BusinessCentral

EMPLOYER BULLETIN

2 December 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

Overseas merchandise trade: October 2024

Overseas merchandise trade statistics provide information on imports and exports of merchandise goods between New Zealand and other countries.

In October 2024, compared with October 2023, goods exports rose by $400 million (7.5%), to $5.8 billion. Imports rose by $211 million (3.0%), to $7.3 billion. This resulted in the monthly trade balance being in deficit of $1.5 billion.

Goods exports rose by $400 million (7.5%) in October 2024 (to $5.8 billion), compared with October 2023. Dairy and fruit exports rose, as did preparations of milk, cereals, flour and starch. New Zealand's top export partners were China, Australia, the USA, the EU and Japan.

Aircraft and parts imports rose the most but imports for vehicles, their parts and petroleum fell. This was led by passenger cars which fell $194 million (30%), to $447 million. New Zealand's top import partners were China, the EU, Australia, the USA and South Korea.

Scaled to the year ended October 2024, annual goods exports were valued at $69.7 billion, up $1.3 million from the previous year (ended October 2023). Annual goods imports were valued at $78.6 billion, down $5.9 billion from the previous year. The annual trade deficit was $9.0 billion compared to the previous year's $14.8 billion.

To read further, please click here.

Retail spending flat in the September 2024 quarter

The total volume of retail sales in New Zealand decreased by 0.1% in the September 2024 quarter compared with the June 2024 quarter, according to figures released by Stats NZ. Figures are adjusted for price inflation and seasonal effects.

Ten of the 15 retail industries had lower retail sales volumes in the September 2024 quarter, compared with the June 2024 quarter, after adjusting for price inflation and seasonal effects.

The largest contributors to the fall in retail activity were supermarket and grocery stores, down 1.3%, and food and beverage services, down 2.1%.

"Retail activity was flat in the September 2024 quarter, with a decrease in spending in most retail industries being offset by an increase in motor vehicles and electrical and electronic goods," economic indicators spokesperson Michael Heslop said.

To read further, please click here.

SH1B Telephone Road to reopen next year

Transport Minister Simeon Brown has confirmed that State Highway 1B (SH1B) Telephone Road in Waikato will reopen in 2025, following agreement by KiwiRail and the NZ Transport Agency (NZTA) on a package of improvements to enable the road and rail crossing to function safely and effectively together.

"SH1B Telephone Road has been closed since April 2022 after repeated instances of low vehicles damaging the railway tracks at the level crossing," Mr Brown says.

The proposed improvements will see the road level raised either side of the rail crossing, new escape lanes built and improved signage and road marking.

"Escape lanes built on the north side of Holland Road, either side of Telephone Road, will ensure longer vehicles heading south do not stack across the rail line as they wait to turn into Holland Road. For vehicles travelling east on Holland Road and wanting to turn left into Telephone Road, the escape lane provides a safe place to wait if access to Telephone Road is blocked by a train.

"NZTA expects construction to be completed before mid-2025."

To read further, please click here.

Levelling the playing field for Community Housing Providers

The Government has agreed to a series of changes to remove barriers faced by Community Housing Providers (CHPs) in delivering social housing, Housing and Associate Finance Minister Chris Bishop says.

"CHPs do a great job of providing housing for people in need and already operate around 13,700 social homes across New Zealand.

"The Government wants CHPs to be treated on a level playing field with the state-owned Kāinga Ora – Homes and Communities, when it comes to competing for funding to deliver social housing.

"CHPs often struggle to access finance that fairly reflects underlying risk for building social houses, while Kāinga Ora can access borrowing by the government."

To help address this disparity and lower the cost of finance, the Government has directed officials to advance short-term changes.

"The Government is also committed to exploring a credit enhancement intervention for CHPs so that they can access suitable debt.

"Ministers have directed the Treasury and the Ministry of Housing and Urban Development (HUD) to investigate options for supporting CHPs to access debt, in addition to removing any barriers to capital markets financing CHPs.

"These changes will help us achieve contestability between CHPs and Kāinga Ora for delivering new social housing places and house more people in need."

The Treasury and Ministry of Housing and Urban Development will work with the CHP sector to deliver advice on these changes to Ministers in early 2025.

To read further, please click here.

Supporting rural New Zealand: one year of action

Farmers and rural communities are the backbone of New Zealand's economy. Over the past year, the Government has delivered practical reforms to reduce costs, cut red tape, provide certainty, and get Wellington out of farming.

