



OCTOBER 2020

SNIPPETS

PROPOSED ACC AMENDMENTS TO KEEP EMPLOYERS IN THE LOOP

A Member's Bill has been introduced which, if passed, will require the Accident Compensation Corporation to inform the relevant employer of a decision made relating to aggravation or re-injury of a work-related injury and provide them with the right to apply for a review. These changes are recognition that such decisions, made outside the determinations of the original cover, may affect an employer's claim history and Experience Rating and yet there is currently no obligation by ACC to advise the employer or to include the employer in any review of such a decision.

COMPANIES OFFICE FEES AND LEVIES ARE CHANGING

The Insolvency Practitioners Regulation Act 2019 established a regulatory regime for insolvency practitioners working in New Zealand. The implementation of this regime means the Registrar of Companies has significant new responsibilities including setting up and running the online register of insolvency practitioners and the monitoring of the regulatory system.

As it is viewed that all companies will benefit from the introduction of the regime, whether as creditors or when they require insolvency services themselves, the costs are to be met by all registered companies paying a small levy to support this system.

From 1 September the levy will be \$1.00 plus GST per company, per year, payable at the time the company files its annual return and also alongside fees for the registration of a new company.

The Government recently announced ACC levy rates will remain at the current level for the next two years in order to provide certainty for businesses and other levy payers in the wake of COVID. The ACC Minister also stated that the invoices normally sent in early July would be delayed until October and other invoices issued this year would be on hold for three months.

FBT ON VEHICLE DURING LOCKDOWNS

You wouldn't be blamed for assuming Fringe Benefit Tax (FBT) would not apply to motor vehicles during Level 4 and possibly Level 3 lockdown periods. Other than essential workers, most employees were either working from home or simply unable to work at all and therefore most vehicles under FBT were 'parked-up'.

However, a fundamental premise of how FBT applies to vehicles is that it is focused on 'availability' rather than actual use. As such, Inland Revenue has confirmed that if an employee had the right to use a motor vehicle for private purposes, then this will attract a FBT liability as normal – regardless of whether the employee actually used the vehicle. With the benefit of hindsight, employers who took the pro-active step of engaging with their employees to agree on restrictions regarding the use of company vehicles would have reduced their FBT cost. Understandably, FBT was not at the forefront of businesses minds during the initial New Zealand wide lockdown at level 4 but mutually agreed restrictions on lockdown usage could be something to think about now.



IRD PAYMENTS AT WESTPAC

From 1 October IRD payments made at Westpac branches or at a Smart ATM need to have a barcode to ensure the payment goes to the correct entity. Barcodes are usually printed on Inland Revenue returns, statements or letters. Alternatively, barcodes can be generated from the IRD website – these can be printed or shown on a mobile device. Do not resize these barcodes as it impacts on Westpac's ability to scan the barcode.

Contents	
Proposed ACC Amendments To Keep Employers In The Loop	1
Companies Office Fees And Levies Are Changing	1
FBT On Vehicles During Lockdowns	1
IRD Payments At Westpac	1
What Is Revenue?	2
Additional Required Statements For New Tenancy Agreements	2
Employee Or Contractor: It Pays To Get It Right From The Start	2
Cancelled Plans & Future Liabilities	3
Poverty Bay A&P Show 16 & 17 th October 20 Pet Competition	3
Ain't That The Truth!	4

WHAT IS REVENUE?

"Revenue means the total amount of money a business has earned from its normal business activities before expenses are deducted" (Work & Income, July 2020)



This core definition has been applied by thousands of businesses who applied for the Government's wage subsidy scheme implemented due to the COVID 19 pandemic lockdowns. Whether a 30 per cent or more reduction in revenue for the original wage subsidy or a 40 per cent or more reduction for the subsidy extension, quantifying the reduction in 'revenue' was a key hurdle to ascertain eligibility.

With the potential for wage subsidy claimants to be audited, documenting the basis for the application and how the eligibility criteria has been met is critical. In some cases, confirming eligibility was relatively straightforward. Retail stores, restaurants, cafes and bars that had to shut their doors overnight were able to demonstrate a clear drop in 'revenue'.

However, for other industries it was not as straightforward. In some cases, the time at which an invoice is issued for GST purposes is different to the point in time at which income is recognised for tax and/accounting purposes. Take as an example the construction industry where jobs are invoiced based on specific milestones. If invoices were raised during a lockdown for work completed prior to the lockdown, then measuring the change in revenue based on 'invoicing' would not provide a fair reflection of the effect of COVID 19 at that point in time.

It goes both ways – if a professional services firm was able to keep working during the lockdown but stopped issuing invoices for a particular period. The firm's invoicing in that period would not provide an accurate reflection of the change in 'revenue'.

Unfortunately the 'Work & Income' definition also refers to "money". Was this intended to have the same meaning as 'income' or was it intended to imply a cashflow test?

The different ways the revenue test is able to be interpreted, and without knowing what the audit process will comprise gives rise to uncertainty. A suggestion is to ensure that the method used to calculate revenue reduction is logical within the context of a particular business. If a standard measure such as sales booked in the period does not align with what has occurred in

practice, consideration should be given as to whether that is the most accurate method.

Consideration should also be given to sensor checking eligibility using different approaches to ensure the outcome feels right. For example, a service-oriented business could look at hours worked by the team and cross check that against movement in WIP and sales.

If multiple measures have been used, and each supports the reduction in 'revenue' required to receive the wage subsidy, then this suggests a reasonable approach has been taken.

