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Changes to employment laws

Substantial changes were made to New Zealand's employment laws on 1 April 2016 that are designed to ensure employer compliance with minimum employment standards.

In the past, a number of employers have failed to meet their obligations, even when they have received an order from the Employment Relations Authority. Many have been able to avoid paying what they owed by closing down their business and starting again as a new business, leaving behind disaffected employees without compensation.

The changes to New Zealand's employment laws are designed to avoid this kind of scenario and are also for employers who are unfamiliar or unwilling to become compliant with New Zealand's minimum employment law requirements.

The new legislation changed the Employment Relations Act 2000 (the Act) by introducing the concept of 'officers' in an employing entity, such as a company, trust or organisation that has employees.

Officers can include partners, directors, those in a position similar to a director if the employer is not a company and those who can exercise significant management or administration influence.

Where an employer breaches minimum entitlement provisions i.e. not paying minimum wage, and the breach is serious, a Labour Inspector can apply to the court for

a declaration of breach against the employer and any relevant officer.

Once a declaration of breach has been lodged, the court can take the following actions against the officer or employer:

Pecuniary penalty order

These penalties can cost up to \$50,000 for individuals (such as an HR manager), \$100,000 for employers or three times the value of the financial gain the employer made from the breach.

Compensation order

This is where employees affected by the breach have or are likely to suffer damage or loss. The court can command compensation against the person involved in a breach for wages or other money payable to the affected employee.

Banning order

The court can ban a person from:

- entering into an employment agreement as an employer
- being an officer of an employer
- being involved in the employment of employees

Banning orders can last for ten years. Breaching a banning order can attract a fine of up to \$200,000, a term of imprisonment of up to three years or both.

The New Zealand court is not limited to handing down only one of the above orders. It can also make multiple orders against a person in relation to the same breach.

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Boosting employee morale

Since employee morale can quickly build or hinder a business's success, business owners should always spend time on keeping employees motivated and engaged.

Low morale is often the cause of low productivity and increased turnover, so it pays to be proactive when it comes to managing employee satisfaction. Here are some strategies to improve employee morale and productivity in your workplace:

Celebrate achievements

Recognising and rewarding your employees for their accomplishments demonstrates your appreciation for their work. Rather than singling out people for good work, try rewarding everyone for the achievements of a few to reinforce teamwork. Celebrate your business successes with your team; employees who feel like the successes of the business are their successes also are more inclined to work hard and come up with

ideas of their own.

Focus on career development

Employees are more likely to have higher job satisfaction if they know that you are invested in their career goals and provide opportunities for career advancement. Identify your employees individual career goals and commit to investing in them. Whether it is as simple as teaming them up with co-worker to learn a new skill or providing work time to study online make it happen. The end result will often lead to happy and more productive workers and a more skilled team for you.

Encourage social activities

Socialising with colleagues can form a major part of whether someone like or dislikes their job. Implementing social activities such as team building exercises, supporting a charity or setting up a social club for outside activities can go a long way to improving employee engagement.

Home-based business expenses

Business owners who use the family home to run their small business can make a claim for the expenses incurred as long as they keep a record of all expenses they plan to declare.

Many small business owners who use an area in their home for work purposes can reduce their tax bill by offsetting their business expenses against their business income. Those who have an area specifically set aside for the business can make a claim for this area as long as they keep a full record of all the expenses they plan to claim.

Individuals cannot claim a deduction for any private or domestic expenditure that is not related to the business.

The responsibility for keeping records and invoices for a home office is the same as for any other business. Individuals can claim a portion of the household expenses, such as the rates, insurance, power and mortgage interest, but they must keep invoices for these costs. Records that home-based business owners may need to keep include receipts for all claims (including statements and GST tax invoices; interest statements; dividend statements and purchase and sale agreements (for disposal of investment assets).

Individuals can also only claim for expenses that relate directly to the area used for business. To do this, individuals must calculate the

percentage of the work area compared to the total floor area of the house, then apply the proportion to the total home expenses.

Claims on mortgage interest

Individuals can claim a proportion of a home's mortgage interest (not principal) paid during the year. Since no GST is involved, it is easier to work it out separately using the same method of the calculating the business floor area percentage to determine what to claim.

