



## MARCH 2021

### SNIPPETS

#### THE MINIMUM WAGE IS INCREASING

The Government has confirmed that the adult minimum wage will increase from \$18.90 to \$20.00 per hour (\$21.60 with 8% holiday pay for those employees on casual hourly rates) on 1 April 2021.

The starting out and training minimum wage rates will also increase on 1 April 2021 from \$15.12 per hour to \$16.00 per hour (\$17.28 per hour with 8% holiday pay).

The minimum wage has jumped nearly 20 percent between April 2018 and April 2020 and this next increase means it will be up 25% in just three years, far outstripping median wage inflation.

#### PROPOSED INCREASE TO MINIMUM SICK LEAVE ENTITLEMENTS

The Government has introduced the Holidays (Increasing Sick Leave) Amendment Bill to increase the minimum employee sick leave entitlement from 5 days per year to 10 days per year. The Bill proposes that:

- Every employee would be entitled to 10 days' sick leave each year (provided they qualify based on existing terms) regardless of their workday/s pattern
- The maximum amount of unused sick leave that an employee can be entitled to under the Act will remain at 20 days
- Employees will receive the increased entitlement on their next sick leave entitlement date after the law commences (rather than all employees receiving the additional sick leave on the same day).

The cost of this increased sick leave minimum will be borne by the employers. Businesses in the manufacturing, construction, accommodation and food services sectors, which are more likely to only provide the current minimum entitlement, will likely be impacted the most.

Employer stakeholders have pointed out that part time and full-time workers are to receive the same number of days sick leave, the part timers' entitlement being a higher proportion of the working time for that class of employee.

In an extreme case, if an employee worked one day a week, an entitlement of 10 days sick leave would give that employee paid sick leave for 20 percent of their working year. It is acknowledged that this differential impact could incentivise employers to not hire part time workers if they perceive they will face higher proportional costs as a result.

Consequently, employers in sectors with a high proportion of part time workers have suggested an approach similar to annual leave where this leave is in proportion to the amount of time spent working. Using this approach, an employee who works one day a week would be entitled to 20 percent of the entitlement of a full time employee. Some form of mixed model may also be possible where part time workers receive some level of fixed entitlement, but additional sick leave is then pro-rated according to hours worked.

Since sick leave is a needs-based entitlement (as opposed to annual leave is a fixed entitlement), it is difficult to predict the impact that increasing the minimum entitlement would have on employers and employees. MBIE has estimated that the average number of sick leave days used per employee would increase from the current 4.7 to 7 days. This takes into account the fact that many New Zealand employees already have greater than five days sick leave per year and behavioural change is likely therefore to be restricted to those receiving an increase in entitlements.

The context of the pandemic has clearly pushed the issue of sick leave to the fore but the publicly funded Covid19 Leave Support Scheme and an additional Short-term Absence payment starting mid this month mean sick leave changes are not urgently needed because of COVID.

The Bill will come into effect two months after it has been passed into law.

## Welcome

The Principals and Staff extend a warm welcome to James, Harvey & Norman clients who have "on boarded" with Graham & Dobson. Ian Chatfield will still be available to assist you on our phone number (869 1234). You will find our receptionists friendly and helpful.

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## THE TRUSTS ACT 2021



This Act finally came into force on 30 January 2021, replacing the entire 1956 Act. The new Act applies to all trusts governed by New Zealand law already in existence at the time the Act came into force.

Broadly speaking, the Act increases the rights and protections of beneficiaries, whilst at the same time, imposes more responsibility and prescriptive requirements on trustees. These changes are likely to make trusts more transparent to beneficiaries but also more intensive for trustees to administer on a day-to-day basis. Of particular note are the record-keeping obligations imposed on trustees.

Another of the more significant changes in the new Act that is generating interest from trustees and practitioners alike is the introduction of beneficiary disclosure requirements on trustees. This becomes sensitive if it means disclosing a trust's financial information, or to what extent some beneficiaries have benefitted more than others. However, the question is to what level should information be disclosed and to whom?

Under the new Act there are two layers to the disclosure obligations. Firstly, a 'presumption' exists that trustees will make available "basic trust information" to every beneficiary. "Basic trust information" would comprise:

- The fact the person is a beneficiary of the trust
- The name and contact details of the trustees
- Any changes to the trustees as they occur
- Their right to request a copy of the trust deed
- Their right to request trust information

The second tier is that a beneficiary may request additional "trust information".

"Trust information" has a wide definition and includes information regarding trust property. Although it specifically excludes "reasons for trustees' decisions", it is reasonable to assume 'trust information' includes financial data but how detailed that information has to be is unclear. Does it include amounts distributed to other beneficiaries? Given the new rules are intended to ensure beneficiaries have sufficient information to enforce the terms of the trust deed, it is presumed the answer is yes.

Before making basic trust information or trust information available to beneficiaries, the trustees are best to consider numerous factors, including:

- The personal or commercial confidentiality of the information
- The age and circumstances of the beneficiary
- The practicality of giving the information, and
- The effect of providing the information on the beneficiary and on wider family relationships.

The wording of the New Act may cause uncertainty for trustees as they consider the risk of acting unreasonably and the different nature of family and beneficiary relationships may make it difficult to determine the best course of action.

## THE LEGALITY OF NO-PAY OR LOW-PAY INTERNSHIPS

If your business is looking at offering an internship, there are a number of considerations to follow as these relationships are not defined in New Zealand's Employment Relations Act and can be deemed by the Labour Inspectorate to be a case of free labour or even exploitation.

If, as a graduate, you are looking at taking on an unpaid internship in a business operation, you need to be aware you are not protected by employee rights but will come under the provisions of the Health and Safety At Work Act and the Human Rights Act.