"With 80% of all the goods exports coming from the primary sector and more than 359,000 kiwis employed because of rural activity, farming, forestry, and horticulture remains a mainstay of NZ economic activity."

Initiatives so far have been to cut costs and red tape, change law on emissions and environmental actions, back rural communities, open up to new technologies and boost trade. Looking ahead, the Government wants to change freshwater rules and the RMA.

"This Government trusts farmers to deliver for New Zealand. We will continue to partner with them to ensure rural communities are supported, costs are reduced, and opportunities for growth are maximised," Mr McClay says.

To read further, please click here.

More relief for Kiwi families

The latest drop in the official cash rate will mean more relief for Kiwis' back pockets, Finance Minister Nicola Willis says.

The 50 point drop in the rate is the third drop since August, meaning the rate has fallen 125 basis points in that time.

"That is good news for families and businesses – both directly and indirectly," Nicola Willis says.

"For businesses, lower rates mean lower borrowing costs and more money in the economy."

To read further, please click here.

Exporters benefit from new trade system

The modernisation of New Zealand's trade certification system, which supports $33 billion of exports, is making selling top Kiwi products overseas more reliable and adaptable for the future, Food Safety Minister Andrew Hoggard says.

"This Government is committed to doing everything it can to facilitate the trade of New Zealand food and wine, by ensuring we have modern and robust systems that can accommodate changing market

requirements. A modern system of providing government assurances to our overseas trading partners is an important part of that picture."

"Exporters have told us they want a system that is always available when they need it, easier to use and more flexible, that responds better and faster to new market requirements and emerging trends."

The new system met another milestone this week as the wine sector successfully went live. Benefits of the change include the ability for the wine industry to gain benefits under the recent European Union Free Trade agreement.

"new Trade Certification System will replace aging systems, giving exporters a single, integrated, and digital process."

Certification for other products such as plant products, and animal products (including dairy) will follow next year.

To read further, please click here.

More flexible dismissal process for high-income employees

Workplace Relations and Safety Minister Brooke van Velden says an upcoming change to the Employment Relations Act will enable employers to ensure they have the right fit for their high impact leadership and specialist roles.

Cabinet has agreed to introduce an income threshold of $180,000 per annum for unjustified dismissal personal grievances, meaning employees earning above that will be unable to raise an unjustified dismissal claim. This policy delivers on the ACT-National coalition to set an income threshold above which personal grievances cannot be pursued.

"Employers and employees are free to opt back into unjustified dismissal protection if they choose to or negotiate their own dismissal procedures that work for them," says Ms van Velden.

"Highly paid workers such as senior executives or technical specialists can have a significant impact on organisational performance and culture. Having a poor performing manager or executive can increase the risk of poor culture and low morale.

"Workers who are wanting to move up the career ladder and be considered for more challenging positions will benefit from this policy.

"The income threshold of $180,000 will cover approximately 3.4 percent of the workforce and aligns with the current top income tax rates. The income threshold will be adjusted annually to match increases in average weekly earnings.

"The change will be progressed through the Employment Relations Amendment Bill, which I aim to introduce in 2025," says Ms van Velden.

To read further, please click here.

EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

Employer's leave buyout scheme forms part of employees' gross earnings

Channel Infrastructure Limited (Channel) operated an oil refinery at Marsden Point. In August 2021, Channel ceased its refining operations to transition into an import-only fuel terminal. In November 2021, Channel offered employees a buyout offer for their accrued leave, which some accepted. The 121 applicants to the hearing were employees who were then made redundant.

The applicants were all members of either E tū or First Union and were covered by a co-joint collective agreement (the CEA) at the time. The CEA set out that redundancy compensation would be based on six weeks' pay for the first year of service and two and a half weeks' pay for each subsequent completed year of service, up to a maximum of 53.5 weeks of pay. The CEA also set out that the calculation would be based on average weekly earnings.

When Channel calculated these average weekly earnings, it did not include final leave payments, or payments under the leave buyout scheme, as part of the relevant gross earnings. The applicants felt that Channel did not calculate redundancy compensation in accordance with the CEA. The applicants sought an order that Channel comply. Channel argued that it did comply.

Therefore, the question for the Employment Relations Authority (the Authority) was whether Channel had calculated redundancy compensation correctly for the 121 applicants. In making its determination, the Authority considered the CEA, the Holidays Act 2003 and the nature of the leave payments.

