

infosheet on *Employment Law*

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NEW EMPLOYMENT LAW CHANGES BODE WELL FOR EMPLOYERS

Effective 01 April 2011, the Department of Labour instituted new legislative amendments made to the Employment Act 2000 and the Holiday Act 2003.

Employment Act

In the past, employment regulations have tended to favour employees, giving workers and not their bosses the upper hand in disputes. However, with the '90 Day Rule' extended to companies of all sizes, union rules limiting a right of entry unannounced, and an amended "fair and reasonable" justification test for dismissal procedures, it is now thought that Employment Law will tip in favour of the employer.

The most pertinent changes to the **Employment Act** are as follows:

'90 Day Rule' extended to all companies

- The three (3) month probationary period now extends to all companies, regardless of size. Although a voluntary contract provision, an employer has the right to request a 90 day trial period for all new employees. This trial period must be agreed to in writing and made in good faith. All employee entitlements remain in place during the trial period.
- Bill Hodge, University of Auckland Professor and expert on Employment Law agreed that the '90 Day Rule' would tighten up any potential employment lawsuits. He stated, "It will be predicted here that there will not be a tide of litigation arising from the Amendment, and in spite of unions and others "crying wolf", there is little room for abuse."

New Dismissal Provisions

- The Employment Relations Act protects employees from unjustifiable dismissal, discrimination, or harassment giving the employee the right to raise a personal grievance claim within 90 days of the dismissal. If a claim ends up going to the Employment Court, the Court must apply the Test for Justification, which is revised to adhere to new meanings of "reasonable and fair" taking into consideration the totality of the surrounding circumstances.

Unions do not have an unfettered right to enter company premises

- No longer do Union Representatives have the right to enter a company's place of business unannounced. This does not mean, however, that a company can deny a union representative to enter at all. Instead, the employer is given a one-day grace period to respond to a Union Representative's request to enter the business premises and right of entry cannot be unreasonably withheld.

Individual Employee Files Required

- As of 01 July 2011, all businesses are required to maintain separate employee files for each employee and include a copy of the employee's contract or individual employment agreement. These should be kept in a locked cabinet with any evaluations and/or disciplinary actions.

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Minimum Wage Increase

- Adult minimum wages have increased to \$13 per hour. New entrants and employees on the training minimum wage (before tax) are to be paid \$10.40 per hour. Increased wages are a natural product of inflation. Employees must be paid at least the minimum wage rate for any work over 8 hours a day or 40 hours a week.

View the Amendments to Employment Relations Act here:

www.legislation.govt.nz/act/public/2010/0125/latest/DLM3172506.html

Holiday Act

In keeping with the underlined promotion of a work-life balance, amendments to The Holidays Act maintain the four-week holiday entitlement but now allow employees to trade in holiday leave for cash and take alternative holidays, at the discretion of the employer.

*The most pertinent changes to the **Holidays Act** are as follows:*

One Week Cash Up

- The amendments to the Holidays Act will allow employees to “cash up” a maximum of one-week of their holiday pay. The employee must make the request in writing and consider it within a reasonable time. Absent an employer’s policy against cashing up, this request should be viewed in good faith. However, it remains the sole discretion of the employer as to whether its employees can take advantage of this option.

Alternative Holidays

- Also at the discretion of the employer, is the ability to accept an employee’s request to transfer a public holiday (and its pay) to another working day. For example, an employee who works on Boxing Day can request this public holiday be transferred to another day of the employee’s choice. However, like the majority of the Act, the employer has the right to opt out of this alternative provision by stipulating in the contract that the transferring of whole or part of a public holiday is not allowed.

Proof of Sick Leave

- Employers now retain the right to request proof of sickness without first having reasonable grounds to suspect the employee is taking advantage of sick leave. The change is meant to reduce compliance costs for employers.

View amendments to the Holidays Act here:

www.legislation.govt.nz/act/public/2010/0126/latest/DLM3172306.html

Special Thanks

Special thanks to Bill Hodge, Faculty of Law, University of Auckland for his aid in preparing the above information.

Contacts:

If you have an employer related dispute or would like more information on employment law, please contact Solicitor, Tina Hwang at tina@queencitylaw.co.nz or 09 970 8812

Disclaimer:

We have taken every care to ensure that the information given is accurate, however it is intended for general guidance only and it should not be relied upon in individual cases. Professional advice should always be sought before any decision or action is taken.

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