BusinessCentral

EMPLOYER BULLETIN

9 December 2024
A Weekly News Digest for Employers

EMPLOYER NEWS

Removing rewards for poor employee behaviour

Workplace Relations and Safety Minister Brooke van Velden says it is important employees are not rewarded in the personal grievance system for poor behaviour or performance and is introducing changes to personal grievances to strengthen employee accountability.

"Simplifying personal grievances is a policy ACT campaigned on, in particular, removing the eligibility for remedies if the employee is at fault and is an ACT-National Coalition Agreement commitment. These changes will strike a better balance and increase certainty for employers so they can focus on their business," says Ms van Velden.

"The Employment Relations Act allows the courts to make reductions to remedies when the employee contributes to the personal grievance, but these reductions have become smaller, while awards to employees have been increasing.

"The status quo has led to increasing uncertainty and potential costs for employers and has incentivised employees to try their luck at raising a personal grievance in the hope that they will get a financial pay out."

To read further, please click here.

Government open for business on market-led infrastructure proposals

The Government has released new guidelines for market-led proposals to clarify how market participants can contribute innovative ideas for solving New Zealand's infrastructure problems, Infrastructure Minister Chris Bishop and Parliamentary Under-Secretary Simon Court say.

A market-led approach is where a private sector player wishes to deal directly with Government with a proposal, where the Government has not requested the proposal in the first place.

New Zealand has never experienced a successful market-led proposal, whereas there are numerous examples across international jurisdictions.

"There is no government monopoly on good ideas, so it's imperative we have a clear framework for assessing ideas and engagement from the private sector," Mr Bishop says.

Mr Court says that a New Zealand framework for market-led proposals has been lacking.

To read further, please click here.

International visitor survey results released

The International Visitor Survey is a key tool for monitoring and reporting on how the tourism system is performing. It measures the expenditure, characteristics and behaviours of international visitors to New Zealand, reporting them quarterly.

For the year ending September 2024, international visitors contributed a total of $11.7 billion to New Zealand's economy, an increase of 30% from 2023. This includes $1.9 billion for the September 2024 quarter.

For the year ending September 2024, international visitor numbers increased 17% from the same period last year to 3.23 million.

When adjusted for inflation, visitor spend for the year ending September 2024 was at 84% of 2019 levels. This is consistent with visitor numbers, which were at 83% of 2019 levels.

To read further, please click here.

International trade: September 2024 quarter

International trade statistics provide information on imports and exports of goods and services between New Zealand and our trading partners.

- Total exports of goods and services for the September 2024 quarter were $22.2 billion, up from $21.5 billion in the September 2023 quarter.
- Total imports of goods and services for the September 2024 quarter were $29.1 billion, the same as the September 2023 quarter.
- The total two-way trade for the September 2024 quarter was $51.3 billion.

To read further, please click here.

New Funding and Financing Framework released

Cabinet has agreed to an ambitious new Funding and Financing Framework to help the Crown make smarter and more informed funding and financing decisions, Infrastructure Minister Chris Bishop says.

"Improving the way we fund and finance infrastructure will help drive better value for money from public investment, make public investment go further, and ensure the greatest possible benefit to the greatest number of people," Mr Bishop says.

"Crown and council infrastructure in New Zealand has historically been primarily funded by taxpayers or ratepayers, but our heavy reliance on this approach is no longer serving New Zealand well.

"Our funding settings for many assets do not manage investment demand or signal where investment is required, meaning we just build new infrastructure rather than more effectively utilising what we already have. We can and should make greater use of user pays and demand management – like congestion charging and water meters.

"Our funding models for many assets do not reflect the full economic cost of delivering the service, which means operational activities, including asset renewals and maintenance, often compete with wider priorities – and often miss out, as New Zealanders are now realising with water infrastructure around the country. Moreover, our current funding tools struggle to recover the full cost of growth from users and beneficiaries."

To read further, please click here.

