BusinessCentral

EMPLOYER BULLETIN

19 August 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

Time of use schemes to reduce travel times

The Government will introduce legislation this year to enable time of use schemes to be developed to reduce travel times on our busiest roads and boost economic growth, Transport Minister Simeon Brown says.

“Congestion is a tax on time and productivity. It means that we are away from home for longer, sitting in gridlock. It results in fewer jobs being done, fewer goods being moved, and delays to services across the city,” Mr Brown says.

“Any money collected through time of use charging will also be required to be invested back into transport infrastructure that benefits the region where the money was raised.”

Auckland has long been considered a leading candidate for a time of use charging scheme.

“Travel times per kilometre in Auckland are much higher than in comparable cities in Australia.”

To read further, please click here.

ACC regulatory changes will improve access to treatment

ACC Minister Matt Doocey says more paramedic and audiometrist treatment will soon be available to treat ACC clients, as part of a set of regulatory changes.

“One of my key priorities is to ensure ACC regulations are efficient, effective and current, and approving more types of medical professionals to provide ACC funded treatment is just one way we are doing this,” says Mr Doocey.

Rural general practices and urgent care clinics sometimes employ paramedics to help ease pressure. This change will ensure those practices are paid for paramedics providing treatment to ACC claimants.

Paramedics and Chinese medicine practitioners will also be added as registered health professionals, so any injuries arising from their treatment are covered under the ACC treatment injury provisions.

All changes will come into effect on 1 December.

To read further, please click here.

New Zealand to benefit from end to gene tech ban

The Government is ending New Zealand's nearly 30-year ban on gene technology outside the lab in a move which will bring health, productivity and climate gains for New Zealanders.

A dedicated regulator to oversee applications to use gene technology will be introduced to Parliament by the end of the year.

"New Zealand has lagged behind countries, including Australia, England, Canada and many European nations," Science, Innovation and Technology Minister Judith Collins says.

"New Zealand's biotech sector, of which gene technology is a part, generated $2.7 billion in revenue in 2020.

"The changes we're announcing today will allow researchers and companies to further develop and commercialise their innovative products. Importantly it will help New Zealanders to better access treatments such as CAR T-cell therapy, which has been clinically proven to effectively treat some cancers. It can also help our farmers and growers mitigate emissions and increase productivity.

"We are working to having the legislation passed and the regulator in operation by the end of 2025," Ms Collins says.

To read further, please click here.

Earthquake-prone building remediation deadline and other matters Bill has first reading

On Thursday 8 August 2024, the Building (Earthquake-prone Building Deadlines and Other Matters) Amendment Bill had its first reading in the House. This was to extend the deadline for the remediation of earthquake-prone buildings.

The timeframe extension is to help provide clarity and certainty to building owners and territorial authorities about their obligations while the review for seismic risk management in existing buildings is underway.

The timeframe will provide reprieve from compliance and enforcement challenges for building owners and territorial authorities where remediation deadlines were set to expire over the next four years.

The Bill aims to extend all non-lapsed earthquake-prone building remediation deadlines, as at 2 April 2024, by four years, with an option to extend by a further two years if required.

To read further, please click here.

Government agrees approach for accelerating Māori development

The Government will modernise its approach to Māori development and accelerate opportunities for the Māori economy through improving Māori GDP per capita, reducing regulatory burdens, and activating opportunities for access to capital.

To deliver on the Government's plan to accelerate Māori development, it is clarifying the respective functions of Te Arawhiti and Te Puni Kōkiri to ensure each organisation has a clear focus on their separate roles.

"Te Arawhiti will remain a departmental agency and continue its core role of progressing long standing Treaty of Waitangi settlements and Takutai Moana applications," Māori Development and Māori Crown Relations Minister Tama Potaka says.

"Te Puni Kōkiri will advise on policy to support the acceleration of Māori economic development, continue to support the revitalisation of Māori language and culture, and support Māori social development including through a social investment lens.

"By addressing income and asset productivity gaps between Māori and non-Māori, we will see significant uplift worth billions of dollars in the nation's wealth," Mr Potaka says. "In practical terms, this means more choices for whānau, more employment and business development opportunities for all New Zealanders, and more revenue that can be invested in delivering better public services like hospitals and schools.

"I'll be meeting with Iwi and Māori leaders shortly to provide more detail on our Government's approach and seek their feedback."

