BusinessCentral

EMPLOYER BULLETIN

12 August 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

New direction for Public Service

The Government has issued a new Workforce Policy Statement outlining expectations and priorities for employment relations across the Public Sector, with a strong emphasis on fiscal sustainability and performance, Minister for the Public Service Nicola Willis says.

The workforce policy statement is a blueprint for how public sector agencies, including Crown entities, should approach a range of workforce matters including remuneration, negotiation of employment agreements, pay equity, diversity, data and information.

“This Government is committed to delivering better public services like health and education while ensuring government agencies spend taxpayer’s money as carefully as they would themselves,” Nicola Willis says.

“Over the past six years, there has been a sharp increase in the amount of taxpayer money spent on back-office staffing in public agencies.

“Despite these increases, actual outcomes for New Zealanders have gone backwards across key areas like health, education, and crime.”

To read further, please click here.

Taxpayer money being spent on children first

After years of allowing money to slide through the cracks Oranga Tamariki is finally taking financial control of its funding for external service providers, says Children’s Minister Karen Chhour.

“This year I asked Oranga Tamariki to make sure the hundreds of service providers having their contracts reviewed, were properly assessed. Line by line.

“Their challenge has been to unpick years of complacency and lack of rigour in the way contracts have been managed. These contracts are valued at more than $500 million.

"I have pushed the Oranga Tamariki senior management team to look for every opportunity to focus its funding on the care and protection of the children it is responsible for.

"For too many years Oranga Tamariki has been the cash cow for community service providers who say they will provide services, and then don't."

To read further, please click here.

Passport wait times reduced by half

Internal Affairs Minister Brooke van Velden says wait times for passports have halved since an upgrade to the passport processing software in March caused unexpected delays to passport processing times.

"As of Tuesday 6 August, the passport application queue has reduced by over 57 percent - 31,000 applications down from a peak of 53,847 at the beginning of May, and wait times have halved," says Ms van Velden.

"In the month of July, the Department of Internal Affairs [the Department] issued 50,397 passports – over 10,700 more passports than applications it received."

Of the passports issued by the Department in July, 83 percent were issued within 6 weeks. Of the passports issued by the Department in July, 91 percent were applied for online and 32 percent were group applications.

To read further, please click here.

Prime Minister Luxon cements ties with Vanuatu

Vanuatu Prime Minister Charlot Salwai and Prime Minister Christopher Luxon have held formal talks today in Wellington.

"New Zealand and Vanuatu have a long-standing friendship, underpinned by the New Zealand-Vanuatu Mauri Statement of Partnership," Mr Luxon says.

"Prime Minister Salwai and I talked about how our two countries can build this relationship even further, and I reaffirmed New Zealand's commitment as a trusted partner to Vanuatu."

The two leaders discussed a range of issues, including labour mobility and the Recognised Seasonal Employer scheme.

"New Zealand greatly values Vanuatu's leadership, including internationally on issues such as climate change. This was also an important chance to discuss issues like New Caledonia as we both prepare for the Pacific Islands Forum Leaders meeting later this month. We discussed how the Pacific can work together to advance the interests of the Region as a whole," Mr Luxon says.

To read further, please click here.

Work-related health newsletter – August 2024

Read WorkSafe's August 2024 work-related health update. In this edition:

- WorkSafe's new strategy and Chief Executive
- Manual handling training is not an effective control
- Managing hazardous manual tasks
- Manual handling risk assessments
- Psychosocial survey of healthcare workers
- Workplace exposure standards consultation
- Safeguard awards winners
- ACC helping build health, safety and wellbeing culture
- Upcoming learning and networking opportunities

To read the full newsletter, please click here.

Calls for tenants, landlords and homeowners to check their bathroom heaters

The Ministry of Business, Innovation and Employment (MBIE) reminds New Zealanders to check their bathrooms for a potentially dangerous recalled heater.

Since May 2024, all S2068 Serene Bathroom Heaters have been recalled after the heaters were found to have a defect by WorkSafe NZ, which has resulted in a number of fires. It is now illegal to use this heater.

MBIE has been working with all known suppliers of these heaters, however many are still being used in New Zealand.

MBIE has been made aware of 18 fire events resulting from S2068 heaters, at least two of which have occurred in recent months since the recall was first issued.

