

## EMPLOYMENT LAW UPDATE

There are many legislative changes to the Employment Relations Act 2000 and the Holidays Act 2003 coming into force from 1 April 2011. You will need to review your HR practices and employment agreements and policies to ensure you comply with these changes. We set out brief details of some of these below.

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### The following changes may affect your workplace from 1 April 2011

- The 90 day trial period will apply to all employees, provided that any employer that wants to have a trial period must ensure the employee signs an employment agreement containing a compliant "trial period" clause **before** starting work.
- Union representatives must seek permission from the employer before visiting a workplace, however such consent may not be unreasonably withheld.
- All employers (from July 2011) must retain an employee's employment agreement or face a penalty. This requirement extends to agreements which have not been signed by the employee but have been agreed.
- The penalties for breaches under the Employment Relations Act and the Holidays Act have increased from \$5,000 to \$10,000 for individuals and \$10,000 to \$20,000 for companies.
- Labour Inspectors will have expanded powers to enforce compliance with the payment of wages and holiday pay.
- The calculation for public holidays, alternative holidays, sick leave and bereavement leave has changed. Employers must pay an employee's "relevant daily pay" or if that cannot be determined, employers must work out an employee's "average daily pay" which is a daily average of the employee's gross earnings over the past 52 weeks.
- An employee can request to cash up a weeks' leave per year. This can only be granted at the consent of the employer. Note that this will initially only apply to annual holiday entitlements that arise after 1 April 2011 (i.e. if an employee's anniversary of employment is after that date).
- Employers and employees can agree to transfer a public holiday to another working day or 24 hour period.
- If employers and employees cannot agree when an alternative holiday is to be taken, the employer can determine, on a reasonable basis, when the alternative holiday will be taken on 14 days' notice to the employee.
- Employers can ask employees for proof of sickness of injury provided the employer pays for any reasonable expenses in obtaining such proof.
- Employers' holiday and leave records must accurately record if an employee has cashed up holidays or transferred public holidays.

### The following changes will affect the Employment Relations Authority and Employment Court processes

- The test of justification when assessing whether a dismissal or action is justified will change from "what a fair and reasonable would have done" to "could have done". The change recognises that there is a range of fair and reasonable responses that could be made by an employer when considering a dismissal or other actions. The law also makes it clear that an employer's actions will not be unjustified solely because of minor mistakes in the process that did not result in the employee being treated unfairly.
- Reinstatement has been removed as the primary remedy.
- Parties can request early problem resolution with a mediator before a more formal mediation event.
- Department of Labour mediators and Authority members will have power to make written recommendations to the parties if the parties request it. The parties will have a specified timeframe to notify the mediator or member if they do not accept the recommendation otherwise it will be binding on them.
- The Authority can dismiss frivolous or vexatious claims.

### Minimum pay

- The adult minimum wage rises from \$12.75 to \$13.00 an hour.
- The new entrant's minimum wage and the training minimum wage rise from \$10.20 to \$10.40 an hour.