williams denied his claim and argued that Mr Boyes was rather an owner-operator in the Business and effectively in partnership with him.

The preliminary issues before the Authority were to determine Mr Boyes' employment status in the Business and, if he was found to be an employee, to determine if his grievance had been raised within the statutory time limit.

To determine Mr Boyes' employment status, the Authority needed to consider the intention of the parties and then review how those intentions played out in practice. Finally, common law principles could be considered to determine if Mr Boyes was an employee or a contractor. Those principles included the control test, which involved analysing who was responsible for deciding what and how the work was performed; the integration test, which involved assessing the degree to which Mr Boyes was integrated into the Business; and the fundamental test, which involved an assessment of whether Mr Boyes was in business on his own account.

Mr Boyes and Mr Williams signed a "Heads of Agreement" document in May 2021. From the negotiations and how the work commenced, it was clear that Mr Williams and Mr Boyes intended to operate their relationship on a partnership basis with a limited liability company. The initial intention of the parties was that Mr Boyes was not working or being paid as an employee but as a partner in the Business.

The Business was operated primarily by Mr Boyes and then, after a time, through employees he managed. While Mr Williams' operational involvement in the Business was minimal, that later increased when he began following up on overdue invoices.

Mr Boyes undertook the day-to-day tasks of running the business and, in the course of doing that work, he treated himself more as an owner-operator than an employee. He described himself as the managing director and worked hours that suited him. He described his remuneration as a loan from the company and did not request or take employee benefits such as annual leave or public holidays.

The Authority was satisfied that the way the Business operated was in line with the parties' original intention. Mr Boyes and Mr Williams operated a partnership in which Mr Boyes developed and undertook the work for the Business and Mr Williams provided the finance required and business mentoring support.

The evidence strongly indicated Mr Boyes had a high level of control in his work. While he submitted Mr Williams exerted control, that was to a very limited degree and largely involved signing off significant expenditure items or, towards the end of the partnership, seeking to be more involved in chasing up invoices. The Authority considered Mr Williams' later involvement to be more an attempt to protect his investment rather than a reflection of him having control over Mr Boyes' work.

Given how the partnership operated, the Authority considered the integration test to be of little value in determining if Mr Boyes was an employee. Mr Boyes was the face of the Business in terms of expertise, customer relationships, and operations, meaning he was fully integrated into it. That equally reflected Mr Boyes being an owner-operator as it reflected him being an employee.

Considering whether Mr Boyes was in the Business for his own benefit, the Authority found the Business was operated for the benefit of both Mr Boyes and Mr Williams as a partnership. The benefit for Mr Boyes was that he could establish a business through finance from Mr Williams, obtain advance payments on profit, and then use overall profit (accumulated over time) to purchase Mr Williams' share. The benefit for Mr Williams was for the potential for a return on his investment. The fundamental test indicated that Mr Boyes was not an employee but rather a partner in the Business as ultimately, the operation of the Business was for his own reward.

The Authority concluded that Mr Boyes was in partnership with Mr Williams and operated the Business as an owner, making his own choices about the work undertaken and the development of the Business for his own benefit. Mr Boyes was not an employee. The claim did not succeed, and the Authority had no jurisdiction to consider any personal grievance claims sought by Mr Boyes. Costs were reserved.

**Boyes v Luke's Mistake Ltd [[2025] NZERA 159; 17/03/25; P Van Keulen]**

## Employer ordered to pay money owed to employee

Mr Kauhega was employed by Ms Martin as a company driver in May 2023. Less than four months into the job, Ms Martin started indicating to Mr Kauhega that there was no work available. Mr Kauhega completed a day's work he was not paid for and was not paid for three weeks when he was available to work, but no work was provided. At the end of October 2023, Ms Martin proposed to change Mr Kauhega's employment agreement to an independent contractor arrangement, which he declined. That was considered the end of the employment relationship. Mr Kauhega never received any paid notice and was not paid out holiday pay.

The Employment Relations Authority's (the Authority) determination resolved whether Ms Martin owed Mr Kauhega wage arrears and holiday pay. Mr Kauhega confirmed he was no longer seeking compensation and just wanted to be paid the arrears he said he was owed.

Ms Martin did not engage with the Authority's investigation or provide a statement in reply. There was no good cause shown for Ms Martin's failure to attend or be represented, so the Authority proceeded in her absence. The Authority confirmed that the law requires Mr Kauhega to be paid for work he completed. Mr Kauhega was entitled under the terms of his employment agreement to be provided with 10 to 12 hours' work a day from Monday to Friday and he had a notice period of one week in case of termination.

The Authority investigated and determined that Mr Kauhega was owed wage arrears for a day of work on 28 September 2023 for which he was not paid. It also determined he was entitled to be paid for days he was available for work, but when no work was provided, from 11 September to 20 October 2023. The Authority found his employment was terminated by Ms Martin when she attempted to change the working relationship from employment to contracting. Therefore, Mr Kauhega was entitled to be paid for one week's notice. He was also entitled to be paid 8% of his gross earnings at the end of his employment to represent his annual leave accrual, given that he had worked for Ms Martin for less than 12 months.

Ms Martin was ordered to pay Mr Kauhega $402.50 gross for the day he worked but was not paid, $6,650 gross for days Mr Kauhega should have been paid, $1,750 gross for his notice period and $3,113.90 gross in unpaid holiday pay. Mr Kauhega incurred the expenses of attending the Authority's investigation meeting, caused by Ms Martin's non-engagement in the investigation. The Authority therefore ordered Ms Martin to pay Mr Kauhega's expenses of $101.55 for Authority's filing fee and parking costs.

**Kauhega v Martin [[2025] NZERA 168; 21/03/25; N Szeto]**

## 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: Four Bills**

Overseas Investment (National Interest Test and Other Matters) Amendment Bill (23 July 2025)

Game Animal Council (Herds of Special Interest) Amendment Bill (24 July 2025)

Immigration (Fiscal Sustainability and System Integrity) Amendment Bill (28 July 2025)

Inquiry into the harm young New Zealanders encounter online, and the roles that Government, business, and society should play in addressing those harms (30 July 2025)

Overviews of bills-and advice on how to make a select committee submission-are available at: https://www.parliament.nz/en/pb/sc/make-a-submission/

CLICK HERE

**A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND**

## The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations.

If you would like to provide feedback about the Employer Bulletin, contact: comms@businesscentral.org.nz
or for further information, call the AdviceLine on 0800 800 362

### ENTERPRISE SERVICES

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www.businesscentral.org.nz

### ADVICELINE

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

### TRAINING SERVICES

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

### OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

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

### EMPLOYMENT RELATIONS CONSULTANTS

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

### LEGAL

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

## ENTERPRISE SERVICES

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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.**