Government releases independent scientific review on biogenic methane science and targets

The Government will carefully consider the findings of the independent review on New Zealand's biogenic methane science and targets, Agriculture and Forestry Minister Todd McClay, Climate Change Minister Simon Watts, and Associate Ministers of Agriculture Andrew Hoggard and Mark Patterson have announced today.

A panel of highly regarded New Zealand and international scientists has provided evidence-based advice on what New Zealand's biogenic methane target should be to ensure no additional warming.

"We will take time to carefully consider the panel's findings alongside the advice from the Climate Change Commission to confirm a target in the new year," Mr Watts says.

To read further, please click here.

Targets data positive but action needed on welfare

The second quarterly update on the nine Government targets shows a range of areas moving in the right direction but underlines the need for robust measures to get people off welfare and into work, Prime Minister Christopher Luxon says.

"The Government's ambitious targets put Kiwis first by driving outcomes that make a difference in the delivery of healthcare, education and law and order," Mr Luxon says.

"It's encouraging to see fewer victims of violent crime and a reduction in youth offending. We still have a long way to go, but our Government's extensive law and order agenda is laser-focused on going after criminals and keeping Kiwis safe."

"Work to get families out of emergency housing is making significant headway, with data showing a more than 60 per cent reduction from when we came into office. This is a huge step towards improving the lives of some of our most vulnerable."

To read further, please click here.

EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

Employer fails to adhere to drug and alcohol policy

Mr Meeking was employed as an engineer by Womersley Group Ltd (Womersley) for 10 months before being dismissed in February 2023 due to a non-negative drug test result. He raised a personal grievance for unjustifiable dismissal. The Employment Relations Authority (the Authority) reviewed whether the dismissal was fair and reasonable. He sought remedies including compensation, lost wages and penalties.

Womersley operated an engineering workshop, requiring staff to work in a safety-sensitive environment due to the use of hazardous materials. The employment agreement outlined health and safety obligations and a zero-tolerance drug policy, along with procedures for drug testing. It allowed for summary termination for serious misconduct, including positive drug test results or breaches of company policy. It also permitted suspension for investigations.

Womersley's drug and alcohol testing policy (the Policy) reinforced those provisions, which allowed for random drug testing due to the role being safety sensitive. It specified that dismissal could only occur following a full and fair investigation and determination of serious misconduct.

On 20 February 2023, a drug detection agency conducted random testing at Womersley's workshop. Aside from the owners, Ms McLelland and Mr Taege, Mr Meeking was the only employee present. Before testing, Mr Meeking admitted to Ms McLelland that he would likely fail because he had been a "stoner" all his life. The initial screening returned a non-negative THC result, which required further analysis.

After learning of the initial results, Mr Meeking asked if he should leave work, which Ms McLelland allowed him to do. He spoke briefly with Mr Taege, packed his tools and left. That exchange was deemed as his dismissal.

In assessing the dismissal, the Authority emphasised that employers not only need a valid reason, but also must follow a fair process, including adhering to their own polices. Womersley failed on both fronts.

The Policy required a confirmed positive drug test before disciplinary action was taken. At the time of dismissal, only a non-negative result existed. While subsequent analysis did confirm a positive test, the Authority determined that Womersley acted prematurely by dismissing Mr Meeking without waiting for confirmation or conducting a proper investigation.

Womersley also failed to follow a fair process leading to dismissal. It failed to investigate the allegation, raise concerns, provide Mr Meeking with a reasonable opportunity to respond to concerns and genuinely consider any explanation by Mr Meeking before making its decision to dismiss. As these procedural errors were not minor, the Authority decided Mr Meeking's dismissal was unjustified.

The Authority awarded $12,000 of compensation, as Mr Meeking was a single parent left suddenly without an income. His struggle was exacerbated when he did not receive his holiday pay. He did, however, find an alternative job after three weeks and was awarded three weeks of lost wages totalling $4,284.

The remedies were reduced by 10% due to Mr Meeking's partial contribution to the situation. Had Womersley followed the correct process, it may have been able to justifiably dismiss him. Mr Meeking admitted knowing he might fail the test but did not disclose that earlier or propose alternatives, such as rehabilitation.