"Checking your bathroom and seeing if you have one of the recalled heaters in there is the first step in making sure you, and your family's home is safer," says Ian Caplin, Business Specialist.

To read further, please click here.

Labour market statistics: June 2024 quarter

Labour market statistics provide a picture of the New Zealand labour market, including unemployment and employment rates, demand for labour, and changes in wages and salaries.

In the June 2024 quarter, compared with the March 2024 quarter, the:

- Unemployment rate was 4.6 percent, compared with 4.4 percent
- Underutilisation rate was 11.8 percent, up from 11.2 percent
- Employment rate remained at 68.4 percent.

In the year to the June 2024 quarter:

- All salary and wage rates (including overtime) increased 4.3 percent
- Average weekly earnings (including overtime) for full-time equivalent employees (FTEs) increased to $1,612
- Average ordinary time hourly earnings increased to $41.52.

To read further, please click here.

EMPLOYMENT COURT: TWO CASES

Strike notice deemed sufficient

Auckland One Rail Limited (One Rail) had employees who were members of the Rail and Maritime Transport Union (the Union). The Union arranged for a continuous strike that would start at 12:01am on 8 June 2024. Notice of the strike was given to One Rail on 6 June 2024.

One Rail sought an interim injunction to restrain the strike, challenging compliance by the Union in the Employment Court (the Court), and alleged deficiencies with the notice.

The case NZ Tax Refunds Ltd v Brooks Homes Ltd set out the approach for an application for an interim injunction. The applicant had to establish that there was a serious question to be tried. Next, the balance of convenience had to be considered. Finally, an assessment of the overall justice of the position was required.

The Employment Relations Act 2000 (the Act) allows an employee to strike if their participation in the strike is lawful, and if proper written notice of the intention to strike under the Act is given.

One Rail argued that the notice lacked the clarity and specificity required by the Act, as it stated that the employees would refuse to work "any shift alteration that varies from the Master rosters." One Rail was unsure about which shift variations might be affected, while the defendant argued that the word "any" was unambiguous and intended to mean that they would not work any shift alteration that varied from the Master rosters.

The Court cited Secretary for Justice v New Zealand Public Service Association Inc which emphasised that the purpose of the notice requirement was to protect the public interest as far as is reasonably possible. Read plainly, the notice unequivocally said that the employees would refuse to work "any" variations to their shifts. This was clear and all communications after the notice from the Union were consistent with the meaning that any shifts that varied from their original rosters would not be worked. While there was confusion between One Rail's employees about which shifts would be worked, this was not sufficient for the claim to succeed, so the cause of action failed.

One Rail also argued that the notice did not specify the end date and time for the strike as required by the Act. There was a networking event hosted by One Rail that day, so there was uncertainty around whether the employees would work to rule for variations issued on that day. One Rail relied on Lyttelton Port Co Ltd v Maritime Union of New Zealand Inc where the Court decided that a strike notice, involving essential services, stating that the strike would be "continuous" without a specified end date or time was a significant defect.

The Union referenced the legislative history and background of the relevant law relating to notice and withdrawing notice, to establish the purpose of the legislation. It argued that originally Parliament's intention was for the parties, but in particular the employer, to have some clarity about when the strike would end to ensure employers could make pay deductions accurately. However, the employer's ability to make any pay deductions was repealed after Lyttelton Port, so little weight was given to One Rail's argument now. One Rail also failed to clarify the notice for itself. The Union emphasised that the Act allowed it to withdraw the strike notice.

Additionally, the balance of convenience lay with dismissing the application. One Rail attempted to argue the strike was a disruption to its business, but the Court replied that it was an inevitable consequence of any industrial action. One Rail was unable to convince the Court for the potential for adverse financial consequences if the strike went ahead. Ultimately, the Court found that employees had the right to strike, Union members would lack alternative remedies if they were restrained from striking, and One Rail's argument was weak. Therefore, the application was dismissed. The Union was entitled to costs.