"Gross earnings" was defined in the Holidays Act as all payments an employer is required to pay to the employee under the employment agreement. The CEA did not expressly provide for accrued leave entitlements to be paid out on termination. However, that did not mean the parties intended that only accrued statutory holiday entitlements would be paid out.

The Authority referred to the Employment Court's past determinations and found that whether a payment is included in gross earnings depended on whether the employer was required to pay it under the employment agreement. Channel would have been required to pay out unused accrued leave as there was no other way to address it.

The CEA had a clause which stated wages and holiday pay were to be paid immediately on dismissal of an employee. However, it did not separate additional leave entitlements (such as accrued leave) from statutory entitlements. Instead, it provided for an aggregate entitlement to general leave. The Authority decided that the parties were entitled to rely on that clause for their accrued leave.

The Authority held that the parties intended for additional leave entitlements to be paid out upon termination. Therefore, final leave payments should have been included as part of their gross earnings.

Channel's other claim was to exclude payments made under the leave buyout offer. Channel argued that these payments were discretionary because they were not required to offer the scheme. The Authority took the claimants' side that upon the acceptance of a leave buyout offer, it became contractually binding. Therefore, all the payments under the leave buyout scheme were not discretionary and should have been included in gross earnings. Channel defended that the applicants did not take the numerous opportunities in consultation to raise concerns about its redundancy calculation methodology. The Authority did not find this to be enough to waive the employees' contractual rights. When Channel's approach departed from its obligations under the CEA, it required a formal variation to be valid.

Channel also argued that before the Authority decided to issue a compliance order, it should be given an opportunity to comply with the law. The Authority took into consideration that the process of calculating redundancy compensation had been complex and time-consuming. Channel's payroll software alone could not complete the task. Compensation had to be manually calculated, double checked by another payroll team member, and then externally audited. The Authority also considered that an object of the Employment Relations Act 2000 was to build productive employment relationships through the promotion of good faith and reduce the need for judicial intervention.

The Authority decided to issue the compliance order but also provided Channel 90 days to remedy the situation without further intervention. The Authority's usual practice in disputes about collective employment agreements was to let costs lie where they fell.

Holroyd v Channel Infrastructure NZ Ltd [[2024] NZERA 503; 21/08/24; J Lynch]

Authority issues interim injunction on breaching restraint of trade

Mr Pleasants worked for Industrial Minerals (NZ) Limited (IMNZ) as an area manager in sales. He resigned in late April 2024 and did not disclose to IMNZ that he was going to work for a competitor, Blastquip Limited (Blastquip), in May 2024.

IMNZ sought undertakings from Mr Pleasants that he would fully comply with non-competition and non-solicitation clauses in accordance with his confidentiality and restraint agreement (the agreement). IMNZ did not negotiate these undertakings successfully and lodged applications with the Employment Relations Authority (the Authority).

Mr Pleasants' agreement forbade him from soliciting customers of IMNZ from the time he was employed until 12 months after he left. It had similar restrictions regarding working for any competitor of IMNZ, or inducing employees of IMNZ to work for another employer. It also contained a confidentiality provision during and after employment.

IMNZ's substantial claim was that Mr Pleasants breached his obligations to use his best endeavours to promote, develop and extend IMNZ's business interests and reputation. Instead, he acted to IMNZ's detriment by commencing employment with Blastquip without IMNZ's consent. It applied for the Authority to issue a compliance order for Mr Pleasants' confidentiality obligations. It also sought a determination that Blastquip aided and abetted Mr Pleasants to act in breach of his contractual obligations.

IMNZ sought to restrain Mr Pleasants from breaching the agreement with an interim injunction, until the Authority made its full determination on the claims. Blastquip argued IMNZ's grounds were too weak to grant the injunctive relief sought, and that the restraints of trade it sought to enforce against Mr Pleasants were unreasonable and unenforceable.

The legal framework for determining interim injunctions was to assess whether there was a serious question to be tried, as well as the balance of convenience and where overall justice lay. Restrictive covenants attempting to limit the ability to earn a living were, by default, contrary to public policy and unenforceable.

However, the law permits restraints if an employer can establish it has a legitimate proprietary interest to protect. The restraint had to be reasonable and no wider than necessary to protect that legitimate proprietary interest.