Mr Meeking also claimed penalties against Womersley for alleged breaches of good faith and failure to follow its Policy. Those claims were unsuccessful as the Policy was not part of the employment agreement, and although some breaches of good faith occurred, they did not warrant penalties.

Mr Meeking's final payslip referenced Womersley's decision that he would not be paid his accrued annual leave, breaching the Holidays Act 2003. Womersley promptly paid the outstanding amount after being informed of their error and apologised. Despite the breach being based on a misunderstanding

of obligations, Mr Meeking still financially struggled, and a penalty of $1,000 was therefore warranted – with 50% being paid to the Crown and 50% to Mr Meeking.

Overall, Womersley was ordered to pay over $15,000, which was inclusive of the deductions for Mr Meeking's contribution. Costs were reserved.

Meeking v Womersley Group Ltd [[2024] NZERA 592; 07/10/24; L Vincent]

Issues outside employment relationship do not factor into personal grievance

Ms Kang was a fashion designer who ran Cecilia Kang Couture (Kang Couture). She was also employed by Nellie Tier NZ Ltd (Nellie Tier) in an arrangement where Nellie Tier would provide industry support to Kang Couture. Her employment lasted from September 2020 to December 2021. Ms Kang claimed in the Employment Relations Authority (the Authority) that her resignation was in fact constructive dismissal due to being underpaid for the creative work she had done for Nellie Tier, as well as for being treated unfairly.

Nellie Tier was a small business that manufactured and sold skincare products. One of its directors was Ms Kim. It only hired two or three other employees alongside its directors. It compiled, packaged, and shipped off its own products.

Ms Kim and Ms Kang came to know each other from 14 July 2020. Ms Kim desired to support Ms Kang as a younger person in the Korean designer sphere and contacted her on 4 September 2020 when Nellie Tier's administrator role suddenly became available. As they formalised the employment agreement, Ms Kang felt culturally embarrassed doing administration for the lower pay that Nellie Tier could afford at that point. She asked for the job title to be changed to 'creative director' to save face in their community. The job description still listed administrative duties like customer liaison and order processing.

Through Ms Kang's employment, Ms Kim supported Ms Kang's dream of entering New Zealand Fashion Week (NZFW) as much as she could, including sponsoring half the entry fee to NZFW and facilitating meetings with other potential sponsors. However, Ms Kang felt her role at Nellie Tier was more than that of an administrator, as she was also responsible for pitching and marketing products at meetings and events.

In September 2021, Ms Kang emailed Nellie Tier about several issues. By this stage she had become very pressured, disillusioned, and exhausted in her role. She was too focused on marketing Nellie Tier's products. She felt the significant benefits Nellie Tier gained from having Ms Kang as their creative director, and using her appearance and brand, had overstepped the mark. She felt taken advantage of. She felt Nellie Tier profited from association with Kang Couture and her involvement in NZFW 2021. She felt that between the unquantified financial benefit and her low wages, she had been significantly underpaid for the work she did.

Ms Kang resigned in December 2021. Upon reflecting on the situation, she felt there had been an extreme power imbalance. She thought Ms Kim manipulated her and took advantage of her goodwill and creative skills, with that benefit only going to Ms Kim and Nellie Tier. Her grievance involved her being given factory tasks that she said were not part of her role. She also argued that Ms Kim's influence caused Ms Kang to comply with her will on a variety of things (including Kang Couture's entry to NZFW).

The Authority considered whether Ms Kang raised her personal grievance within 90 days. That depended on if her communications with Nellie Tier were sufficient to make it aware that she had raised a personal grievance. Her grievance was lodged on 4 May 2022. Ms Kang applied to have her grievance heard out of time as there were exceptional circumstances that meant she could not raise the issue within 90 days. She had to show that she was so affected or traumatised by the matter that she was unable to properly consider raising the grievance. She referred to feelings of vulnerability created by cultural expectations of deference to seniors that caused her to struggle to articulate her concerns, as well as fearing retribution from her community. She also said the control and manipulation meant she could only see it after the fact.