Auckland One Rail Limited v Rail and Maritime Transport Union [[2024] NZEmpC 101; 12/06/24; Smith J]

Court overturns Authority's decision of unjustified suspension and dismissal

Ms Roy worked for Carrington Resort Jade LP (the Resort) as a chef from 2020 until April 2022. Ms Roy applied to the Employment Relations Authority (the Authority) which found she had been unjustifiably disadvantaged, by being suspended without pay, and unjustifiably constructively dismissed. In this case, the Resort filed a challenge against the Authority's findings in the Employment Court (the Court). Ultimately, the Resort's challenge was successful.

Throughout Ms Roy's employment, concerns were raised by other staff about how she treated them. The Resort had not considered the complaints serious enough to warrant a formal response. However, on 20 April 2022, another chef approached the general manager of the Resort, Mr Tan, and told him he was resigning because he could no longer tolerate working with Ms Roy. Mr Tan asked him not to resign, and that he would schedule a meeting between himself and Ms Roy to resolve the issue. Mr Tan then emailed Ms Roy about the numerous complaints from staff and invited her to a meeting.

On 25 April 2022, Ms Roy went to Mr Tan's office before starting her shift. Evidence showed the meeting lasted approximately six minutes. Ms Roy was so upset that Mr Tan's receptionist got up and shut the door to his office. Afterwards, Ms Roy went to the kitchen and spoke to the staff there. She then gathered her belongings and went home.

On 28 April 2022, Ms Roy's representative raised a personal grievance for unjustifiable disadvantage for what was said to be a suspension immediately following the meeting, as Ms Roy did not return to work. She argued Mr Tan had told her at the meeting to go home for three days while he decided what to do with her. Two days later, Mr Tan emailed Ms Roy and asserted that she resigned at the meeting.

The Court said what occurred at the meeting, and Ms Roy's subsequent behaviour on 25 April 2022, were key to determining the issue. The parties held different perspectives on what occurred. The Court had to assess the conflicting evidence. It first set out the relevant law.

Whether an employee resigned is an objective assessment which is informed by the relevant circumstances. The Court's recent determinations indicated that when employees resign in the heat of the moment, employers were no longer obliged to provide them with a cooling down period. Resignation is a unilateral act. Employers cannot decline to accept a resignation if it is given. The issue is whether the words or actions of the employee, objectively assessed, were such that the employee had terminated the employment relationship.

Having assessed the different versions of events, the Court decided Mr Tan had not sent Ms Roy home. It found, by her words and actions, that Ms Roy had resigned. Its finding was supported by how Ms Roy spoke to staff after the meeting, and the fact she had taken all her belongings home with her when she left.

Even though the Court decided she had not been unjustifiably dismissed, it went on to consider whether she had been constructively dismissed or unjustifiably disadvantaged by Mr Tan not following a fair process.

On the evidence, Mr Tan had not offered Ms Roy a choice between resigning or being dismissed. Rather, he had expressly said it was her choice whether she wished to resign. Mr Tan had not acted in a way which suggested he had coerced her to resign. He had explained to her the concerns raised by other staff but did nothing to suggest that he was unwilling to work through those issues with her. The Resort had not breached any duty owed towards her to make her want to resign. Therefore, there was no evidence that Ms Roy had been constructively dismissed.

Further, because Mr Tan provided Ms Roy with sufficient information for her to understand what the concern was and invited her to a meeting to address those concerns, the Court decided Ms Roy had not been unjustifiably disadvantaged.

The Court found the Resort's challenge against the Authority's decision was successful. The Authority had ordered the Resort to pay Ms Roy lost remuneration and compensation for hurt and humiliation.

The Court ordered her to pay back the lost remuneration sum to the Resort in full. Of the $24,000 compensation for hurt and humiliation, $18,000 was ordered to be paid back to the Resort. The remainder that was not paid back represented the still-successful unjustifiable disadvantage of the suspension.

Carrington v Roy [[2024] NZEmpC 129; 18/07/24; Holden J]

EMPLOYMENT RELATIONS AUTHORITY: THREE CASES

Dismissal for threatening harm found to be justified

Mr Blampied was employed by Electricity Ashburton Limited, trading as EA Networks (EAN), as an earth rig operator from October 2017, until he was summarily dismissed on 12 July 2022. The event that led to his dismissal took place on 4 May 2022. That morning, it was alleged that Mr Blampied indirectly threatened another employee with physical harm.

