



## Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

## Revisitation of Rest and Meal Breaks

A series of amendments to the Employment Relations Act will take effect from 6 May 2019 including revision of Part 6D of the Act; Rest and Meal Break provisions. These new changes will effectively reverse amendments made by the previous government in March 2015 and re-enact the original 2009 provisions. It is timely therefore to reflect on the law as it stood in March 2015 (before the changes) to determine what these new (old) changes will mean for us.

The pre-2015 provisions set standard times for and duration of rest and meal periods. The 2015 amendment simply required employers to provide a reasonable opportunity for employees to take breaks of a reasonable duration at a reasonable time. Moreover it provided that if an employer was exempt from this requirement because it could not reasonably provide these breaks, it had to reasonably compensate the employee.

From 6 May 2019 all employees will have a statutory right to set rest and meal breaks, the former paid and of at least 10 minutes and the latter unpaid and at least 30 minutes. The timing of these breaks is prescribed unless the parties agree otherwise. In an 8 hour working day the breaks will be:

- First rest period ½ way between start and meal.
- Meal – half way through work period.
- Second rest period ½ way between meal and end.

The 2014 amendment was the direct result of the series of decisions involving *Greenslade v. Jetstar New Zealand* which was the first decision to consider the prescriptive rest and meal break provisions that had been instituted in 2009.

Greenslade, a Christchurch based pilot for Jetstar flew a series of intercity services between New Zealand and Australia. On any given day his hours of work were between 05.00 am and 2400 (midnight) with between one and five sectors. Domestic duties ranged between 4 hours and 8.25 hours on any day, the latter would include 5 hours 30 minutes actual flying over four sectors.

Scheduled turnarounds for flights were 40 or 30 minutes for international and national flights respectively. During this time he was required to perform a number of administrative duties which generally resulted in the pilots being on the flight deck (except for toilet breaks on the plane) throughout the whole shift. Meals were provided to flight crew once the aircraft was in flight mode. It was agreed by both parties that Greenslade had not been given rest or meal breaks while on shift.

Greenslade's individual employment agreement stated that the company 'may direct the most appropriate time for . . . breaks to be taken in accordance with the operational requirements' and in general terms linked back to Civil Aviation (CAA) Regulations.

Greenslade argued that the airline did not comply with the Act and Jetstar argued that both it and its pilots were regulated by the mandatory provisions of the CAA.

The Employment Relations Act provided for the following breaks:

- “(4) If an employee's work period is more than 6 hours but not more than 8 hours, the employee is entitled to—
- (a) two 10-minute paid rest breaks; and
  - (b) one 30-minute meal break.
- (5) If an employee's work period is more than 8 hours, the employee is entitled to—
- (a) the same breaks as specified in subsection (4); and
  - (b) the breaks as specified in subsections (2) and (3) as if the employee's work period had started at the end of the eighth hour.”

These breaks were to be taken either 'at times agreed between the employee and employer' or as specified in the Act itself; being

## Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Raewyn Gibson, Peter Zwart** or **Dean Kilpatrick**.

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- Work 2 – 4 hours:
  - In the middle
- Work 4 – 6 hours:
  - Rest period 1/3 through
  - meal 2/3 through
- Work 6 – 8 hours:
  - First rest period ½ way between start and meal.
  - Meal – half way through work period.
  - Second rest period ½ way between meal and end.
- After 8 hours:
  - Repeat the above pattern.

The Court defined rest break as ‘a period when an employee is freed from the performance of his or her work duties during a working day or a working period’. They distinguished meal breaks as a ‘subspecies’ of rest breaks with the ‘implicit notion . . . that this must be such as to allow an employee to partake of a meal, that is, to consume food and beverage . . .’. Also *“implicit in the notion of (certainly) a meal break, and perhaps also a rest break, is the ability of the employee to refresh himself or herself by attending to their toilet requirements.”*

The Court determined that the effect of the Rest Break provision in Mr Greenslade’s agreement was that the employer agreed to provide the require breaks subject to the ability to determine when the breaks would be. They therefore found that Jetstar had, by failing to provide rest and meal periods, breached Mr Greenslade’s individual employment agreement.

Jetstar then argued that:

*“if it was required to provide pilots with breaks away from their duties (and aircraft), this would affect adversely its service scheduling, causing additional cost to the airline or the loss of income to it as a result either of operating fewer flights or increasing aircraft and/or pilot numbers.”*

The Court went on to accept:

*“that in the particular circumstances of piloting passenger service aircraft, there may be consequential and more significant effects of an employee taking a break than might be the case, for example, by the diminution or temporary cessation of a factory’s production. . .”*

The airline concluded that although breaks could, from an operations perspective, be implemented, this could at its most drastic, result in the withdrawal of Jetstar from operations based in New Zealand. The Court concluded however that such *“spectres, irrespective of their probability, should not be allowed to influence the interpretation of minimum code legislation or its application in particular cases, and do not do so in this case.”*

It was this decision that led to the 2015 amendment which has (or will from 6 May 2019) been reversed.

From that date all employees will be entitled to the prescribed rest and meal break which, unless the parties agree otherwise, **MUST BE TAKEN** at the prescribed times.

In the absence of agreement the Court or Authority will (as they did in Jetstar) enforce the provisions of the Act irrespective of how unreasonable that may be or the consequences of such a decision on either the employee or the employer.

The Act provides for extremely limited exemptions from these requirements only for the purposes of National Security or essential services (as defined in Schedule 1 of the Act). The exception will only apply if continuity of service is critical to the public interest and the employer would incur unreasonable costs.

We suggest that all employment agreements are reviewed to ensure that they either reflect the statutory minimum and/or that they reflect an agreed variation around timing.

# What's Happening

- **Briefing Sessions: Employment Relations Amendment Act 2018**  
Wednesday 27 February 2019 – 9.30 am to 11.30 am  
**OR**  
Monday 11 March 2019 – 1.00 pm to 3.00 pm  
The George Hotel, Christchurch  
\$225.00 per GST per person
  - **2 Day Employment Relations Practice Course**  
10 and 11 April 2019  
The George Hotel, Christchurch
- Email [carey@mgz.co.nz](mailto:carey@mgz.co.nz) to book a place.