To read further, please click here.

Annual net migration falls

New Zealand's net migration gain of 73,300 in the June 2024 year, is down from the peak of 136,600 in late 2023, according to provisional estimates released by Stats NZ.

"Migrant arrivals of non-New Zealand citizens are down from their peak in the October 2023 year, while migrant departures of both citizens and non-citizens are both up," population indicators manager Tehseen Islam said.

Net migration loss of New Zealand citizens remains at record levels. There was a provisional net migration loss of 55,300 New Zealand citizens in the June 2024 year. For every migrant arrival of a New Zealand citizen there were just over three migrant departures. Based on the latest estimates available, just over half of these migrant departures went to Australia.

The net migration gain of non-New Zealand citizens slowed but still drove the overall increase, and more than offset the record net loss of New Zealand citizens.

To read further, please click here.

Cost of living relief welcome

The cut in the Official Cash Rate (OCR) to 5.25 percent is welcome relief for families and businesses, Finance Minister Nicola Willis says.

"New Zealand has been suffering an acute cost-of-living crisis since the middle of 2021, with weekly food budgets stretched thin, mortgage repayments high and confidence in our living rooms, offices and boardrooms low.

"I am pleased the Reserve Bank's decision to lower the OCR today shows it has confidence that inflation is under control and the era of extreme price increases is over.

"This also means Kiwis will pay less interest on their mortgage loans and on their credit cards. Taken together with our recent tax relief package, the cost of living will be even further reduced for families.

"[The] drop also tells us the hard conditions business have faced are easing, and that in turn will give businesses the confidence to invest, hire and grow once again."

To read further, please click here.

Improving fairness and ease of doing business

A raft of reforms to modernise and simplify company law will make New Zealand an easier and safer place to do business, Commerce and Consumer Affairs Minister Andrew Bayly says.

"I am sure many Kiwis have heard stories of companies that go bankrupt leaving behind debts, only for effectively the same company to pop up somewhere else under a different name. This is often referred to as 'phoenixing' and is clearly not fair or right.

"The Government's package of reforms includes changes to improve insolvency law and combat phoenixing so that when companies go bust, it's fairer for creditors and other changes that will make it harder for directors to dodge their debts and continue practicing.

"Company directors will be assigned a unique identification number which will improve transparency and make it easier for creditors and law enforcement to trace individuals. Meanwhile, directors will have the option to remove their home address from the Companies Register which will address significant safety and privacy concerns, while still ensuring that directors are findable and accountable.

"The Act has not been substantially updated in 30 years and as a result aspects of it do not reflect the modern business environment and hamper growth and innovation.

To read further, please click here.

RSE Scheme revitalised and cap increased

The coalition Government is supporting the growth of New Zealand's horticulture and viticulture industries, by revitalising the Recognised Seasonal Employer (RSE) Scheme and increasing the cap on the number of workers to 20,750 for the 2024/25 season.

"Our Government is committed to increasing the number of RSE workers over time in line with industry demand, while balancing the availability of New Zealanders and accommodation for workers," Immigration Minister Erica Stanford says.

Other changes include employers being required to pay workers an average of 30 hours a week over four weeks. The pause on accommodation cost increases will be lifted and the requirement to pay RSE workers 10 percent above the minimum wage will only apply to experienced workers, recognising their productivity.

"The RSE scheme is central to our relationships in the Pacific and has delivered tremendous benefits to everyone involved," Foreign Affairs Minister Winston Peters says.

"New Zealand is committed to supporting Pacific priorities. That is why these changes include broader opportunities for skills development, greater flexibility in visa settings, and pay based on experience."

"These changes are just the start. The next phase of our work programme will consider substantive, longer-term options to further improve the wider RSE system and worker welfare settings," Ms Stanford says.

To read further, please click here.

EMPLOYMENT COURT: ONE CASE

Employment Court overturns Authority's decision of unjustified dismissal

On 14 December 2017, Oranga Tamariki summarily dismissed Mr Gumbeze for serious misconduct. The Employment Relations Authority (the Authority) determined Mr Gumbeze did not have a personal grievance for unjustified dismissal. He challenged this in the Employment Court (the Court) and sought reinstatement to his former role or an equivalent one, compensation, reimbursement for lost earnings, and costs.