An internship as a period of low-paid or unpaid work experience can be compulsory or optional as part of a study programme, or simply used as a chance to gain relevant skills and experience in a particular field. Internships are also known as a seasonal clerkship, vacation work programme, work placement programme or practicum, and are common among registered charities, non-government or voluntary organisations or in some industries such as arts and media.

For interns to be unpaid they need to be volunteers. If the internship is part of a degree course or contributes to civic engagement or community services without 'wages' payment, then the arrangement most certainly is as a volunteer. This is because the volunteer gets the primary benefit from the internship, not the organisation worked for.



If, as an organisation, you intend to offer unpaid work experience or internships, there is a requirement to:

- Make absolutely clear (specifically in writing) that the position is a volunteer one and that there is no expectation of payment, whether one-off or irregular, or other reward such as free accommodation or meals
- Avoid getting an economic benefit from the work done by the intern (unless you are a registered charity)
- Avoid having the intern do work that is integral to the organisation and that an employee would ordinarily do
- Ensure the internship is primarily about learning new skills and gaining experience
- Limit the duration of work and the hours worked by the intern

If you operate a business outside the above sectors and propose a paid internship, the best practice would be to

offer a fixed term agreement. In this case, all the terms of minimum employment standards apply, including that you will require a genuine reason for internship within the fixed term and the pay must be at least at the level of the minimum wage paid as money.

As part of the paid internship employers and employees may agree that the employer will provide accommodation to an intern and that the cost of that accommodation be deducted from the employee's wages before they are paid. The written agreement should clearly detail the accommodation arrangement and its cost to the employee which must be reasonable. Where there is no specific agreement as to this cost of accommodation, an employer can deduct 15 percent of the employee's wages calculated at the relevant minimum wage for board or 5 percent for lodging – advice provided by the Labour Inspectorate "Fair Workplaces" publication. Board is considered to mean the provision of both accommodation and meals while lodging means the provision of accommodation only.

### THE DEATH OF THE CHEQUE

Some bank customers are being thrust into the modern age of Internet and mobile banking use as ANZ expects to stop using cheques in May this year, Westpac in June and BNZ in July 2021. ASB have yet to announce a date but have confirmed they intend to also stop issuing and accepting cheques.

There is a short window of opportunity for those still using cheques to improve their computer skills or familiarise themselves with alternative methods of payment such as phone banking or personal teller assisted banking (which may come with additional bank fees).

The Government's Digital Inclusion Action Plan 2020-2021 shows that up to 90,000 rural households and businesses (not necessarily in isolated areas) are currently "unable to access broadband at speeds fast enough to effectively work or learn from home". The Rural Broadband Initiative is targeting the majority of these internet-deprived entities to receive "improved broadband" by the end of 2023. However, there are expected to still be around 6,000 properties which will not have decent Internet access once the Initiative is finished.

### CAN NEW ZEALAND EMPLOYERS FORCE EMPLOYEES TO BE VACCINATED?

The aviation industry worldwide is pinning its hopes on a vaccine against COVID 19 to kickstart international operations. Qantas boss Alan Joyce recently suggested all passengers wanting to fly internationally with the carrier will have to prove they have been vaccinated and mandatory vaccinations will be included in Qantas' terms and conditions for passage. However, it prompts the question as to how the company will handle the situation for its employees as mandating immunisations against COVID for staff will be a far trickier issue.

Hamish Kynaston, a partner at law firm Buddle Findlay, believes an employer, particularly those in certain sectors like aged care, might contend that if you are going to work with the vulnerable you will need to be vaccinated. However, while there is potential justification regarding

coming into contact with international travellers, it is certainly not as crystal clear as looking after a vulnerable patient, so the employer would need to argue why a vaccination is necessary rather than the use of personal protection equipment, proving that a vaccination is therefore a reasonable health and safety measure.

An employee would have the right to decline vaccination and the employer in that instance might be able to dismiss the employee after consultation, considering redeployment or other management options.

In terms of how an employer might implement mandatory vaccinations, Kynaston believes it could be rolled out as a policy with clear reasons behind the need for employee vaccinations with an opportunity for staff to provide feedback on that policy. It is likely over the next 12 months, businesses in many sectors will be forced to make vaccination policy decisions which could then be tested in court.

### HE WAKA EKE NOA

He Waka Eke Noa (We Are All In This Together) is a collaboration between 11 primary sector organisations – including DairyNZ, Beef+LambNZ, and Federated Farmers - and the Government to build a framework to reduce agricultural methane and nitrous oxide emissions

The Government and the primary sectors have committed to working towards all farmers and growers being required:

- to include the mitigation of greenhouse gas emissions and adaptation to climate change in their farm business and environment plans by 2025
- calculate their greenhouse gas emissions sources and sinks and being incentivised to take action on climate change through the development of an appropriate pricing mechanism for emissions by 2025.

Key milestones in the joint action plan are:

- 25% of NZ farms by 31 December 2021 – required to hold a documented annual total of on-farm greenhouse gas emissions calculated by methods and definitions accepted by He Waka Eke Noa
- All farms in New Zealand by 31 December 2022 – the person responsible for farm management to hold a documented annual total of on-farm greenhouse gas emissions by methods and definitions accepted by He Waka Eke Noa
- A pilot scheme for a farm level accounting and reporting system to be completed by 1 January 2024 across a range of farm types
- Accounting and reporting of 2024 agricultural greenhouse gas emissions at farm level to be in use by all farms by 1 January 2025
- All farms to have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2025.

The milestones in He Waka Eke Noa are now legislated in the Climate Change Response (Emissions Trading Reform) Amendment Bill.



This week God was spotted  
in New Zealand. When asked,  
“What are you doing in  
Aotearoa God?” he answered,  
“Working from home Bro.”