Telephone costs

If a home acts as the core of a business's operations or management, the owner can claim a telephone rental deduction of 50 per cent. Those who have a separate commercial and domestic line rental can make a claim for the full cost of the commercial line for income tax and GST. Individuals cannot claim anything for the domestic line.

Claiming home internet for business purposes

Home internet costs are generally considered to be a private expense of a household and are therefore, not claimable. However, those who run their business from home may sometimes need to use the internet as part of carrying on the business. The portion of internet used relating to business usage may be claimable as an expense. The proportion of business-related internet expense is calculated depending on the type of internet plan installed.

When couples split

During a relationship or marriage breakdown, a concern for each partner is working out how their KiwiSaver savings will be treated or divided.

KiwiSaver savings form part of property as set out by the Property (Relationships) Act. In most cases, a relationship breakdown will lead to a 50/50 property split, assuming each partner contributed equally to the relationship.

The funds accumulated in KiwiSaver schemes can be part of a settlement. A court order will determine how a couple's assets are split as an agreement is not enough. The court order may direct the trustee of a KiwiSaver scheme to immediately pay out a portion of an individual's KiwiSaver balance to the individual's ex-spouse/partner.

KiwiSaver providers are bound by what the court directs them to do. A court order can specify some or all of an individual's KiwiSaver balance be paid out as part of the split. For example, some court orders may direct a portion of the funds be withdrawn; others may direct providers to split a member's KiwiSaver account in half and that half is directed into their partner's personal account or into a solicitor's trust account.

Even though court orders between spouses and partners are binding, they are representative of a judge's interpretation of a legal relationship between two parties. Therefore, it may be wise for separating couples to seek legal advice before taking further legal action.



Making environmental claims

Businesses wishing to use environmental claims in their marketing strategy need to make sure their claims are honest, accurate and can be substantiated.

Many customers will use environmental claims as a factor when evaluating a product. To avoid misleading or deceiving a customer, claims need to be scientifically sound and explicitly identify and convey any 'green' characteristics.

Special care must be taken when formulating 'green' claims to ensure your business is providing customers with a truthful overall impression of your products. Businesses must comply with the Fair Trading Act to ensure environmental claims are not false or misleading representations.

Here are some principles to consider:

✓ **Claims must be accurate**

Any claim made must be accurate and not mislead customers in any way. You must be able to substantiate any claim made, for example, what scientific authority can justify the basis of your claim.

✓ **Be specific**

Broad or unqualified statements can

mislead customers as the audience can draw many meanings. A claim needs to be specific in how it links to a part of a product or its production process, such as packaging, manufacture or transportation.

Avoid using vague claims such as "environmentally friendly", "safe", "green", "energy efficient", "recyclable", "carbon neutral" or "renewable" as they can be misrepresented and mislead customers into drawing incorrect conclusions.

✓ **Use plain language**

Avoid using technical terms or jargon that may confuse the customer. The customer needs to be able to understand what exactly is beneficial about a product so assumptions are not made.

✓ **Claims must have genuine benefit**

Environmental claims must provide a real benefit and should only be applied where they are relevant. Be aware that claims can lose relevance over time, therefore, they might not be appropriate to use as they can mislead customers. Claims must also not overstate the benefit or level of scientific acceptance.

✓ **Use an appropriate context**

When making claims ensure they are used in an appropriate setting. For example, do not claim that a product is not tested



on animals if it was never tested on animals to begin with.

✓ **Use endorsement with caution**

When using logos, certifications of your product or environmental schemes provide customers with further details of the scheme to prevent misleading impressions.

✓ **Be wary with images**

If your business uses pictures associated with the environment, such as the earth or forests, customers can infer environmental benefits. To reduce misrepresentation use symbols and images with caution.

Injured ACC earners miss out on KiwiSaver

While it is possible to contribute to KiwiSaver while receiving ACC payments, it is not obligatory, even if an individual made contributions before they were injured.



If an employee's employer is accredited or has an ACC employer reimbursement agreement and is paying the employee's weekly compensation, ACC will not be involved in managing the employee's KiwiSaver contributions.

For those who were KiwiSaver members before injuring themselves, the contributions continue at the percentage (three, four or eight) they have instructed their employer to deduct, unless they apply to the IRD for a contributions holiday.

Those who are being paid by ACC while injured and want to keep up KiwiSaver contributions need to provide the ACC with a completed KS2 KiwiSaver deduction form.