The Court reviewed the circumstances that led to Mr Gumbeze's dismissal. Several supervisors had made complaints and Oranga Tamariki conducted a review of three cases where he was the assigned social worker to client families. In June 2017, Oranga Tamariki met with Mr Gumbeze to discuss concerns about his performance. Following this, Oranga Tamariki raised further concerns with Mr Gumbeze relating to the reviewed cases.

Mr Gumbeze was suspended on full pay while Oranga Tamariki engaged an external investigator to look into the issue. Mr Gumbeze asked for a copy of the investigation terms of reference, but it was not provided until ten weeks after the investigation began. Mr Gumbeze was highly critical of the findings throughout the process and refused to engage with the investigator.

Following the investigation, Oranga Tamariki advanced that Mr Gumbeze's actions amounted to serious misconduct. Its preliminary decision was that the employment relationship had become untenable and to terminate his employment. He was given an opportunity to provide further information before the final decision but he offered no response.

The Court analysed the investigation findings. While Oranga Tamariki could have concluded that some of Mr Gumbeze's work fell below its expectations and required remediation, the Court did not think such issues indicated, either individually or together, that the concerns about him amounted to serious misconduct. The Court also heavily criticised Oranga Tamariki for not providing the investigation terms of reference. In failing to do this, Oranga Tamariki had not acted in good faith.

The Court found Oranga Tamariki's decision to terminate Mr Gumbeze's employment had an element of predetermination. Its preliminary decision letter carried a predetermined tone. The Court understood why Mr Gumbeze did not engage with Oranga Tamariki. The Court also observed that the decision maker had a history of working through contentious matters with Mr Gumbeze, which would have made it appropriate for her to step aside from this role.

The Court overturned the determination of the Authority. It found that Mr Gumbeze had been unjustifiably dismissed and was entitled to remedies. Oranga Tamariki argued Mr Gumbeze had not done enough to mitigate his loss of wages, but the Court rejected this. It used its discretion to order Oranga Tamariki to pay Mr Gumbeze one year's salary of $79,015.

The Court found reinstatement would be unworkable. Six years passed since Mr Gumbeze left Oranga Tamariki. His strong views about how Oranga Tamariki was discharging its statutory responsibilities and criticism of senior management would also be a detriment to reinstatement.

Oranga Tamariki submitted that Mr Gumbeze's behaviour should be considered in assessing remedies. The Court felt that in the absence of an adequately conducted investigation, it could not establish grounds to justify reducing the compensation. It awarded compensation of $35,000. The Court ordered that Mr Gumbeze be reimbursed $9,000 with interest for taking proceedings to pause the Authority's costs determination.

Gumbeze v Chief Executive of Oranga Tamariki [[2024] NZEmpC 133; 24/07/24; Smith J]

EMPLOYMENT RELATIONS AUTHORITY: THREE CASES

Employer breaches law on employment agreements and misunderstands trial period

Bestbase Construction Group Limited (Bestbase) verbally offered Mr Hu employment in April 2022. Mr Hu raised a claim with the Employment Relations Authority (the Authority) alleging Bestbase unjustifiably dismissed him. He also argued Bestbase disadvantaged him by breaching minimum employment agreements requirements, unlawfully delaying and deducting payments, and failing to provide information required for ACC compensation.

Bestbase offered Mr Hu $36 per hour along with rent-free accommodation, but this was not formalised with an employment agreement. Bestbase deployed him on a project in Tauranga, then another in Waikato in July 2022. It told him the latter would be under a trial period, although no formal agreement was presented or signed before work commenced. Tensions rose over late wage payments. When Bestbase finally provided an employment agreement, Mr Hu felt it contained multiple flaws and inaccuracies, and refused to sign it.

On 16 October 2022, Mr Hu was removed from the work group chat following a heated discussion, and Bestbase told Mr Hu's landlord that it was ending rent payments on his accommodation. The following day, Bestbase's director, Mr Hou, emailed the following to Mr Hu: "Due to various reasons, you did not pass the trial of our company and all relevant expenses are settled as scheduled. Please leave our company before 30th of this month and return the entry key."

The first matter the Authority heard regarded an accident Mr Hu had in May 2022, while employed with Bestbase. To receive ACC compensation, Mr Hu had to provide ACC with a copy of his employment agreement, as he had no recent taxable earnings information on file with the IRD. Bestbase said they had not been able to provide an employment agreement because no written agreement had been drawn up yet. The Authority was not convinced by Bestbase's explanation. It felt Bestbase made no effort to provide ACC with information to support Mr Hu's claim. Mr Hu was disadvantaged by Bestbase's actions.