An employee who heard Mr Blampied make the threat raised the matter with the EAN's Chief Executive, Mr Sutton, who then initiated an independent investigation. While this was undertaken, Mr Blampied was suspended on full pay. The investigation report upheld the allegation. This ultimately led to the decision maker, EAN's Chair of Board Mr McKendry, terminating Mr Blampied's employment by way of a letter. In the letter, Mr McKendry briefly acknowledged the submissions made during the investigation, reiterated EAN's health and safety obligations, wrote that he had considered Mr Blampied's clean record and positive performance reviews, but ultimately concluded: "I cannot issue any sanction other than termination with immediate effect."

Mr Blampied raised a claim with the Employment Relations Authority (the Authority) alleging that he was unjustifiably dismissed and sought reinstatement and compensation. EAN refuted the claim and considered its actions were justified.

The Authority found the investigation was consistent with the terms of reference and was conducted in a full, fair, and thorough manner. Mr Blampied and his union had ample opportunity to comment on the investigation report's veracity or other things, and to challenge its methodology. In the final analysis, the report provided a factual finding on the issue identified and explained how that finding was reached.

The Authority addressed the alleged aggressive behaviour and credibility of the indirectly threatened worker. It was satisfied, regarding the investigation and interview notes, that EAN's decision maker had sufficient information to contextually inform them of the historically poor relationship between Mr Blampied and the colleague he threatened.

Mr Blampied's employment agreement stated that before a decision is made about the findings of an investigation, the decision maker was expected to have a meeting with the accused. As it turned out, Mr McKendry did not request such a meeting with Mr Blampied. Instead, Mr Blampied decided to provide a written response. Mr McKendry also did not review Mr Blampied's personnel file before making his decision. The Authority noted these flaws but found they did not objectively cause any disadvantage to Mr Blampied.

Mr Blampied suggested the comments made on 4 May 2022 could be considered as throwaway comments or bravado. In response, Mr McKendry held a genuine belief that, at some future point, Mr Blampied could have made good on his threat.

The Authority found that given Mr Blampied was inexplicably harbouring and dwelling upon a long-time grudge, Mr McKendry reasonably assumed the threat suggested a real risk that would be acted upon. It was objectively reasonable in all the circumstances for Mr McKendry to conclude that a legitimate threat of violence had been made.

Mr Blampied felt alternative censures should have been considered, but the Employment Relations Act 2000 (the Act) did not create a specific obligation to exhaustively consider alternatives to dismissal. The Authority was satisfied that in making the decision, Mr McKendry took a measured and careful approach, and was entitled to conclude that an indirect threat of serious physical violence had been made.

EAN's chosen sanction was fair and reasonably open to it in all the circumstances. Since the employer's investigation was full and fair, and the subsequent categorisation of Mr Blampied's threat was capable of being deemed serious misconduct, the Authority did not see this as a case where it could substitute a lesser sanction.

The Authority cited the Employment Court case, X v Chief Executive of the Department of Corrections, which stated: "the Act contemplates there may be more than one fair and reasonable response or other outcome that might justifiably be open to a fair and reasonable employer in the circumstances. If the employer's decision to dismiss the employee is one of those responses the dismissal must be found to be justified. It follows that, if dismissal was one option open to the Department after conducting a proper investigation into the circumstances of the complaint, its decision ought not to be interfered with merely because the Court might, possibly, think some lesser penalty could have been imposed." Costs were reserved.

Blampied v Electricity Ashburton Limited T/A EA Networks [[2024] NZERA 192; 04/04/24; D G Beck]

A costly miscommunication in the hiring department

NYY applied for and accepted a job offer from Terra Lana Products Limited (Terra Lana) for a role installing insulation. Due to an internal miscommunication surrounding a delayed commencement date, on 16 May 2023, Terra Lana told NYY they no longer had a job. NYY claimed they were unjustifiably dismissed, as well as that Terra Lana failed to abide by its clauses, which warranted penalties.

NYY had signed the individual employment agreement that Terra Lana offered on 1 May 2023. They were due to start on 9 May 2023. However, on 4 May 2023, two of NYY's family members were in a serious accident, and one passed away the following day. On 8 May 2023, NYY contacted the Terra Lana Palmerston North branch manager, Mr Leach, to delay their start date. The parties agreed that NYY would not start work until 17 May 2023.