Mr Pleasants commenced employment with Blastquip as a business development manager on 21 May 2024. It was a sales role, which was covered by IMNZ's restraint of trade. However, Mr Pleasants assured IMNZ that he would not do customer-facing work for Blastquip for a period of three months. Blastquip said that Mr Pleasants had abided by his assurance to IMNZ. During that time, his responsibilities were limited to induction and training exercises.

The Authority was satisfied IMNZ had a legitimate proprietary interest capable of being protected by restraint. However, it found that IMNZ overstated the specific commercial information that Mr Pleasants held about their intellectual property. It assessed the reasonableness of the restraints and did not see grounds for why the clauses had to last for 12 months, which pushed against the limits of what was reasonable. It felt the geographical range in the provision was broadly unreasonable. In Mr Pleasants' favour was that he was not a senior employee and not especially compensated at the time he signed this agreement.

IMNZ claimed that Mr Pleasants solicited some of its customer base both while working for IMNZ and for Blastquip. The parties disagreed on the facts here. Still, this counted as an arguable case that Mr Pleasants had solicited some IMNZ customers. The Authority next assessed the balance of convenience, which it found in favour of IMNZ. Mr Pleasants had resigned from IMNZ but had been less than frank about his new employment and even commenced it while still employed by IMNZ. IMNZ had shown potential financial losses in the meantime and could establish an understandable concern that Mr Pleasants would use his knowledge of IMNZ's customer base. Finally, the Authority found the overall justice favoured granting some interim orders. Meanwhile, while the interim injunction would be in place, IMNZ was encouraged to use the time to re-establish its customer base.

The Authority ordered that, until 24 November 2024, Mr Pleasants was not to solicit the customer of any client of IMNZ with whom he had dealings, within the 12 months ending 29 April 2024, for the purpose of providing goods or services to any such client. Costs were reserved pending further consideration of the case.

Industrial Minerals (NZ) Limited v Pleasants [[2024] NZERA 527; 04/09/24; S Blick]

Authority decides workers are independent contractors rather than employees

In December 2018, Ms Paul asked Mr Fursdon to mow her lawns. While he was undertaking the work, she provided him with an employment agreement. Mr Fursdon's lawn mowing came to an end in November 2019 when Ms Paul's nephew took over. Mr Fursdon raised a claim that he had been an employee whilst working for Ms Paul and she therefore owed him money. Ms Paul denied this and argued that Mr Fursdon had been acting as an independent contractor.

Ms Paul's employment agreement was a single unsigned page. It stated that Mr Fursdon was to mow the lawn and do gardening for $600 per month. It also provided for other work, such as collecting items from stores and taking Ms Paul to medical appointments. The agreement set out that Mr Fursdon would be paid $25 per hour and that any other person who assisted him would be paid $18 per hour. After the lawn-mowing ended, Mr Fursdon continued to perform the occasional ad-hoc task for which he issued invoices.

The Employment Relations Authority (the Authority) had to determine what Mr Fursdon's employment status had been. The Authority first considered the contractual basis and intention of the arrangement. The agreement was not signed, which is a mandatory requirement of employment agreements under the Employment Relations Act 2000 (the Act).

The employment agreement did show that the parties intended for Mr Fursdon to provide regular lawn mowing services. However, the Authority examined the implementation of the agreement. First, before the employment agreement came about, Mr Fursdon had performed work for Ms Paul and her husband as an independent contractor. The Authority felt it was unclear whether Ms Paul would have understood that they were entering into any employment agreement, given that she was very elderly.

In addition, after the parties entered the agreement, Mr Fursdon continued to provide invoices in order to be paid, handled his own ACC contribution and did not change the way he prepared his accounts and tax return. After the agreement with Ms Paul ended, Mr Fursdon made a claim for a Covid subsidy as an independent contractor. These factors all indicated that Mr Fursdon had been operating as an independent contractor throughout the time he worked.

The Authority applied the control and integration tests and deemed that Mr Fursdon had the flexibility and autonomy of a contractor in carrying out the gardening services. He controlled his hours and days of work, and Ms Paul never gave him instructions nor supervised him. While he did use Ms Paul's ride-on mower, he supplied the rest of the equipment and transport.