Bestbase required a written agreement containing a trial period clause, in order to dismiss Mr Hu under one. Additionally, the draft agreement only referenced a probation period. Bestbase claimed the dismissal was for poor workmanship and bad behaviour, yet there was no evidence these issues were investigated or brought to Mr Hu's attention, or that his feedback had been genuinely considered.

The Authority found Bestbase did not act as a fair and reasonable employer could have done. It simply gave notice on the basis of a misguided belief that it was entitled to dismiss on a trial period, without providing a reason or utilising a process. Accordingly, Mr Hu was found to have been unjustifiably dismissed.

Mr Hu sought the rent he paid for the Hamilton accommodation after his dismissal, as Bestbase had initially agreed to pay it. His rent payments from November 2022 to February 2023 totalled $1,560. The Authority deemed this a lost benefit which he would have obtained but for being dismissed. Accordingly, the Authority ordered Bestbase to pay this to Mr Hu, although the parties already reached an agreement to pay this amount beforehand.

The Authority found that Bestbase's behaviour warranted a penalty. Its actions and inactions included not providing an employment agreement at the start of employment, providing an agreement which did not comply with the requirements by law, late payment of wages, unlawful deduction by reducing Mr Hu's pay rate, unlawful deduction for rent and failure to provide wages and time records.

Bestbase was ordered to pay Mr Hu $19,440 in lost wages and $15,300 in compensation for hurt and humiliation. Each of these remedies was reduced by ten percent to acknowledge that Mr Hu's lack of communication had contributed towards the parties not being able to resolve the disputes. Bestbase also had to pay penalty payments of $3,600 to Mr Hu and $5,400 to the Authority. Lastly, Bestbase was directed to resolve any outstanding IRD tax matters. Costs were reserved.

Hu v Bestbase Construction Group Limited [2024] NZERA 202; 08/04/24; N Craig]

Employer warns and dismisses employee without process

Mr King worked for Kaamadhenu Agribusiness Limited (Kaamadhenu) as a herd manager at three dairy farms from 5 January 2022 until his employment ended on 15 April 2023. Mr King claimed he was the subject of an unjustified warning on 15 December 2022. He also said he experienced difficulties in his relationship with his immediate manager and co-worker that impacted his wellbeing. He said he brought these issues to Kaamadhenu's attention, but it failed to act fairly and reasonably in response to his concerns.

Mr King was moved to a role at a third South Canterbury farm in September 2022. Three months later, Kaamadhenu hired a farm manager and assistant, Mrs Del Mundo, to work with and oversee Mr King. On 15 December, Mrs Del Mundo said she had cause to believe Mr King was at work still under the influence of alcohol from the previous evening. She reported her concerns to farm operations manager, Mr Torman, and director, Mr Vaishnav.

Mr Vaishnav prepared a letter of complaint for Mrs Del Mundo to sign without disclosing it to Mr King. Mr Vaishnav called Mr King and put the incident to him for a response. Mr King acknowledged his wrongdoing, but then also raised his own issues about Mrs Del Mundo.

On 15 May 2022, Mr Vaishnav issued a written warning to Mr King by email. It was initially called a "First Notice of Misconduct" but would subsequently be described as a "first warning letter". It stated, "if another misconduct is repeated the next step will be a 4-week termination notice." The Employment Relations Authority (the Authority) found the letter objectively read as a final written warning.

Mr King responded to the warning letter by email to Mr Torman and Mr Vaishnav. While broad and ambiguous, the email was sufficient to alert Kaamadhenu that he was dissatisfied. Mr Vaishnav accepted at the Authority hearing that he had got the warning badly wrong.

The parties held a meeting on 7 February 2023. Mr Vaishnav had called Mr King to attend, principally to discuss performance concerns from Kaamadhenu. There was no meeting invite or communication prior to the meeting, which would have set out an agenda and identified any issues of concern Kaamadhenu purportedly wanted to discuss. At the end of the meeting, Mr King said he intended to resign at the end of the season (usually early June). Mr Vaishnav said Mr King could reconsider his resignation. At the time it was not asked for in writing, which his employment agreement included as a requirement.

