



The Human Resources Specialists

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HR KNOWHOW
WHAT'S NEW

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Minimum Wage Increase

From April 1 2011 the minimum wage will increase from \$12.75 to \$13.00 an hour and the training and new entrants' wage will increase from \$10.20 to \$10.40 an hour.

A new entrant is an employee who is 16 or 17 years old except if they have:

- Completed 3 months or 200 hours of employment, whichever is shorter, or
- Been supervising or training other employees; or who are trainees

Summary of Amendments to Employment Relations Act & Holidays Act

The reforms are welcome, particularly the 90 Day Trial being introduced for all businesses regardless of size and the shift to what a responsible employer "could" do in a disciplinary situation,

While the reforms do provide some needed balance it is important that employers do not relax about the processes required in a restructuring or disciplinary situation.

The reforms are clear about taking into consideration "minor" defects in process. What "minor means" will be determined by case law but it is fair to say that the fundamentals of good process will remain unchanged.

If a problem arises an employee is entitled to:

- Have the issue clearly defined so that he/she understands what the employer considers to be the problem
- Have time to prepare his/her account or explanation
- Be fully aware of the possible implications if disciplinary action is being considered
- Have the right to representation at the investigation/consultation meeting/s

The employer is required to keep an open mind about the issues until he/she has heard from the employee and or the representative and has taken the time to consider all information relevant to the matter and to the employment relationship as a whole.

None of these requirements will change.

We have provided below some fairly technical information in this newsletter regarding the reforms. If this sends you into glazed eye territory or has you reaching for a wine to dull the pain – we are here to decode, interpret or handle the matter for you. Call us – we have been working through the changes and we will keep abreast of case law in the future.

Changes in employment legislation will take effect **1 April 2011**.

In summary:

Employment Relations Act

- **90 Day Trial Period is extended to all workplaces**

- Trial period must be agreed and documented in the employee's employment agreement. Both the parties must sign the employment agreement before the commencement of employment.
- Failure to comply with these provisions will void the trial period provision
- The law relating to good faith, disadvantage, discrimination, sexual or racial harassment still applies.

- **Dispute Resolution:**

- In determining whether the employer's actions were justified in the case of a dismissal, the test will be "*whether the employer's actions, and how the employer acted, were what a fair and reasonable employer **could** have done in all the circumstances at the time the dismissal or action occurred*".

The change from "**would**" to "**could**" will provide a range of options open to the employer, as opposed to the current test of "would", which only allows for one reasonable action.

- The resources of the employer will be considered.

- **Employment Relations Authority & Employment Court**

- Minor defects in the process will be taken into consideration.
- The Authority and Court can dismiss frivolous or vexatious claims
- Reinstatement as the primary remedy is repealed, but remains as a remedy.
- Penalties for delaying behaviour at the Authority
- Priority at the Authority for mediated cases
- Ability to cross-examine witnesses

- **Employers will be able to regulate union access to workplaces.**

- **Employers will be able to communicate directly with staff during collective negotiations.**

- **Penalties double for breaches of the Employment Relations & Holidays Act**

- **Labour Inspectors will have wider powers, more flexibility to address non-compliance**

Holidays Act

- **1 week's annual leave can be exchanged for payment**

The Employee:

- Must request the payout
- Can only be paid for annual leave that he/she is entitled to take (not accrued leave)
- Can only be paid for up to 1 week in any 1 year.

The Employer:

- Must consider the request, advise the employee in writing and respond in a reasonable timeframe
- Can decline the request
- Must calculate the payment at the greater of the employee's ordinary or average weekly earnings (as if he/she were taking the

leave)

- Can have a policy ruling out payout requests
- Excludes the amount of the payout from the employee's gross earnings.
- Record the portion of annual leave paid out, and the date and amount of payment

- **Average Daily Pay – (public holidays, alternative holidays, sick leave, and bereavement leave)**

Relevant daily pay and average daily pay applies to the calculation for payment of Public Holidays, Alternative Holidays, Sick Leave or Bereavement Leave.

Where employees have variable hours or it is not possible or practicable to determine what the employee would have earned, employers must calculate the pay using the Average Daily Pay calculation.

Average Daily Pay is calculated over the preceding 52 weeks as opposed to the current 4 week calculation.

Average Daily Pay: a
 —
 b

a = employee's gross earnings for 52 calendar weeks before the end of the pay period immediately before the calculation is made

b = the number of whole or part days during which the employee earned those gross earnings, including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work

- **Medical Certificates can be obtained within 3 consecutive calendar days, without the need to suspect the leave is not genuine. Employer must meet reasonable costs in obtaining the medical certificate.**

- **Alternative Leave – Timing to be agreed between the parties, failing agreement the employer can determine the date the alternative leave will be taken, on 14 days notice.**

Currently – after 12 months of the entitlement arising and failing agreement, the employee can determine when the alternative leave is to be taken.

- **Public Holidays can be transferred to another working day**

- **Discretionary Payments mean:**

- Payment of amount that the employer is not bound to pay under the employment agreement, and excludes payment even though the amount of the payment is not specified in the employment agreement and the employer will determine the amount; and excludes;
- Payments where the employer is only required to make the payment if certain conditions are met, and is provided for in the employment agreement.

- **Gross earnings exclude allowances re non taxable payments to reimburse an employee for actual costs related to the employee's employment**

From 1 July 2011

- **Individual Employment Agreements**

Employers will be required to:

- Retain a signed copy of an employee's agreement.
- Retain a copy of any unsigned employment agreement which has been provided to an employee
- Provide a copy of the employment agreement to the employee upon request, as soon as is reasonably practicable

To avoid doubt – an intended employment agreement must not be treated as the employee's employment agreement if the employee has not signed the intended employment agreement or has not agreed to the terms and conditions of the intended agreement.

Tools / Templates re Amendments

90 Day Induction Programme

We have developed an Induction Review (in addition to our Induction Kit) to provide employers with the tools to assess and monitor an employee's performance, skill level, interaction with the team and fit with the Organisation. This Induction Programme was developed in response to feedback we received regarding uncertainty around how employees were actually performing when it came to the 89th day.

The requirement of good faith is a key and important part in applying the 90 day trial period. While a couple of reviews throughout out the 90 days are not a requirement of the Act – we see significant value in discussing concerns and providing feedback to employees in the early stages of employment. Not only can this increase productivity but it will show that you have discussed your concerns and provided the employee with the opportunity to improve – as opposed to a surprise if the relationship is terminated.

Our Induction Review is concise and aimed at keeping the review meetings brief.

Annual Pay Out

We are developing templates to assist employers with recording annual leave payouts, responses to employees about approving/declining a leave payout, and a policy around payouts.

If you are interested in our new products we would be delighted to discuss tailoring these for your business. Please call Helen Ewan at HR KnowHow on 09 377-9891

Further legislation before Parliament

The Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill is awaiting its second reading.

The Employment Relations (Secret Ballot for Strikes) Amendment Bill is awaiting its third reading.

Referrals

We are very grateful to our clients who provide us with referrals. If you know of an employer who needs support in managing employment matters or perhaps is in need of Employment Agreements or for these to be brought up to date please pass on our contact details or let us know and we will contact them to outline what we do.

Please do let us know if there is more we can do to assist you with your HR matters.

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The Employer's Resource

Employment Agreements, Company Policy and Procedures, Health and Safety Manuals/Systems Compliance, Restructuring, Redundancies, Managing Performance, Mediations, Dispute Resolution, Personal Grievances, Compliance, Termination

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