The Authority had to determine whether Mr Fursdon had been effectively working on his own account. He denied having other clients during the time he worked for Ms Paul. However, Ms Paul paid him in cash, so it was possible that other clients did so as well. An annual report produced by Mr Fursdon's

accountants supported that possibility when it only showed trading income from carpentry and nothing for gardening services. One invoice also had a blue van as a credit against the invoice total, which would have been unusual for an employee.

Mr Fursdon's argument was supported by another person who performed work for Ms Paul, Mr Wati. Mr Wati also claimed that he had been an employee of Ms Paul. However, the Authority instead deemed Mr Wati to have been a sub-contractor to Mr Fursdon. That was because Mr Wati never had any agreement with Ms Paul. Rather, Mr Fursdon was the one who arranged all his work and payments.

Because Mr Fursdon was held to be an independent contractor and Mr Wati a sub-contractor, Ms Paul owed them no monies. Costs were reserved.

Fursdon v Paul [[2024] NZERA 529; 04/09/24; E Robinson]

Director of liquidated company personally liable for employees' wage arrears

Mr Tomas was employed by The Fire Guys Ltd (Fire Guys) as a senior fire alarm technician from 18 June 2020 until he resigned on 7 March 2023 with four weeks' notice. He claimed that he was owed wage and annual leave arrears by his employer. The Fire Guys was placed into liquidation on 5 September 2023. Mr Tomas therefore sought leave from the Employment Relations Authority (the Authority) to recover these amounts from the company's sole director, Mr Sanders.

Mr Tomas claimed that approximately 10 days after his resignation, Mr Sanders took a work vehicle back from Mr Tomas. On that same day, Fire Guys told Mr Tomas that he "was not required to return to work". His notice period was meant to be four weeks.

The Act had narrow scope for Mr Tomas to receive leave for a legal claim. He could not apply for unjustified disadvantage and unjustified dismissal. Such claims could only be laid against the company, Fire Guys, which required the consent of the liquidator or the High Court. The remaining relevant avenue only allowed for the recovery of wages and money.

Mr Sanders opposed leave from the Authority. He claimed the arrears were withheld pending the resolution of a return of company stock and equipment. The Authority found it more likely that Mr Tomas had returned all the items in his possession. Mr Sanders claimed tens of thousands of dollars' worth of stock was still held by Mr Tomas but could not detail what stock that was.

The Authority ascertained that there had been a default in the payment of wages that were owed to the employee. Mr Sanders conceded he had not paid Mr Tomas any wages since 27 February 2023. The Authority then determined the default was due to a breach of employment standards – specifically the Holidays Act 2003 and the Wages Protection Act 1983. It also found that Mr Sanders was knowingly part of the breach. Since the Authority concluded Mr Tomas was not holding company stock, there was no good reason for Mr Sanders to withhold wages and annual leave payments.

Under the law, any order could only be to the extent that the employer was not able to make such payments. With Fire Guys in liquidation and so unable to make such payments, the amounts owing were to be paid by Mr Sanders. Mr Sanders was found to be a person involved in a breach of employment standards and was personally liable for the payment of Mr Tomas' wage arrears and unpaid annual leave.

The Authority was asked to consider penalties against Mr Sanders. In the circumstances, a penalty for wage arrears could only be advanced by a Labour Inspector. Other penalty claims could not be considered because Mr Sanders was only a director of Mr Tomas' employer, rather than the employer himself.

Mr Sanders was ordered to pay Mr Tomas $12,000 (gross) in wage arrears, $10,290.50 (gross) for unpaid annual leave, interest on the total from 13 October 2023 until repayments were complete, and reimbursement of the filing fee of $71.55. Costs were reserved.

Tomas v Sanders [[2024] NZERA 538; 06/09/24; P Fuiava]

Migrant employee resigns due to being refused pay

Ms Zhou was employed by Peach Cars Limited (Peach Cars), from 6 October 2019, as an assistant manager in its Christchurch car sales and parts business, until 20 January 2021. She claimed that she was constructively dismissed and owed unpaid minimum wage arrears and unpaid holiday pay.

Mr Liu was the sole director of Peach Cars. At the time of the hearing, the company ceased trading and was being removed from the New Zealand Companies Register. Mr Liu denied Ms Zhou's claims on the basis that Peach Cars was always the sole employer of Ms Zhou.

Ms Zhou was the subject of four employment agreements during her time with Peach Cars. These dated from before the employment on 7 October 2019 through to 15 October 2020. Ms Zhou sought assistance from Peach Cars for her visa renewal, which was set to expire on 25 September 2020. Mr Liu made his support conditional on her paying him a fee to assist. Across 2020, Ms Zhou paid him $4,583.97 for that purpose.