Mr King took sick leave between 7 and 10 March 2023, supported by a medical certificate. He returned to work on 13 March. At this point he received an email dismissing him on notice. His ongoing health issues were cited as the reason for termination. At the Authority, Kaamadhenu stated its "intention… at all material times was simply to formalise acceptance of the Applicant's resignation".

The Authority found that the final warning was unjustified. It naturally and evidentially impacted upon Mr King's sense of job security, leading Mr King to suffer a detriment. Kaamadhenu had a duty of good faith and obligation to provide a safe work environment. It breached this duty by not properly investigating the concerns Mr King raised about his work environment and how it had impacted his wellbeing. Kaamadhenu's handling of Mr King's situation, including its communications, fell short of what could be expected of a fair and reasonable employer.

Kaamadhenu failed to explain why it could not produce wage and time records. Still, the Authority declined to issue a penalty. It was not ignoring the breach, but it felt the records had no relevance to Mr King's claims and so he was not disadvantaged by Kaamadhenu failing to provide them.

The Authority found Mr King was unjustifiably disadvantaged and unjustifiably dismissed. Kaamadhenu had to pay Mr King $22,500 in compensation for hurt and humiliation and $3,589.77 in lost wages. Costs were reserved.

King v Kaamadhenu Agribusiness Limited [[2024] NZERA 208; 11/04/24; D Beck]

Authority examines if personal grievances were raised in time

Ms Faber had been employed by CHS Investments Limited (CHS) in June 2019 to work at its Whangārei store as a part-time retail assistant. In September 2023, Ms Faber sent a letter raising four personal grievances for unjustified disadvantage. She argued CHS failed to communicate changes to rostered shifts, ran an unwarranted and unfair disciplinary process, failed to reasonably investigate concerns of unfair treatment, and failed to provide a signed employment agreement.

CHS argued only the signed employment agreement issue was raised in time, while the other three issues came to her attention in 2021 at the earliest. Ms Faber applied for leave to raise her grievances out of time.

An employee can raise a grievance with their employer within 90 days of the alleged action which gave rise to the personal grievance, or when it came to the attention of the employee, whichever is later. The Employment Court in Creedy v Commissioner of Police and Chief Executive of Manukau Institute of Technology v Zivaljevic also said that to raise a grievance, an employee must specify it sufficiently enough for the employer to be aware of it and able to address it.

In May 2021, Ms Faber felt she had been bullied and harassed and made a formal complaint to CHS's HR department. Ms Faber outlined the time period the bullying and harassment occurred and who the alleged perpetrator was. The Employment Relations Authority (The Authority) found that Ms Faber raised a personal grievance in time for workplace bullying and harassment with this complaint. She had also communicated sufficient information to CHS about the grievance that she wanted to have addressed.

Ms Faber also wanted to raise a personal grievance about CHS failing to investigate a similar complaint she made in March 2021. The Authority found for this complaint that Ms Faber had not raised the grievance in time, as the incident had occurred over two years ago. However, Ms Faber was in time to pursue the actual claim of bullying and harassment, as that was covered within the 90-day period.

Ms Faber claimed that CHS failed to communicate changes to rostered shifts. The parties had initially agreed upon a roster in 2021. However, when Ms Faber returned from a period of leave in September 2023, CHS had changed the roster without her agreement. Ms Faber expressed her dissatisfaction with the change in a letter sent that same month. The Authority found that Ms Faber had successfully raised a personal grievance in her September 2023 letter, as it identified the roster change and claimed that the change was not made in good faith or with a fair process.

The allegation that CHS ran an unwarranted and unfair disciplinary process could not be considered by the Authority as it was raised outside of the 90-day period. Ms Faber was invited on 9 March 2021 to a disciplinary meeting to discuss an instance where she failed to follow a reasonable request to return to work. CHS concluded the disciplinary meeting by saying Ms Faber should return to work and that no further action would be taken.

CHS said the outcome of the meeting was confirmed by email on 18 March 2021, but Ms Faber said she did not receive it. Ms Faber claimed that the unsatisfactory outcome of the disciplinary process was ongoing because she did not receive a written outcome. The Authority found that Ms Faber had been made known, or ought to have reasonably known, of the outcome at the meeting, so that was the point the 90-day period started. Ms Faber's September 2023 letter did not raise a personal grievance in time for this.