The Authority found the bar for trauma was high. While Ms Kang tried to show that she had experienced physical and mental health issues, feeling depressed and anxious, suffered damage to her reputation, and socially isolated herself, the Authority did not find this was enough for the "substantial injury" required. The employee had to be unable to properly consider raising the grievance for the entire 90 days.

Nellie Tier's conduct and the job description confirmed Ms Kang's role was as an administrator. Ms Kim added a social media aspect to play to Ms Kang's strengths rather than to appoint a creative director. The evidence about the nature and size of Nellie Tier suggested it had no need for a creative director at the time. Ms Kang performed the tasks she had agreed to and did not experience exploitation in doing so.

Instead, the Authority found it was the parties' wider professional relationship that broke down, which then affected the employment relationship. Their relationship was described as symbiotic, where both parties benefited in various ways, often intangibly. They were connected by reputation and exposure in the fashion and beauty industry, which was tied to NZFW. The Authority felt most of this was outside the employment relationship.

Ultimately, Ms Kang did not qualify for exceptional circumstances, so her grievance was too late. Costs were reserved.

Kang v Nellie Tier NZ Ltd [[2024] NZERA 187; 02/04/24; S Kennedy-Martin]

Directors made personally liable after breaching employment standards

Ms Ma started working for Qixuan International Trading Ltd (Qixuan) as a cashier in July 2019. In the following five years, she remained in New Zealand as the partner of a work visa holder or as a residence class visa holder. Qixuan was her only employer. As a new migrant, Ms Ma was ignorant of New Zealand's employment laws and regulations and trusted her employer to do right by her. However, with the help of her husband, she came to realise that she was underpaid for multiple sustained periods, resulting in significant wage, public holiday, alternative public holiday and annual leave arrears.

Ms Ma lodged a statement of problem with the Employment Relations Authority initially naming Qixuan as the respondent. However, Qixuan went into liquidation on 5 June 2024.

Because Ms Ma's claim concerned the non-payment of wages and the potential breach of employment standards, leave was granted for the company's two directors, Mr Chen and Ms Jia, to be joined as second and third respondents. Neither director involved themselves in the hearing.

Ms Ma provided the Authority with her payslips and weekly rosters covering a 43-month period from 29 May 2020 to 12 January 2024. She also provided WhatsApp messages between her and Ms Jia.

With Qixuan in liquidation, the Authority followed a four-step process to consider if the directors, Ms Jia and Mr Chen, should be made personally liable to pay wage arrears.

The first step was to determine if there had been a default in wages or money owing to Ms Ma. The Authority found that was the case. The wage slips revealed a shortfall in wage payments, a failure to pay annual leave and having Ms Ma take annual leave when she ought to have taken sick leave. There were also shortfalls in public holiday payments. In total, the Authority identified a shortfall of $22,794.01 comprising wages, public holiday pay, alternative holiday pay and annual leave arrears.

The next step was to determine if the shortfall was due to a breach of employment standards. The Authority was satisfied that that was the case. When the payslips and roster information were individually and cumulatively considered, there was clear evidence that the default in the payment of Ms Ma's wages related to a breach of employment standards as defined by the Act.

The third step was to determine if the directors were involved in the employment breaches. The WhatsApp messages clearly showed Ms Jia was involved in the breaches. While the evidence around Mr Chen's involvement was not so clear, the Authority found that, as a significant shareholder and director, he could be taken to have had indirect knowledge of the inconsistencies with the payment of staff wages. The Authority found that both directors were directly and indirectly involved in the breach of employment standards.

The final step was to only order payments to the extent that the employer was not able to meet the cost. Considering Qixuan was in liquidation, the Authority found the full amount should fall on Ms Jia and Mr Chen to pay jointly. The Authority decided that amount would be repaid with interest.

The Authority decided not to penalise Ms Jia or Mr Chen because such penalties could only be at the request of a Labour Inspector. Also, penalties could not be awarded for breaches of the Holidays Act 2003, the Minimum Wages Act 1983 or the Wages Protection Act 1983, because the directors were not Ms Ma's employer – Qixuan was.

