

# Employer's Newsflash

In November 2010 Parliament passed extremely important changes to the Employment Relations Act 2000 and the Holidays Act 2003. As an employer you need to be aware of the changes and the affects of them for you and your staff.

Most changes for both Acts will come into effect on **1 April 2011** and include the following:

## Changes to the Employment Relations Act 2000

- Union access to workplaces
- Communications during bargaining
- Requirement to retain and provide a copy of the terms and conditions of employment
- Extending the trial employment period
- Changes affecting cases investigated by the Authority
- Early problem resolution without representation
- Promoting mediation
- Recommendations by a mediator or Authority member
- Reinforcing minimum employment entitlements in problem resolution
- Minors
- Other changes to that apply to the Employment Relations Authority
- Defining the functions of Labour Inspectors
- Enforceable undertakings
- Improvement notices
- Extending and increasing penalties

## Changes to the Holidays Act 2003

- Payment for leave
- Changes for calculation of payment for working on a public holiday
- Cashing up a maximum of a week of annual holidays
- Transferring public holidays
- Taking alternative holidays
- Asking for proof of sickness or injury
- Clarification of entitlements during a closedown period

Rather than go through every change we have concentrated on the most important and those that you will be facing on a regular basis. If you fail to comply with the law you will face serious consequences and penalties.

## **Cashing up annual holidays**

From 1 April 2011, employees can ask their employer to pay out in cash up to one week of their minimum entitlement to annual holidays a year. This will leave them with only three weeks annual holidays.

The request to cash in holidays can only be made by the employee and must be made in writing. When the request is made an employee can request less than a week at a time. However the total requests in each entitlement year can be no more than one weeks holiday.

Employers must consider any request within a reasonable time and can decline the request. However if the employer has a policy that does not allow cashing up then no requests can be made. Once a decision is made the employee must be advised of the decision in writing but the employer is not required to provide a reason for their decision.

If an employer agrees to pay out a portion of the employee's annual holidays, the payment should be made as soon as practicable, which will usually be the next pay day. The value of the payment must be at least the same as if the employee had taken the holidays.

As an employer you cannot put pressure on an employee to cash up holidays. Cashing up cannot be a condition of employment and furthermore requests to cash up cannot be included in an employment agreement. But, an employment agreement may outline the process for making such a request.

Employees cannot cash up annual holiday entitlements that arose before 1 April 2011. For example, an employee who becomes entitled to annual holidays in March 2011 could not make a request to cash up until they next become entitled to annual holidays in March 2012.

### **Trial Periods**

From 1 April 2011 trial period provisions apply to all employers, regardless of the number of employees in the business. Employers are able to employ new employees on a trial period of up to 90 calendar days.

Any employer can provide any potential employee with an offer of employment that includes a trial period. A trial period is voluntary, and must be agreed to in writing and negotiated in good faith as part of the employment agreement. The written employment agreement should be signed by both the employee and employer at the beginning of the employment relationship.

An employee who is given notice of dismissal before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. He or she may, however, raise a personal grievance on other grounds, such as discrimination or harassment or an unjustified action by the employer that disadvantaged the employee.

If an employee agrees to a trial period, this does not affect his or her entitlements to holidays and leave.

An employer and employee may agree to a trial period only once. If an employee has previously been employed by the employer, they may not agree to a trial period. For example, if an employee was employed for six months in 2009 and then applies for a position with that same employer in 2011 they cannot agree to a trial period.

### **Canterbury Earthquake Memorial Day**

The Government has announced that Friday 18<sup>th</sup> March will be a provincial holiday to remember those lost as a result of the earthquake on 22<sup>nd</sup> February. The Government intends to pass legislation to make this a public holiday for the Canterbury province. As a result all employees will be entitled to a day off if it is a normal working day for them.

If an employee works on this public holiday, they should be paid at least time and a half for the time they actually work on a public holiday.

If an employee works on this public holiday that is otherwise a working day then he or she must be given an alternative holiday in the future, referred to as a day in lieu. An employee who works on this public holiday that is not otherwise a working day must be paid the extra public holiday payment for the time worked, but does not get an alternative holiday.

### **Transferring public holidays**

From 1 April 2011, employers and employees will be able to agree to transfer the observance of public holidays to another working day in order to meet the needs of the business or the individual needs of the employee. Such an agreement cannot reduce the number of public holidays to which the employee is entitled.

An employer and employee may agree in writing that an entire public holiday is to be observed by the employee on another calendar day or 24-hour period which would otherwise be a working day.

Once an employer and employee have agreed that a public holiday will be transferred to another day, the day the public holiday is transferred to is treated as if it were a public holiday for the purposes of the Holidays Act. The employee is entitled to a paid day off on that day and the following applies:

Employers may have a workplace policy that they will not transfer public holidays. This can relate to the whole of a business or some parts of the business. As part of their good faith obligations an employer should consult with their employees on the development of a policy. If employees agree, this policy could be included in an employment agreement. An employer should tell any potential new employee about the policy when they make the offer of employment.

The first public holiday to which the new law may apply is Good Friday, 22 April 2011.

### **Anzac Day**

Anzac Day (25 April) this year falls on Easter Monday. Anzac Day will be recognised on the Monday and will not be transferred to any other day. This also means all shops must close their doors until 1.00pm on 25 April, unless they meet certain exemptions.

### **Minimum wage**

From 1 April 2011 the adult minimum wage will increase to \$13.00 an hour, and the new entrants' minimum wage and the training minimum wage will increase to \$10.40 an hour.