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a regular newsletter for clients of
mcp h a i l g i b s o n & z w a r t l t d

New Zealand Income Insurance Scheme

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

According to the Ministry of Business, Innovation, and Employment, an estimated 100,000 New Zealanders per annum are made redundant or have to stop working due to a health condition or disability. No doubt this situation has been exacerbated by many factors beyond the scope of this edition of The Advocate. However, the implications of the Canterbury Earthquakes, a global pandemic over the last two years, and more recently the war in Ukraine, may be relevant.

The Labour Government has said that the effect of the current economic climate on business and workers will continue to be significant. It has determined that government intervention in the form of a national income insurance scheme is needed, consistent with the approach taken by many other developed countries including Canada, Japan, and Republic of Korea. On 2 February 2022, the Labour Government therefore announced the introduction of a proposed New Zealand Income Insurance Scheme (the **Scheme**), in the form of an initial discussion paper.

The Scheme's objectives, as outlined in the paper, are threefold:

1. *minimise the immediate financial impact of losing income and work for workers and their families*
2. *support workers back to good jobs*
3. *support the economy to adjust more rapidly to shocks or downturns."*

Finance Minister Grant Robertson has said, "*Our proposed scheme provides economic security to individuals directly, and supports them to transition into a good, new job, as opposed to economic support packages which keep people in their existing job even if that role is no longer viable*".

Essentially, the Scheme will cover and provide compensation to workers for "*no fault*" terminations, whether due to redundancy or medical incapacity. It will not therefore apply where a worker has been dismissed (for conduct or performance reasons), nor will it apply where the employee resigns (including in instances of constructive dismissal). The Scheme will also address the practical inequities of treatment between those workers who are injured (and receive ACC cover), and those workers who are temporarily unable to work due to a medical condition or disability (currently not covered by ACC).

In situations of redundancy or medical incapacity termination, an employee would be eligible for 80% of their wages/salary (capped at \$130,191 - the same as for ACC), for a period of up to seven months (inclusive of a compulsory four week notice period). The Scheme will not however cover situations where there is a reduction to a role, for example where a worker is offered and accepts a reduced role following an organisational restructure, or where the employee accepts a permanent part-time role following a period of absence due to a health condition. Whilst receiving compensation following a termination, the worker is expected to actively look for work, and retrain for a new vocation if the termination was for health reasons.

ER Seminar Postponed

Unfortunately, due to individuals either having Covid or having to isolate we have had to postpone the 2 Day Employment Relations seminar which was to be held this month. New dates have been set for 31 May/1 June 2022 and also 26/27 October 2022. Details can be found on our website www.mgz.co.nz/training/

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 **Dean Kilpatrick, Jane Taylor or Deborah Hendry.**

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For any period where a worker's capacity to work is reduced by at least 50%, the Scheme would similarly pay 80% of wages/salary for the period of incapacity (up to six months). As for absences caused by injury, ACC would be the agency taking on responsibility for managing the employee's rehabilitation and return to work. During this time, the employer would be expected to provide light/reduced/alternative duties where possible. In most situations, the employer would also be required to make all reasonable efforts to hold the role open for the length of the worker's claim, where the worker's prognosis is that the worker will be able to return to work within six months.

Like ACC levies, the Scheme would be funded by both employers and employees, each contributing 1.39% of salary/wages. However, to be eligible to receive payments under the Scheme, workers will need to have contributed at least six months of levies over a period of at least 18 months.

Of note, is that the Scheme specifically refers to *workers*, which shows a wider definition of coverage than just employees. While a definition of "*worker*" has not been provided, the Government has stated that the Scheme will apply to all types of employees (including part-time, fixed term, "*casual*" (where the pattern of work creates an expectation of ongoing work), and seasonal workers), as well as independent contractors who are effectively employees. At this stage however, the Scheme will not apply to the self-employed.

Like all proposed laws, policies and schemes in their early stages, there are a number of potential implications, both good and bad. Insofar as employment issues, the following outlines just some of the implications we have identified:

- The Government has acknowledged that like any insurance scheme, the Scheme may be open to abuse. This may occur for example, where the employer has raised serious misconduct, but wishes to avoid risk of a personal grievance and so reframes the termination as a redundancy pursuant to a record of settlement. As the Government cannot reasonably audit every single redundancy termination across the country, it has proposed two solutions: one is to require that employers pay a "*bridging payment*" (say the first eight weeks); the second is to introduce a statutory definition of redundancy with strict criteria as to when a redundancy can be said to have occurred (currently, redundancy is defined by case law).

- Our concern with the first option is that if a business is already struggling financially, the requirement to pay employees for several weeks may simply mean that the business is unable to continue operating. In respect of the second option, the success of this solution will likely depend on the drafting on any such definition, which is yet to be seen. However, this approach will still require a level of audit/government oversight to ensure the legitimacy of a claim under the Scheme.
- It is likely that adoption of the Scheme would see a reduction in personal grievances (and therefore litigation) on redundancy and medical incapacity terminations. Even if a personal grievance was likely to be successful, payments under the Scheme would no doubt impact the extent of remedies available to the employee, making litigation uneconomical for the employee in most situations.
- If independent contractors are excluded, it is likely that there would be an increase in litigation from individuals claiming that they should be treated as employees, in order to fall under the Scheme. Similarly, it is possible casual workers may challenge their "as and when needed" status, and claim that they are effectively permanent employees.

Our view is that while the details of the Scheme will take some time to be established, it is likely that the Scheme will ultimately be implemented in some form. The Scheme is somewhat unique, in that it has the backing of both the New Zealand Council of Trade Unions *and* Business New Zealand. However, what is certain is that if the Scheme is implemented, it will have a significant impact on HR and employment law and practice.

While no legislation has yet been introduced, the Government has invited submissions on its paper "*A New Zealand Income Insurance Scheme: A discussion document*", due by 26 April 2022 (www.mbie.govt.nz/have-your-say/income-insurance/). The paper outlines the proposal in much more detail and outlines a number of potential implications of the Scheme (including tax/accounting, insurance, economic and financial implications). Should you wish to provide submissions on the employment/HR aspect of the proposed Scheme, we can assist you.