Mr Leach was relatively new to his role and asked the general manager, Mr Gallagher, for guidance on the situation. Mr Gallagher misunderstood what Mr Leach said. He thought they were discussing a job candidate who sought to reschedule their job interview, rather than changing the start date for someone they had already employed. Mr Gallagher thought NYY then failed to attend a rescheduled job interview, and that they had not contacted Mr Leach to explain why. Since he thought NYY had not explained or asked for the interview to be rescheduled a second time, he told Mr Leach that NYY was likely unreliable, and that Terra Lana "should not proceed any further."

Mr Leach proceeded to call NYY on 16 May 2023 to say, "we can't have you … I can't take you on mate … as of now you're not employed with us." NYY arrived at Terra Lana's offices on 17 May 2023 with their signed agreement, where they were told they were not employed. NYY requested a letter of termination.

At that point, Mr Gallagher realised his mistake and sought to rectify the situation. Mr Leach made another call to NYY to apologise. Mr Leach said he would not, and could not, dismiss NYY, or give NYY a termination letter. However, he said NYY would need to either come into work or resign. Terra Lana emailed similarly on 18 May 2023, purporting to clarify the situation by explaining the misunderstanding, and restating that NYY was still an employee. It repeated that NYY was asked to either start work or resign.

The Employment Relations Authority (the Authority) found that Terra Lana dismissed NYY during its phone call on 17 May 2023. At that time, employment had still been open to NYY, but Terra Lana then confirmed its dismissal the next day when NYY tried to show their signed agreement at the Terra Lana offices. NYY reasonably lost trust and confidence in Terra Lana because of the dismissal and lack of rectification. Even though the events arose from a misunderstanding, given that the Authority found there was a dismissal, it was unjustified due to having no substantial justification.

NYY was able to find new employment swiftly. Although their actual lost remuneration was only two days' wages, they sought compensation for their ongoing losses of earning $100 per week less in their

new job. Terra Lana argued lost wages should be limited to one week since NYY rejected Terra Lana's offer of reinstatement. The Authority did not limit its wage award based on NYY's new employment because NYY's rejection was reasonable. The Authority awarded NYY the lost wage difference for 35 weeks, totalling $3,500.

NYY sought compensation for hurt and humiliation, as Terra Lana dismissed NYY for experiencing bereavement. Since NYY secured alternative work quickly, the Authority thought compensation should be modest. Nevertheless, the amount it awarded was $15,000.

Terra Lana breached two provisions of the agreement. One stipulated it would act "as a good employer" in all dealings with NYY. The Authority did not issue a penalty for breaching this clause. Terra Lana sought to limit the damage of the mistake it made relatively quickly, issuing a quick reversal and offer of ongoing employment. Similarly, even though Terra Lana breached its good faith obligations, it did not do so deliberately or with wilful wrongdoing. The Authority would not have imposed a penalty for either of these breaches anyway, because they overlapped with the award made for unjustified dismissal.

The other clause Terra Lana breached was not paying notice, which in contrast, was a serious breach and should have been rectified quickly. Rather than being a mistake, this breach was negligent. Terra Lana was ordered to pay this notice at $2,080. Since this was a first time for Terra Lana, the Authority reduced the scale of the maximum $20,000 penalty by 70 percent, and settled on a $3,000 penalty for this breach, with $1,500 going to NYY. Costs were reserved.

NYY v Terra Lana Products Limited [[2024] NZERA 199; 05/04/24; R Anderson]

Authority affirms interim reinstatement after unjustified dismissal

This summary is a follow up to a preliminary determination by the Employment Relations Authority (the Authority). It initially decided that Mr Chen was an employee and should receive interim reinstatement pending a further hearing. That determination was challenged in the Employment Court (the Court).

The matter before the Authority was the alleged unjustified dismissal of Mr Chen on 31 March 2022 from his role as a fulltime principal pastor of the Bread of Life Christian Church (the Church) in Auckland, which was a registered charitable trust governed by an incorporated Trust Board (the Board). The Board was made up of six trustees, of which Mr Chen was one. Two other trustees supported Mr Chen's claims whereas the other three (referred to as the opposing trustees) did not. The Board was beset with governance issues.