ADDITIONAL REQUIRED STATEMENTS FOR NEW TENANCY AGREEMENTS

From 1 December this year, irrespective of whether the residential rental property meets the required Healthy Homes Standards, landlords must include a separately signed healthy homes compliance statement in new or renewed tenancy agreements. The statement is not required for fixed term tenancy agreements where the term of the tenancy ends before the relevant healthy homes compliance date – full compliance is required by private landlords from 1 July 2021. Landlords have needed to provide an insulation statement in all new tenancy agreements for some four years and as this new compliance statement includes insulation details, it is not necessary to provide that document as well.

The Compliance Statement is not a simple checklist – the 13 page template requires landlords to provide comprehensive details of the rental property's current level of compliance relevant to five Healthy Homes minimum standards:

- Heating - calculation of the heating capacity of qualifying heaters in the rental's main living room is required using the online heating assessment tool.
- Insulation – ceiling, wall and underfloor R-values are required on this statement.
- Ventilation – habitable spaces must have openable windows and doors at ratios of at least 5% of the floor area of each room. In addition, each room with an indoor cooktop, bath or shower must have an extractor fan vented to the outside and in working order.
- Moisture ingress and drainage – the property must have gutters and downpipes efficiently draining, storm, surface and ground water.
- Draught stopping – open fireplaces must be blocked off and unreasonable gaps and holes which allow noticeable draughts must be repaired.

There are some exemptions to compliance with all or parts of the standards – these exemptions, in some cases, are for 12 months only.

EMPLOYEE OR CONTRACTOR?

IT PAYS TO GET IT RIGHT FROM THE START

Employers thinking of taking on more staff over the spring/summer, and trying to decide whether they need an employee or contractor? Take care. The initial appeal of a contractor may not be right in the eyes of the law and getting this wrong can be costly to the employer and their business.

Most employment laws don't cover contractors in the same way as employees. Unlike employees, contractors don't get minimum employment rights like annual holidays, sick leave and the minimum wage and much more, plus they can't bring personal grievances.

Employee vs Contractor - The Differences

Hiring workers as either employees or contractors can be lawful providing that the correct type of working arrangement is used in each situation. Employees work for you, while contractors work for themselves.

How to Decide – The Legal Tests

You need to know whether your worker is an employee or a contractor because employer's responsibilities as a business will be very different. To make the correct decision, focus on the real nature of the working relationship, not what you want to call them. The courts have developed some legal tests to help employers tell the difference - they are:

- Intention Test (What the parties intended the relationship to be).
- Control vs Independence Test (the greater the control exercised over the worker the more likely they are an employee).
- Integration Test (if the work performed by the worker is fundamental to the organisation they are more likely to be an employee).
- Fundamental/Economic Reality Test (looking at the full circumstances of the work relationship to determine its economic reality).

Consequences of getting it wrong

If a contractor is hired when they are actually an employee, the employer may be liable for many additional costs. These potentially include unpaid PAYE, minimum wages, holiday and leave entitlements, penalties from Inland Revenue and/or penalties from the Employment Relations Authority and could even involve being banned from bringing in workers from overseas. The negative publicity could harm the business, affecting customer goodwill, the Employer's reputation and potentially the value of the business.

CANCELLED PLANS AND FUTURE LIABILITIES: ANNUAL HOLIDAYS



COVID-19 has not only hit many employers hard in terms of economic impact. It has also confronted employers with many employment challenges that require urgent attention, one being staff annual leave entitlements.

In this regard, employers have been dealing with employees' cancelled holidays, adjusted holidays and annual holiday liabilities.

The Holidays Act 2003 (HA03) provides that an employee is entitled to a minimum of four weeks' paid annual leave after each completed 12 months of continuous employment.

Under the HA03, annual holidays do not 'accrue' during employment despite what the payroll system might say. Holiday pay accrues at the rate of 8% of gross earnings and this is converted to annual leave each year on the commencement anniversary of the employee. So if an employee wants to take holidays when the employee does not have an annual leave entitlement, the employee will need to put a request to the employer to take an agreed portion of the upcoming entitlement in advance.

Nothing in the HA03 prevents an employer from providing an employee with enhanced or additional entitlements. If the employer wants his employees to uptake holidays against an annual leave entitlement from the start of employment or give employees more than four weeks' paid annual holidays, the business is lawfully able to do so. However, these holidays in advance may need to be calculated at an average daily rate and not at the rate 'earned' over twelve months which equates to 8% of annual gross earnings.

However, apart from the situation where a business closes, with notice, over a period such as Christmas/New Year, an employer cannot direct or require an employee to take annual leave in advance.

An employee, having worked 12 months, can cash up one week's annual leave within the following and subsequent 12 months. However, an employee cannot request to have their salary topped up with holiday pay or expect to be paid holiday pay for a portion of their remuneration. Further, an employee must be on annual holidays to receive annual leave payments, as an employee cannot work and be paid for annual holidays at the same time.

POVERTY BAY A&P SHOW 16 & 17 OCTOBER 2020 PET COMPETITION

The Poverty Bay A&P show will again be packed with all the attractions and entertainment for which it is renowned – it being the first show of the summer circuit. Graham & Dobson, a Diamond sponsor of this annual Spring event, which this year is celebrating its 140th anniversary, continues our support with sponsorship of the Show's Pet Competition with prize money, goodie bags and ribbons for three classes of pet participants (and their owners!).

- Best dressed pet lamb or goat
- Best undressed lamb or goat
- The most entries from one school

There is no cost to enter. Further information can be obtained from info@gisborneshow.co.nz



Ain't that the Truth!

Money isn't everything...
But it sure keeps the kids in touch.