ACC needs this form even if individuals were previously making KiwiSaver contributions out of their wages before they were injured. As long as a person meets the criteria, they

can also join KiwiSaver while receiving ACC.

Unfortunately, ACC does not pay the employer contribution and employers don't need to make any compulsory employer contributions. Those payments are a KiwiSaver benefit available only to wage and salary earners who actively contribute to their KiwiSaver through their pay.

Employer contributions are not paid to those who are on a contributions holiday, have taken leave without pay or are under the age of 18 or over 65. However, as with ACC payments, employers can choose to voluntarily contribute in these circumstances.

While self-employed and stay-at-home parents don't receive employer contributions, they are eligible for other KiwiSaver benefits such as the member tax credits and first-home withdrawal. Those contributions are directly made to the provider or through IRD.

Guide to successful business borrowing

In New Zealand's economic climate, many small businesses have seen a change in their ability to borrow funds from their bank.

With banks conducting careful research to determine a business' risk factor it is more important than ever for businesses to maintain a good relationship with their bank in order to safeguard their future access to funds.

Prepare a strong business plan

This is one of the first steps to ensure that the bank will identify it as a low risk business and therefore someone they are willing to give funds to. A solid business plan highlights the viability of the business, information about the experience and success of the owners and managers, expenses which the loan will cover, as well as detailed sales expectations.

Establishing a personal relationship

Over time, an owner establishes key contacts

within their bank that are familiar with their business and financial needs. Keeping these contacts informed of any changes to the business or cash flow projections before it comes as a surprise will build trust between the bank and the business.

Knowing your business inside out

By keeping themselves updated of their own financial status by obtaining credit reports and public records, business owners will know what research the banks will obtain when deciding on the amount, if any, to loan to the business.

Learn the banking language

Understanding banking terms such as credit ratings, cost of capital and other financial drivers will place business owners in a strong position when negotiating the terms of their loans.

Keep the adviser informed

Financial advisers are there to advise and

will have an intimate knowledge of bank processes. Keeping them posted of any plans or changes will allow them to better advise the business on the best course of action, and ensure that the business will continue to prosper. more informed hiring decisions.



Residential land withholding tax

After 1 July 2016, New Zealand base companies, partnerships and trusts with an overseas connection will be subject to residential land withholding tax (RLWT) of up to 33 per cent if they sell residential property within two years of acquisition.

Property developers will be able to obtain a certificate of exemption in limited circumstances.

The Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill (which is awaiting royal assent) introduces RLWT as a mechanism to collect the tax due under the new residential property 2-year bright-line test from 'offshore RLWT persons.'

An individual is considered to be an 'offshore RLWT person' if they:

- are a New Zealand citizen who has not been in New Zealand within the last three years
- hold a residence class visa and has not been in New Zealand within the last 12 months
- are not a New Zealand citizen and does not hold a residence class visa.

A company or partnership is considered to be an 'offshore RLWT person' if:

- it is incorporated or registered outside New Zealand or constituted under foreign law
- it is controlled by more than 25 per cent offshore RLWT persons
- more than 25 per cent of its directors or general partners are offshore RLWT persons.

Some New Zealand companies may be caught by these rules. For example, a New Zealand company with three directors, one of whom is Australian, could mean the company is subject to the RLWT rules. New Zealand subsidiaries of multinationals will almost certainly be offshore RLWT persons.

The rules applying to trusts are even broader. In addition to looking at the offshore status of each of the trustees, settlors and beneficiaries, the RLWT rules will apply to a trust where:

- a beneficiary who is an individual and an offshore RLWT person who has received a distribution from the trust in one of the last four years of more than \$5,000, or
- the trust has disposed of any other residential land within the last four years and the trust has any beneficiary that is an offshore RLWT person.

Important tax dates

7 June

Employer deductions form and payment due for deductions made between the 16th and the end of the previous month.

Employer monthly schedule for the whole month is due.

20

Employer deductions form and payment due for deductions made between the 1st and 15th of the same month.

28

GST returns and payments due.

Provisional tax instalments due for people and organisations who use the ratio method.

5 July

Employer deductions form and payment due for deductions made between the 16th and the end of the previous month.

Employer monthly schedule for the whole month is due.