The personal grievances that Ms Faber successfully raised were the bullying and harassment complaint, the unilateral roster changes, and matters concerning her employment agreement. These issues would proceed to a hearing by the Authority. Costs were reserved.

Faber v CHS Investments Limited [[2024] NZERA 223; 18/04/24; M Urlich]

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

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)

Inquiry into banking competition (25 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.

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.

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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.

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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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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

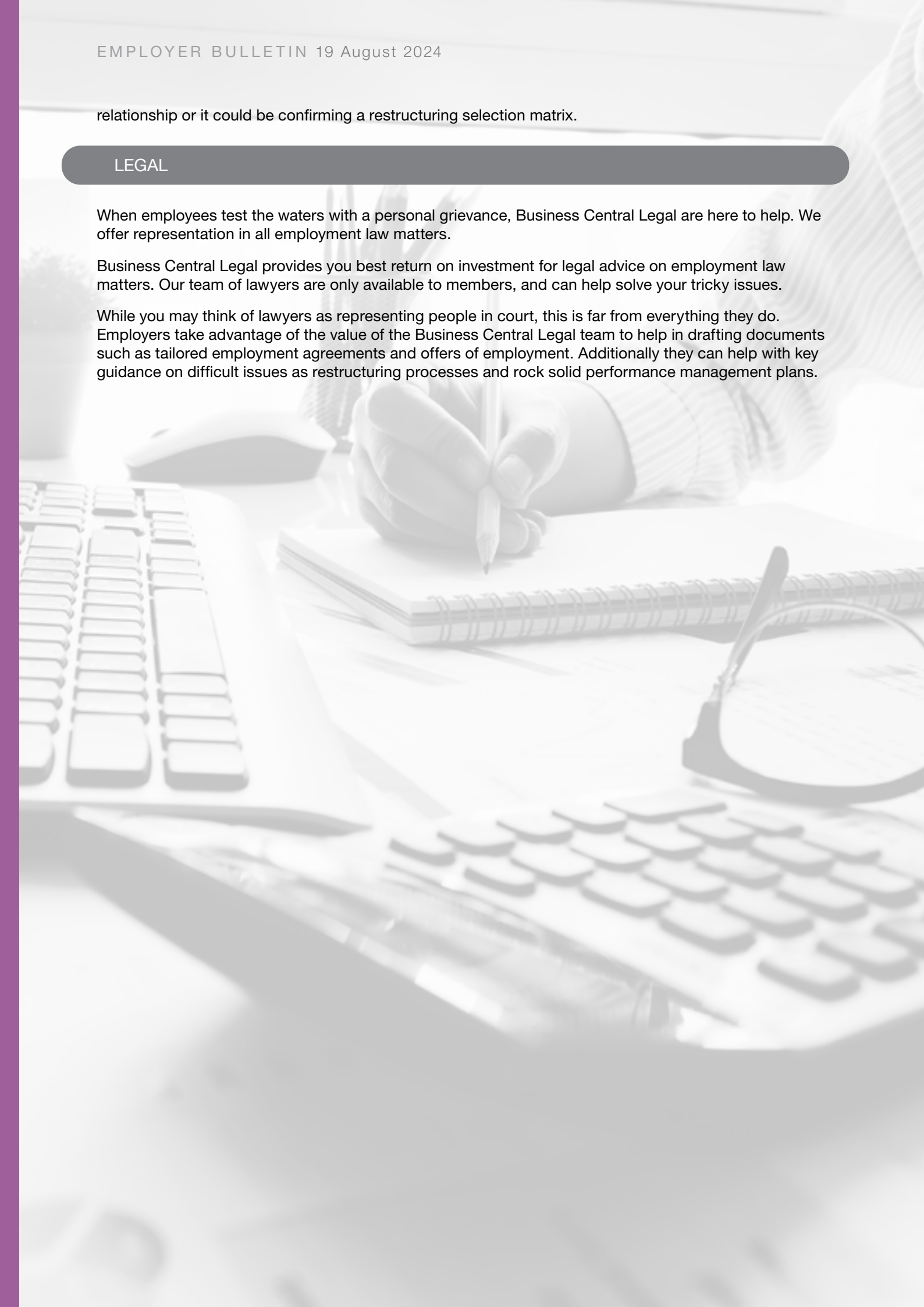
relationship or it could be confirming a restructuring selection matrix.

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

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.