

The Bottom Line

Special Employer Alert – April 2011

Sumpter Baughen

CHARTERED ACCOUNTANTS



Employment Relations and Holidays Act

Changes to the Employment Relations Act 2000 and the Holidays Act 2003 were passed by Parliament in November 2010. Most changes for both Acts come into force 1 April 2011.

The legislation introduces a wide range of changes, many of which will affect our employer clients. Some of the changes make employer life simpler, some spell out what should already be best practice, and others will invariably add to the administrative burden of employing staff.

This Special Alert highlights those changes and provides some practical solutions for the more far reaching ones.

For a more comprehensive read, refer to the Department of Labour's booklet – "Changes to the laws on employment relations and holidays", at www.ers.govt.nz

Changes to the Employment Relations Act at a glance

Main changes and implications

Please note: All outlined changes will be applicable as of 1 April 2011 (unless otherwise stated)

Union access to workplaces

- Unions must seek permission to access a workplace
- Employers must not unreasonably refuse access

Collective bargaining

- Employers may now communicate their proposals directly with employees
- They still however need to ensure that they do so in a way that recognises the union, does not constitute negotiation, and does not undermine the union or the bargaining process

Retention of individual employment agreements - changes apply 1 July 2011

- Employers must retain a copy of every individual employment agreement, even where the employee has not signed the agreement
- Labour inspectors are charged with enforcing these new requirements. They must give employers seven working days to remedy any breach, failing which, the employer is liable for a penalty
- Employers need to check their employment agreements and ensure that they include compulsory information. Those who provide a defective employment agreement will be liable for a penalty

Trial period provisions

- The current 90-day trial period is extended to all employers
- Enables all employers to dismiss employees within the first 90 days without the employee bringing a personal grievance challenging the dismissal
- Where a trial period is used, a legally effective clause will have to be included in the employment agreement



Changes to the Employment Relations Act at a glance (cont.)

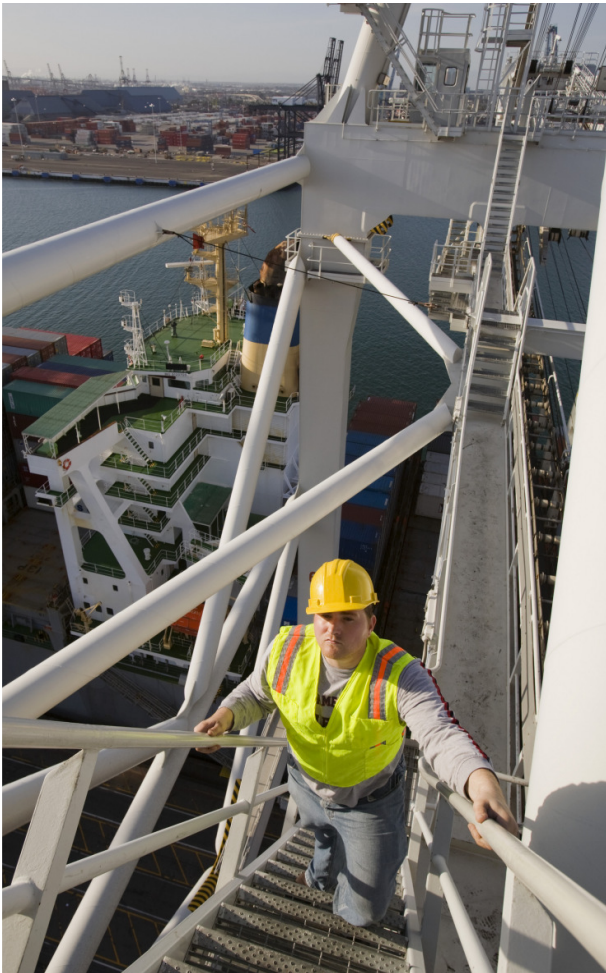
Main changes and implications Please note: All outlined changes will be applicable as of 1 April 2011 (unless otherwise stated)

Test for justification in dismissal disputes

- Whether a dismissal or action was justifiable must now be decided on an objective basis. The court will consider four common sense elements of fair process
- The employer's resources will be taken into account
- Importantly, a process will not be unjustified if the process failures were minor and did not result in the employee being treated unfairly

Changes to promote mediation

- Mediators will be permitted to talk to a party in mediation without the representative being present (where agreed)
- This change will help to limit the practice of filing a claim with the Employment Relations Authority, preventing unhelpful costs being incurred



Labour Inspectors' roles and powers

- Labour Inspectors will be in an educative, support and (where required) compliance role

Extension and increasing of penalties regime

- For companies, these increase from \$10,000 to \$20,000
- For individuals, from \$5,000 to \$10,000

When things haven't gone well for you, call in a secretary or a staff man and chew him out. You will sleep better and they will appreciate the attention.