With Peach Cars' support, Ms Zhou applied for a new work visa on 15 September 2020. She worked up until 25 September and took agreed unpaid leave until the new visa was confirmed on 28 October 2020. Ms Zhou informed her employer she was ready to return to work on 30 October 2020 but was told by Mr Liu that they needed to discuss her situation, and that he would get back to her.

On 30 October 2020, another shareholder of Peach Cars, Mr Wu, directed Ms Zhou to take more personal leave. Ms Zhou asked how long the leave would be and was told to figure it out herself. On several occasions up to 21 November, Ms Zhou attempted unsuccessfully to get clarity from both Mr Liu and Mr Wu on when she was meant to return to work. Instead, she was assigned work tasks to do remotely without remuneration.

Ms Zhou got hold of Mr Liu on 17 December 2020. He advised the company was orientating to just selling car parts and accessories, with a new retail plan being formulated. Mr Liu then directed Ms Zhou to set up three Facebook accounts for marketing and to run the accounts daily. On the basis that she was still not being remunerated for any work undertaken, Ms Zhou resisted the instruction and waited for her alternative employment to start from 25 January 2021.

When Mr Liu pressed Ms Zhou to complete the work on 12 January 2021, she again insisted that she would only do so if she was returned to the payroll and the office. Mr Liu's response was dismissive. When she pointed out that she had no money to live by, he merely said that was okay – he would get someone else to do the work. Mr Wu asked Ms Zhou to return the company phone and laptop on 20 January 2021.

Ms Zhou's employment agreement stipulated her entitlement to be paid for a minimum of 33.5 hours per week, for the period from 28 October 2020, to when Peach Cars brought the employment to an end on 20 January 2021. She then clearly resigned due to not being paid for a significant time. The Authority concluded Ms Zhou's resignation was because of the ongoing breach of her employer failing to remunerate her, with a direct causal connection between the breach and the resignation. Ms Zhou established she was constructively dismissed as it had been procedurally and substantively unjustified.

Peach Cars kept no time or wage records. The Authority found it owed Ms Zhou minimum wage arrears of 13 weeks totalling $8,230.95, with holiday pay added on of $658.48, and $4,583.97 as reimbursement of an illegal deduction from pay.

Ms Zhou impressed upon the Authority as being a patient and honourable person, who despite being ill-used by her employer, sought to contribute to the business while she was not being rewarded. The Authority ordered Peach Cars to pay Ms Zhou $10,000 as compensation for hurt and humiliation. Costs were not an issue as Ms Zhou represented herself.

Zhou v Peach Cars Limited [[2024] NZERA 547; 11/09/24; D Beck]

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: Twelve Bills

Statutes Amendment Bill (4 December 2024)

Child Protection (Child Sex Offender Government Agency Registration) Amendment Bill (6 December 2024)

Oversight of Oranga Tamariki System Legislation Amendment Bill (8 December 2024)

Responding to Abuse in Care Legislation Amendment Bill (11 December 2024)

Evidence (Giving Evidence of Family Violence) Amendment Bill (19 December 2024)

Policing (Police Vetting) Amendment Bill (19 December 2024)

Mental Health Bill (20 December 2024)

Principles of the Treaty of Waitangi Bill (7 January 2025)

Oranga Tamariki (Responding to Serious Youth Offending) Amendment Bill (9 January 2025)

Disputes Tribunal Amendment Bill (16 January 2025)

Crimes (Countering Foreign Interference) Amendment Bill (16 January 2025)

Employment Relations (Employee Remuneration Disclosure) Amendment Bill (23 January 2025)

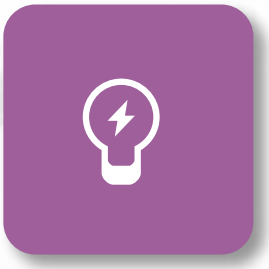
Overviews of bills-and advice on how to make a select committee submission-are available at: https://www.parliament.nz/en/pb/sc/make-a-submission/

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



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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.

TRAINING SERVICES

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

OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

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

EMPLOYMENT RELATIONS CONSULTANTS

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

LEGAL

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

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ADVICELINE

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

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

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

TRAINING SERVICES

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

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

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

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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

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.