Mr Chen and Ms Jia were ordered to pay Ms Ma $22,794.01 in wage, holiday pay and annual leave arrears, interest of $2,268.73, and further interest if these amounts remain unpaid by 1 November 2024. No cost order was made.

Ma v Qixuan International Trading Ltd [[2024] NZERA 587; 03/10/24; P Fuiava]

Failure to pay commission in line with employment agreement leads to costly payout

Mr Jones was employed from 2003 to September 2021 by Recon Security Ltd (Recon) as a sales representative. In September 2021, Recon was acquired by Allied Investments Ltd (Allied). Mr Jones accepted the opportunity to transfer his employment from Recon to Allied. The terms of employment remained largely the same.

As part of his remuneration package, Mr Jones received commission payments. While he was not aware of how those were calculated, he did know which products attracted a commission component. For the first three months of his employment with Allied, his commission payments were paid as expected. However, from January 2022 onwards, those payments significantly decreased. Allied was of the view that the commission had been incorrectly calculated by Recon and set about making commission payments in line with their interpretation of Mr Jones' individual employment agreement (the agreement).

After the parties engaged in mediation to address the matter, which ultimately proved unsuccessful, Mr Jones resigned in May 2022 and lodged a claim with the Employment Relations Authority (the Authority). He sought compensation, commission payments and lost wages.

Upon reviewing the evidence, the Authority found Recon had used a spreadsheet to calculate commission. It had been created by one of Recon's former directors and had been used for many years. Allied still thought Recon had incorrectly calculated commission. Specifically, the issue concerned the trail commission Mr Jones thought he was owed for sales prior to September 2021, which formed part of his agreement. The Authority observed that, even if Allied wanted to make changes relating to how the trail commission was calculated, it could not unilaterally do so without Mr Jones' agreement.

Allied argued it had been reasonable to make corrective changes when Recon had been wrong. The Authority did not agree. Therefore, Allied breached the agreement between the parties when it failed to pay Mr Jones' wages correctly and substituted a new method to calculate commission. When Mr Jones transferred employment to Allied, it had agreed to pay Mr Jones in the same manner and on the same rates he enjoyed at Recon.

Because Mr Jones did not agree to any changes, and insufficient information was given to him to allow for meaningful consultation, Allied's actions were also found to be a breach of the duty of fair dealing, and a breach of the statutory good faith obligations in the Employment Relations Act 2000.

The Authority decided that Mr Jones' resignation was reasonably foreseeable and that he had established a claim for constructive dismissal. With Mr Jones' wages having been significantly reduced

with limited communication and no meaningful consultation on the reasons for the changes, Allied's conduct was not how a fair and reasonable employer could have acted in all the circumstances.

Mr Jones had not worked out his notice period and Allied had deducted these wages from his final payment. That was found to be in breach of the Wages Protection Act 1983.

Allied was ordered to pay Mr Jones $20,000 as compensation for hurt and humiliation, 13 weeks' lost wages, commission payments worth $42,477.70, reimbursement of the $3,052.80 deduction unlawfully made from Mr Jones' final pay and annual leave and public holiday arrears. Costs were reserved.

Jones v Allied Investments Ltd [[2024] NZERA 595; 07/10/24; S Kennedy-Martin]

Unjustified dismissal following redundancy results in interim reinstatement

Ms Cheng was employed by the Vice Chancellor of Lincoln University as a research field technician on 1 February 2022. Ms Cheng's employment came to an end on 1 May 2024 when Lincoln University made her position redundant. As a result of events that occurred during her employment and her termination, Ms Cheng claimed she was unjustifiably disadvantaged in her employment and unjustifiably dismissed by Lincoln University. Ms Cheng sought compensation, an award for lost remuneration and reinstatement. The Employment Relations Authority (the Authority) had to determine Ms Cheng's claim for interim reinstatement pending her substantive claims being determined at a later date.