The opposing trustees, despite the preliminary determination of the Authority, refused to both pay and reinstate Mr Chen on an interim basis. The Court issued an interlocutory judgement on 16 January 2024, where it declined to pause the Authority's interim reinstatement order. The Court ordered the Church to reinstate Mr Chen to the payroll by no later than 23 January 2024, and to pay him his outstanding salary from 9 June 2023.

The first task of the Authority was to determine whether Mr Chen's employment was under a fixed term or permanent agreement. The opposing trustees considered it fixed term, yet the evidence did not support this. The Authority considered the Church was unable to establish that it had complied with all the legal requirements of the Employment Relations Act 2000 (the Act).

Clause 3 of Mr Chen's employment agreement set out the date of employment which stated, "from 2nd September 2019 to 31st March 2022." However, there had been no mutual agreement about an end date to his employment. The end date written was never put to Mr Chen or raised with him. The Authority found that he was not able to have agreed that his employment would end. Rather, it was just a clause that was unilaterally inserted into the employment agreement he signed. All the evidence pointed towards Mr Chen being a permanent employee, and the Authority agreed.

Witnesses said an end date had been inserted into Mr Chen's employment agreement because some people did not want him to be appointed as the principal pastor. Rather, the intention was to try him out to see if he was suitable for a permanent role. Neither of these reasons were held to be legitimate

genuine reasons for using a fixed term agreement. The Act specifically forbids the use of fixed term employment to establish the suitability of an employee for permanent employment.

The Authority considered the decision to stop paying Mr Chen his salary from 31 March 2022 amounted to a dismissal. The Church failed to comply with its good faith obligations regarding the decision to stop paying his salary. The opposing trustees put forward a range of different concerns about Mr Chen but none of these were raised with him during his employment in an appropriate, fair, or proper manner. He was not adequately consulted about that decision, he was not provided with sufficient information to enable him to properly respond to the opposing trustees' concerns, and his argument that he was a permanent employee and so he did not have to re-apply for his role was not properly considered.

The Authority found that the failure of the Church to comply with its minimal statutory good faith and procedural fairness obligations fundamentally undermined its ability to justify Mr Chen's dismissal, or the unjustified action it took in unilaterally stopping his salary. Accordingly, Mr Chen established that he was unjustifiably dismissed.

Turning to the question of reinstatement, the Authority observed the significant support Mr Chen had from the Church community. It found that reinstatement was reasonable and practicable. The role existed, the work needed to be done, and he had been performing the role as normal, but without payment. Mr Chen did not seek any compensation for his hurt or humiliation. No orders for costs were made.

Chen v Bread of Life Christian Church [[2024] NZERA 198; 05/04/24; R Larmer]

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

Inquiry into the aged care sector's current and future capacity to provide support services for people experiencing neurological cognitive disorders (19 August 2024)

Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill (26 August 2024)

Land Transport (Drug Driving) Amendment Bill (29 August 2024)

Regulatory Systems (Immigration and Workforce) Amendment Bill (04 September 2024)

Regulatory Systems (Economic Development) Amendment Bill (05 September 2024)

Customer and Product Data Bill (05 September 2024)

Improving Arrangements for Surrogacy Bill (18 September 2024)

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

CLICK HERE

A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND

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

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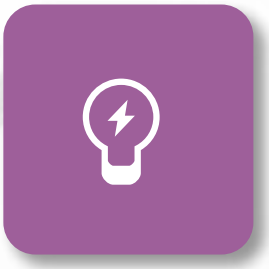

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Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.

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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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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'.

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

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

relationship or it could be confirming a restructuring selection matrix.

LEGAL

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

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

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

A QUICK GUIDE TO HOLIDAY PAY PRACTICES IN NEW ZEALAND

CHRISTMAS AND NEW YEAR PUBLIC HOLIDAYS 2024/2025

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

PUBLIC HOLIDAYS

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

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

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

OTHERWISE WORKING DAY

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

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

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

CHRISTMAS/NEW YEAR CLOSEDOWN AND PUBLIC HOLIDAYS

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

ANNUAL HOLIDAYS, PUBLIC HOLIDAYS, TERMINATION OF EMPLOYMENT

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

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

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

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

PUBLIC HOLIDAY TRANSFER

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

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

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

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

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