- Lyndon B. Johnson

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Disclaimer

This publication has been carefully prepared, but it has been written in general terms only. The publication should not be relied upon to provide specific information without also obtaining appropriate professional advice after detailed examination of your particular situation.

Changes to the Holidays Act 2003 at a glance

Please note: All outlined changes will be applicable as of 1 April 2011 (unless otherwise stated)

Calculation of payments for public holidays, alternative holidays, sick and bereavement leave

- Changes have been made to simplify the calculation of pay for public holidays, alternative holidays, sick and bereavement leave
- A new calculation, 'Average Daily Pay', is based on earnings over the last 52 weeks, rather than the current 4 week formula

Cash up of annual holidays

- Employees can now request that up to one week of annual holidays be cashed up
- Employers can accept or decline requests and can even have a blanket policy that they will not cash up

Changes to the Holidays Act 2003 at a glance (cont.)

Please note: All outlined changes will be applicable as of 1 April 2011 (unless otherwise stated)

Transferring the observance of public holidays

- Employers and employees can agree to transfer the observance of a public holiday to another working day, giving people more flexibility

Alternative holidays

- Alternative holidays must not be taken on a public holiday
- If employer and employee cannot agree when an alternative holiday is to be taken, the date will be decided on a reasonable basis by the employer
- 14 days' notice must be given to the employee of the requirement to take that alternative holiday

Proof of sickness or injury

- Employers can now request proof of an employee's or dependant's sickness or injury within 3 days. However employers must pay the costs of such proof, e.g. a doctor's visit

Entitlements during a closedown period

- Applies from 27 November 2010

- Employees are entitled to be paid for public holidays, alternative holidays, sick or bereavement leave if any of them fall during a closedown, and if the day would have been a working day if it hadn't been for the closedown

Penalties for non-compliance

- For companies, these increase from \$10,000 to \$20,000
- For individuals, from \$5,000 to \$10,000



Key Preparation required prior to 1 July 2011

We are concerned that many of our employing clients still do not have documented employment agreements. Given the toughening up of potential penalties for not observing this requirement, as well as the increasing compliance role of Labour Inspectors, we think it's high time that many of you beefed up your employment administration.

The best place to start is to make sure you maintain a comprehensive personal file for each employee. The following checklist (see back page) provides you with a useful guide for building such a file. Be sure to create a 'soft' (saved in your computer) file as well. That way you'll be more likely to have natural disaster-proof records.

*It is not the employer who pays the wages. Employers only handle the money.
It is the customer who pays the wages. - Henry Ford*

We're here to support you

If you need any assistance with wages queries or even complete payroll preparation, remember that we are experienced in this area. Call us or send us an email and we'll certainly help where required.

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Employee Personal File Checklist

(Strike through details that are not applicable)

Recruitment

- Position description
- Application & CV
- Interview notes
- References
- Skills tests completed
- Behavioural profile
- Offer of employment letter copy

Contractual

- Intended employment agreement prior to applicant signing - mark as draft
- Finalised employment agreement (& notes of discussions or correspondence re offer letter or employment agreement)
- Documents of variation, over course of employment

Induction

- Induction itinerary
- Team member booklet
- Employee contact details recorded
- New team member form
- Signed IR330 form
- Emergency contact details recorded

Remuneration

- Salary details & subsequent amendments
- Allowances
- Discretionary payments
- Wages & time records OR
- Reference confidential electronic file location

Trial & Probation

- Trial period duration: _____ days
- Probation duration: _____ months
- 30 day/1 month review report on file
- 60 day/2 month review report on file
- 90 day/3 month review report on file

KiwiSaver/Superannuation

- KiwiSaver information form OR
- Employee's superannuation scheme documentation
- KiwiSaver entry/continuation correspondence
- Details of salary sacrifice (if applicable)
- Payroll updated confirmation notes

Career Development Reviews

- Date: _____ report on file
- Date: _____ report on file
- Date: _____ report on file

Salary Review

- Salary review forms
- Correspondence
- Payroll updated confirmation notes

Disciplinary Review

- Verbal warnings
- Written warnings
- Interview records
- Investigations
- Correspondence
- Mediation records
- Outcomes

General

- Employment history
- Skills & qualifications record
- Training record
- Absence/lateness record
- Benefits record

Leave

- Leave taken, leave outstanding, alternative holidays
- Requests to cash up leave
- Requests to transfer public holidays
- Basis for payment calculation (e.g. relevant/average daily pay)
- Holiday & leave record OR
- Regular printouts from payroll system OR
- Reference to confidential file on drive

Grievance

- Grievance forms
- Investigation reports
- Records of meetings
- Correspondence

Termination

- Letter of resignation
- Acceptance of resignation
- Reference
- Exit interview
- Employee leaving checklist
- Verbal warning date: _____
- Written warning date: _____
- Second/final warning date: _____
- Termination (notice period) date: _____
- Termination of employment letter

Completed by: _____ Date: _____

Reviewed by: _____ Date: _____