



DYHRBERG DRAYTON  
EMPLOYMENT LAW

## Employment Update

The government has announced a number of changes to New Zealand's employment laws most of which will come into effect on 1 April 2011. The changes being made are intended to reduce compliance costs, increase business confidence in recruiting new staff, expedite resolution of workplace disputes and provide greater choice for employers and employees.

The changes are outlined below:

### 90 day trial period

The 90-day trial period is being extended to all employers; currently this is only available to employers with less than 20 staff. From 1 April 2011, any employer and employee can agree to enter into an employment agreement which includes a trial period of 90 days or less. During this period the employer can dismiss the employee without risk of a personal grievance for unjustified dismissal. A fair process is still required and advice should be sought.

### Communication with employees during collective bargaining

Employers will be allowed to communicate directly with their employees during the collective bargaining process provided that the communications are consistent with the duty of good faith.

### Employers must keep employment agreements for every employee

Employers will have until 1 July 2011 to ensure they have employment agreements for all their employees. Employers will be required to retain a signed copy of individual's employment agreement or current signed copy of the terms and conditions. Employees are entitled to a copy of their agreement if requested.

### Employment Relations Authority

The Authority will have the power to award a monetary penalty against any parties who, without sufficient cause, obstruct or delay an investigation. They will also be able to dismiss any frivolous or vexatious proceedings.

Any cases with the Authority that have been inactive for 3 years will be treated as withdrawn

### Justification for dismissal and fair process

The test of justification for an employer's decision to dismiss an employee will be based on 'whether the employer's actions and how it acted were what a fair and reasonable employer could (rather than would) have done in all the circumstances at the time'. Minimum requirements of a fair and reasonable process are set out in the Act and employer's processes will

not be subject to pedantic scrutiny for minor or technical defects.

### Mediation

Mediators and the Employment Relations Authority are encouraged to make recommendations on resolving the employment relationship problem. This gives parties the benefit of the expertise and experience of the mediator or Authority member without limiting their options if they do not accept the recommendation.

Mediation is promoted as the first problem solving option and clarifies that mediation services for early problem resolution may occur without external representation. It also provides for the Authority to prioritise mediated cases.

### Remedies

Reinstatement will no longer be the primary remedy for unjustified dismissal; it will remain as a remedy where practicable and reasonable.

Penalties will be increased to a maximum of \$10,000 for individuals and \$20,000 for companies.

### Union access

Union representatives will need to gain employer's permission before entering a workplace. The employer is required to respond to access requests within one working day and if they deny access must provide their reasons in writing. Employers should be aware that union access to the workplace cannot be unreasonably withheld.

### Changes to the Holidays Act

- Employees will have the option to receive a cash payment of up to one week of their four weeks' annual leave. This is only permissible at the employee's request and the issue should not be raised during salary negotiations. Note that these requests can only be made by employees who become entitled to annual holidays on or after 1 April 2011 (i.e. after their next anniversary date post 1 April 2011).
- Employers and employees will be able to agree to transfer the observance of the whole of a public holiday to another working day.
- Employers may request proof of sickness or injury, within 3 days, without having reasonable grounds to suspect that sick leave is not genuine. Employers are still required to meet the employee's reasonable expenses in obtaining the proof.
- Employees who have irregular working hours and pay, will now have their annual, sick and bereavement leave calculated on an "average daily pay" basis. Relevant daily



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pay (RDP) will still apply to employees with regular hours/pay.