

Proposed Employment Law Changes

The planned changes announced by the Government on Sunday 18 July are reportedly tailored to reduce compliance costs, give businesses more confidence to take on new staff, help resolve workplace disputes faster and provide more choices for employees and employers.

The changes will require amendments to the Holidays Act and the Employment Relations Act. The first draft of this legislation was introduced on Monday 16 August 2010. After the first readings they will be sent to the Transport and Industrial Select Committee for public consultation.

The Association will be preparing submissions. We will be interested in member comment and will keep members informed of progress.

We expect the majority of changes to take effect on 1 April 2011.

The media have headlined some of the changes but there are more. The signalled changes are:

Employment Relations Act

- Extension of the 90-day trial facility to all employers. Currently this may be used only by employers with fewer than 20 employees.
- Union access to workplaces will be subject to the employer's consent, which may not be unreasonably withheld.
- Employers will be able to communicate directly with staff during collective bargaining, including discussing settlement offers, subject to good faith provisions.
- The 'test of justification' will change from what a reasonable employer 'would' have done to what it 'could' have done. This will allow a range of reasonable responses.
- Minimum requirements for a fair and reasonable process will be set out in the Act and a Code of Employment Practice relating to discipline and dismissal will be established. The focus will be on the merits of the employer's decision, rather than pedantic scrutiny of the process and the Code will improve understanding.
- Mediation services will be provided for early problem resolution without representation, which should keep costs down and simplify some situations. Formal mediation, with or without representatives, will still be available.
- The role of Labour Inspectors will be defined in legislation as one of managing complaints and supporting businesses to achieve compliant practices and systems. Wider authorities for Labour Inspectors will accompany this.
- Mediation will be promoted, with the Employment Relations Authority (ERA) giving priority to mediated cases.
- The ERA will be able to dismiss frivolous or vexatious claims, and mediators and ERA members will be able to make recommendations to parties
- Reinstatement will no longer be designated as the primary remedy in dismissal cases.

- A code of ethics will be developed for employment relationship advocates.
- The ERA regulations will be reviewed and will move to making the Authority more judicial, with a right to cross examine witnesses. The Chief of the ERA will be given powers to assist in consistency of decisions.
- Parties who fail to attend investigations or who otherwise employ delaying tactics may be penalised and existing maximum penalties will be doubled.

Holidays Act

- Employees will be able to trade one of their four weeks' annual leave for cash. The request must come from the employee and be in writing. It may not be raised in salary negotiations and may be declined without need of an explanation. It may be a full week at once, or spread out in separate requests. The cash value will be the same as if the holiday was taken.
- For employees with irregular hours of work and pay, payment for sick leave, bereavement leave, public holidays and alternative holidays will be calculated by averaging their gross earnings for the year (or lesser period of employment). There will be no change to the Relevant Daily Pay calculation for employees with regular hours and pay.
- Employers and employees will be able to agree to transfer the observance of public holidays to another identified working day. This is designed to better reflect New Zealand's multi-cultural society.
- If the parties cannot agree on when an alternative holiday is to be taken, the employer will have the ultimate say.
- Employers will be able to ask for proof of illness or injury within three days of an employee taking sick leave but will have to pay reasonable costs in obtaining this proof. The current requirement, that the employer have good grounds for suspecting abuse before making such a request, will be removed.
- Penalties for non-compliance will be doubled to \$10,000 for individuals or \$20,000 for companies and other body corporates. This should strengthen the deterrent value of penalties.

These changes are consistent with the National Party's campaign promises on employment law. We expect them to simplify and assist and we look forward to reviewing the draft legislation once it is available.

For any queries members are welcome to contact the advisors on 0800 472 472.