

Changes To Laws On Employment Relations And Holidays

Chance To Review Agreements 1 April 2011

There are a number of significant employment law changes that will take effect from April 1, many of which are said to give an advantage to employers. If you want to obtain the full benefit of those changes, you will need to review, and more than likely amend, your employment agreement.

1. From April 1 you can employ new employees under a 90-day trial period regardless of the number of employees you have. Under the current law, this right is available only for businesses employing fewer than 20 people. These new provisions will help with performance-related dismissal procedures within that 90-day period. However, there are strict requirements around these “grievance-free” dismissal provisional, including making sure your new employee signs a written employment agreement with a “compliant” 90-day trial period before they start work.

2. The Employment Relations Act has always required employees to be provided with a written employment agreement. From June 1, however, a greater onus will be placed on you to ensure there is a written employment agreement in place and that you retain either a copy of a signed agreement or, if unsigned, the intended agreement, for the duration of your employee’s employment. You can face significant penalties if you don’t do this.

3. The Employment Relations Amendments Act 2010 now prescribes the factors the Employment Relations Authority must consider when deciding whether a dismissal was justified. You should review any disciplinary procedures and/ or policies you have to ensure they will comply with the new law.

4. Up to March 31, 2011, you can ask for proof of sickness or injury only if an employee has been sick for three consecutive days or if you have reasonable grounds to suspect they’re taking a sickie. From April 1, you can (at your cost) require an employee to provide proof that they are genuinely taking sick leave, without waiting the three consecutive days. If you want to be able to do this you will need to review your employment agreements.

5. From April 1, your employees can ask you to pay out up to one week of their annual leave entitlement. More than one request may be made until a maximum of one week of the employees annual holidays is paid out in each entitlement year. Employees cannot cash up annual holiday entitlements that arose before 1 April 2011. An employee who becomes entitled to annual holidays in March 2011 cannot make a request to cash up until March 2012. You should consider either recording the necessary procedure for making such a request in their employment agreements, or introduce a policy disallowing this.

6. Payment for leave for public holidays, alternative holidays, sick leave and bereavement leave there is a chance for calculating payments. Previously the calculation was the employee’s relevant daily pay, this caused issues of the employee’s relevant pay was unclear, e.g. if the employee’s daily pay varied. In a situation such as this, the Act now allows a calculation of Average Daily Pay of gross earnings over the past 52 weeks.

7. Transferring Public Holidays - 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, but gives more flexibility.

8. Up until March 31, 2011, your employees have the final say as to when they can take an alternative holiday (day in lieu) if neither of you can agree on a date. From April 1 this position will reverse so employers have the final say as long as the employee gives at least 14 days notice of the requirement to take the alternative holiday.

