



Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
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The Employment Standards Legislation Bill

The recent introduction of the Employment Standards Legislation Bill introduces the potential for significant changes to employment related legislation, including the Employment Relations Act, the Holidays Act, the Minimum Wage Act, the Wages Protection Act and the Parental Leave & Employment Protection Act. The Bill will be subject to a Select Committee process and consequently there will likely be changes made before the legislation is finalised.

The explanatory note provides that the Bill “promotes fairer and more productive workplaces by providing enhanced protections and benefits for both employers and employees through a number of improvements to the employment relations - employment standards legislative framework.”

The Bill provides that the amendments to the various pieces of legislation would come into effect on 1 April 2016, however of course given the Select Committee process and likely debate on the substance of the changes, there is no guarantee the legislation will be in place within the proposed timeframe.

1. Changes to the Employment Relations Act

The explanatory note to the Bill highlights the proposed changes in relation to “zero hours” contracts which have been the subject to much media attention of late. The explanatory note defines “zero hours” as contracts “in which employees are required to be available for work, but the employer is not required to offer guaranteed hours”.

The Bill provides that “availability provisions” are unenforceable unless an agreed sum of compensation is payable. The Bill defines an availability provision as a provision in which:

- “(a) the employee’s performance of work is conditional on the employer making work available to the employee; and
 - (b) There is no obligation on the employer to make work available to the employee; but
 - (c) The employee is required to be available to accept any work that the employer makes available.
- (2) To avoid doubt, an availability provision may relate to—
- (a) All work performed under the employment agreement; or
 - (b) To work performed during hours of work that are additional to any agreed hours of work.”

While availability provisions may impact upon the requirement to work overtime (i.e. to work performed during hours of work that are additional to ordinary hours of work), they are not intended to be applicable to employees who are engaged on a salaried basis.

The changes proposed to the Employment Relations Act to deal with the current use of zero hours contracts are as follows:

- 1.1 To include the contracted hours of work in an employment agreement, where the parties have agreed to this.
- 1.2 A prohibition on employers requiring employees to be available to work over the agreed contracted hours unless:
 - the employees are able to refuse any such work (without being treated adversely); **or**
 - the employment agreement provides for the employee to be compensated (the amount of which is unspecified) for their availability.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Neil McPhail**, **Raewyn Gibson**, or **Peter Zwart**.

Contact Details:

McPhail Gibson & Zwart

Ground Floor

71 Cambridge Terrace

PO Box 892, Christchurch

Tel (03) 365 2345

Fax (03) 365 2347

www.mgz.co.nz

Neil McPhail

Email neil@mgz.co.nz

Mobile 0274 387 803

Raewyn Gibson

Email raewyn@mgz.co.nz

Mobile 0274 387 802

Peter Zwart

Email peter@mgz.co.nz

Mobile 0274 367 757

The Bill also provides for prohibition on the following:

- (a) Cancelling a shift without reasonable notice or compensation. The Bill requires that the employment agreement must specify the period of notice (which must be reasonable) required for cancellation of the employee's shift and the compensation payable to the employee if shift work is cancelled without giving the requisite notice. In the event:
 - the employment agreement does not comply with these requirements; **or**
 - the shift is cancelled on the day of the shift; **or**
 - the remainder of the shift is cancelled after it has begun, the employee is entitled to "what he or she would have earned for a shift" had they worked for the entire shift.
- (b) Placing unreasonable restrictions on secondary employment by prohibiting an employee from performing work for another employer or performing work for another person without the employer's consent **unless** there is a genuine reason based on reasonable grounds and this is specified in the individual employment agreement.

The reasonable grounds may relate to:

- "(a) protecting an employer's commercially sensitive information; or
- (b) Protecting an employer's intellectual property rights; or
- (c) Protecting an employer's commercial reputation; or
- (d) Preventing a real conflict of interest."

2. Changes to Wages Protection Act

The Bill provides that an employer is not able to make "unreasonable deductions from an employee's remuneration". The MBIE website provides that an example of an unreasonable deduction would be "to cover losses caused by a third party through breakage or theft may be unreasonable, particularly if the employee had no control over the third party conduct."

3. Changes to the Enforcement and Penalty Powers of the Employment Relations Act, Minimum Wage Act, Holidays Act and the Wages Protection Act

The Bill provides for:

- Significantly higher penalties (\$50,000.00 for individuals and the greater of \$100,000.00 or the three times the financial gain for a company) for serious breaches which may only be heard in the Employment Court.

- Extending accountability to persons other than the employer (for example Directors, Senior Managers), who are knowingly and intentionally involved in breaches of employment standards.
- Enhancing the powers of Labour Inspectors to request information from employers and share information with other regulatory agencies.
- The introduction of a "banning order" which would have the effect of prohibiting an employer from entering into an employment agreement, or from being an officer of an employer or being involved in hiring an employee.
- A requirement for clear record keeping for time and wages, holidays and leave.
- The introduction of an infringement notice regime for breaches of an employer's obligations in respect to record keeping and individual employment agreements.

4. Changes to the Parental Leave Legislation

The explanatory note to the Bill provides that the changes outlined in the Bill "broadens the eligibility of the parental leave scheme to better reflect current work and family arrangements, and provides more flexibility to increase choice for both employers and employees and support labour market attachment. Key measures in the Bill include—

- extending parental leave payments to non-standard workers (such as casual, seasonal, and employees with more than one employer) and those who have recently changed jobs;
- extending parental leave entitlements to a wider range of primary carers than biological or formal adoptive parents
- extending unpaid leave to workers who have been with their employer for more than 6 months (but less than 12) as a standard 6 month leave period (inclusive of the 18 weeks' paid leave period);
- providing for greater flexibility in how that unpaid leave is taken;
- enabling keeping-in-touch days so employees can work limited hours during their paid leave period if they choose."

Given the potential for the legislation to impact upon your workplace you may wish to voice your views on the practical impact of the proposed changes via the Select Committee process.

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