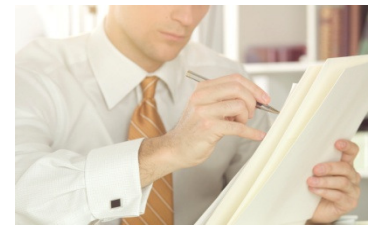


Legislative Changes

Legislation has now been passed to amend the Holidays Act 2003 and the Employment Relations Act 2000. The majority of the changes will come into force on 1 April 2011.



Holidays Amendment Act 2010

- The inclusion of a definition for “*discretionary payment*” for the purposes of calculating “*ordinary weekly pay*”, “*gross earnings*” and “*relevant daily pay*”.
- A provision to transfer public holidays, by agreement, to be observed on an alternative date.
- A new definition of relevant daily pay which removes the four week averaging formula and replace it with the new concept of “*average daily pay*”.
- A change to the definition of “*what would otherwise be a working day*” by providing an additional “*but-for*” test and dealing with the impact of closedowns on that definition.
- A change to the definition of “*gross earnings*” to expressly exclude non-taxable reimbursing payments and to exclude payments for leave which is “*cached up*” in accordance with the Act.
- To allow for an employee to request to cash up one week of their annual holiday entitlement.
- To allow employers to direct when an alternative holiday is taken, in the absence of an agreement.
- To allow for employers to require proof of sickness or injury (before an absence of 3 consecutive calendar days) provided this is requested as soon as possible and the employer meets the reasonable costs associated with this.
- Increasing the penalty for non-compliance to \$10,000.00 for employers who are individuals and \$20,000.00 for a company or other body corporate.

Employment Relations Act

- A requirement upon union representatives to obtain the consent of the employer before entering a workplace; such consent cannot be unreasonably withheld.
- Clarification of an employer’s ability to communicate with employees during collective bargaining, including communications about the employer’s proposals for the collective agreement, provided such communications do not breach the existing duties of good faith.
- A new provision which makes it clear that the employee may have access to a copy of the employment agreement retained by the employer and clarification of the status of unsigned employment agreements; this provision comes into force on 1 July 2011.
- Extends the ability of employers and employees to agree to trial periods of 90 days (or less) to employers who employ in excess of 20 employees.
- To amend the test for justification of dismissal or other action from what ‘*would*’ a reasonable employer do, to what ‘*could*’ a reasonable employer do.
- The introduction of minimum requirements for procedural fairness.
- A new provision which requires that the Employment Relations Authority or the Court must not reach a determination that an action of the employer is unjustified “*solely because of defects in the process followed by the employer, if the defects were minor and did not result in the employee being treated unfairly*”.
- Reinstatement is no longer the primary remedy in unjustified dismissal claims.

- The introduction of penalties for obstructing or delaying an Authority investigation.
- Increasing the penalty for non-compliance to \$10,000.00 for individuals and \$20,000.00 for a company or other body corporate.
- Allowing the parties to agree to allow a Mediator or Authority Member to make a written recommendation in relation to matters in issue/dispute; the recommendation can either be accepted or rejected.
- The ability to recover monies agreed to in a mediated settlement in the District Court.
- A provision to allow cross-examination of the parties at an Employment Relations Authority hearing.
- The Employment Relations Authority are required to give priority to scheduling an investigation hearing in respect to matters which have been to mediation except in circumstances where they consider mediation is not appropriate.
- The Employment Relations Authority may remove a matter to the Employment Court without application by either party.
- The introduction of provisions which clarify when mediation may be impractical or inappropriate before recourse is had to the Employment Relations Authority.
- Providing the Employment Relations Authority with the power to dismiss frivolous or vexatious proceedings.
- Enabling cases that have been inactive for three years in the Authority to be treated as withdrawn.
- Clarifying the functions of Labour Inspectors.

As you will appreciate we have only provided a summary of the changes to the Holidays Act and Employment Relations Act however we would encourage your attendance at the briefings which we have scheduled for early in the New Year which will provide:

1. The detailed content of the amendments; and
2. Their application/impact in a practical sense.

Christmas Shutdown

We hope you all have a great Christmas and are able to “*put your feet up*” for at least some part of the break.

Our office will be unattended from midday on Wednesday 23 December 2010 until Wednesday 5 January 2011.

If you require assistance during this period please feel free to contact us on the following numbers:

Neil 0274 387 803 : Raewyn 0274 387 802 : Peter 0274 367 757