The Authority noted that Ms Cheng's redundancy was a form of dismissal. Therefore, the onus was on Lincoln University to establish that the dismissal had been justified.

Ms Cheng said her work on Mount Grand Station (MGS) was disrupted by two significant events. First, MGS's farm manager took offense at her continued requests for records and that she informed Lincoln University of his unwillingness to provide them. From that point, Ms Cheng claimed the farm manager harassed and bullied her, including instructing her to undertake menial and unnecessary farm tasks. Second, Professor Morton, the Dean of the Faculty of Agriculture and Life Sciences at Lincoln University at the time, questioned Ms Cheng's supervisors, Dr Moir and Dr Moot, about her role. That caused the two to withdraw their instruction which meant much of the ongoing technical support work Ms Cheng was doing ceased. That occurred in August 2023.

Professor McKenzie, who was appointed as the Interim Dean of the Faculty of Agriculture and Life Sciences on 1 January 2024, said he became aware that neither the number of students utilising MGS nor the number of research programmes there had increased, even though both aspects had been projected to grow. Professor McKenzie formed a preliminary view that the faculty's needs might be best served by establishing a new field technician position. That would be based predominantly at Lincoln University and would provide technical support across all the farms in the Lincoln University portfolio.

Professor McKenzie and Ms Cheng agreed to meet on 11 March 2024. In advance of the meeting, Ms Cheng was provided a copy of the consultation document and a position description for the proposed new role of field technician. To advise Ms Cheng of the outcome, Professor McKenzie created an outcomes document, which he emailed to Ms Cheng on 28 March 2024. On 3 April 2024, Lincoln University offered Ms Cheng the newly created position of field technician and supplied her with the confirmed position description at that time.

In response, Ms Cheng did not accept the offer and raised concerns about the restructure through her union representative. Nothing further came from this meeting, and on 29 April 2024, Lincoln University gave Ms Cheng notice of termination by reason of redundancy.

Ms Cheng's research field technician role was funded by the Struthers Family Trust. Lincoln University failed to show that in the process of disestablishing Ms Cheng's role and creating the new field technician role that it had the ability to change the use of the approved funding to accomplish such a change.

In the consultation, no specific information supported that there was a downturn in technical support work and farm support work at MGS. The treatment of that feedback on the outcomes document was

not particularly helpful in terms of establishing how Lincoln University had come to its decision.

Lincoln University had argued that reinstating Ms Cheng was not practical or reasonable because there was no longer a research field technician role at MGS. The Authority was not convinced that Ms Cheng's research field technician role at MGS was properly disestablished, so it rejected that argument. It also rejected Lincoln University's claim that it had insufficient work for Ms Cheng at MGS. Even if that was the case, Lincoln University would not have difficulties or hardship finding additional work for Ms Cheng to do at MGS.

The Authority ordered Lincoln University to reinstate Ms Cheng to her role on an interim basis until her personal grievances were properly determined. Lincoln University was directed to progress its investigation into the issues between Ms Cheng and the farm manager as quickly as possible. Lincoln University and Ms Cheng were directed to attend urgent mediation to discuss and agree on how Ms Cheng would operate in her role, particularly how dealings between her and the farm manager (if any are required) could be accommodated in a safe way. Costs were reserved.

Cheng v The Vice Chancellor of Lincoln University [[2024] NZERA 552; 12/09/24; P Keulen]

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: Ten Bills

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)

Victims of Sexual Violence (Strengthening Legal Protections) Legislation 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)

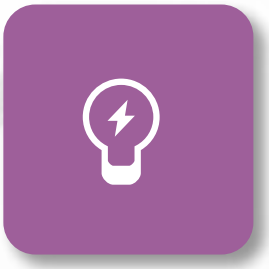
Crimes (Countering Foreign Interference) Amendment Bill (16 January 2025)

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/

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

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

TRAINING SERVICES

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

OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

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

EMPLOYMENT RELATIONS CONSULTANTS

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

LEGAL

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

ENTERPRISE SERVICES

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ADVICELINE

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

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

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

TRAINING SERVICES

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

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

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

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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.