Employer Update

December 2014

Employee Documentation

The complexity surrounding Employment Law may have you wondering if your systems relating to employment matters are compliant.

Some essential documentation is required to help businesses maintain sound record-keeping systems before, during and after an employee's period of employment. Attached is a complimentary checklist that you may wish to use to review your current systems.

All employee records need to be retained for six years and we recommend you also keep a "soft" copy of essential documentation as a backup.

What you shouldn't keep

Unless you have their permission, CV's and application forms of unsuccessful candidates should not be kept on file. This will ensure that your organisation complies with the Privacy Act 1993 and the Human Rights Act 1993.

Employment agreements

Under the Employment Relations Act (ERA) you must supply a written agreement to your new employee and they must sign it to indicate acceptance of your terms and conditions of employment.

In general terms agreements should contain full details of all the matters discussed with the employee and should cover any potentially contentious issues. There are number of mandatory clauses and some that are highly recommended.

Retention of individual agreements:

Employers must retain a copy of every individual employment agreement, even where the employee has not signed the agreement.

Labour inspectors are charged with enforcing these new requirements. They must give employers seven working days to remedy any breach, failing which, the employer is liable for a penalty.

Employers need to check their employment agreements and ensure that they include compulsory information. Those who provide a defective employment agreement will be liable for a penalty.

90 day trial period

All employers are now able to use trial periods of up to 90 days for new employees. An employee whose employment agreement is terminated in accordance with a valid trial provision within the first 90 days of employment cannot bring a personal grievance or legal proceedings in respect of the dismissal.

Key points to note:

The 90 day trial clause with appropriate wording must be in the employment agreement. The agreement with the relevant clause should be provided to the employee at the time employment is offered.

If employee is not given opportunity to get legal advice on the employment agreement containing the relevant clause, then the clause is likely to be unenforceable.

The employee must sign the agreement before he/she starts work.

We're here to support you

If you need any assistance with any HR matters from recruitment, employment agreements, performance appraisals, record keeping, wages queries or even payroll preparation, remember that we are experienced in this area. Call us or send us an email and we'll certainly help where required.

Encouraging employers to employ youth

The government has introduced a new initiative aimed at encouraging employers to recruit young New Zealanders, especially those who have been on a benefit. It allows the lower minimum wage rate - 80% of the adult minimum - to apply to a wider range of people. The new scheme came into effect on 1 May 2013.

The 'starting-out' minimum wage can be paid to certain categories of youth aged 16-19 years. Currently, the categories are:

- ✓ 16 and 17 year olds in their first 6 months of paid employment with their current employer
- ✓ 18 and 19 year olds who have received a benefit for 6 months or more and have not completed 6 months' work with any employer since starting on that benefit
- ✓ 16 - 19 year olds involved in a recognised industry training course of at least 40 credits per year

The starting-out wage replaces the new entrant minimum wage and the trainee minimum wage for under 20s. (There is still a trainee rate for those who are 20 years or older.)

'Wise are those who learn that the bottom line doesn't always have to be their top priority.' - William Arthur

'Mondayisation' ahead

As from 1 January 2014, when New Zealand celebrates Waitangi Day or ANZAC Day, and it falls on a Saturday or Sunday, it will be treated as falling on the following Monday for those staff who do not normally work on the day upon which it actually falls. (Of course, the employee will only be paid for that Monday if it would otherwise be a working day.) And the public holiday will continue to be treated as falling on the Saturday or Sunday for those staff who normally work on the day it actually falls.

The changes do not mean that the actual observance of the two holidays will occur at different times.

The cost to businesses following the law change is not enormous since these holidays fall on weekends in only two out of every seven years. Although the relevant amendments come into force on 1 January 2014, the first time one of these holidays falls on a weekend is not until 2015.

Rest and meal breaks

Amendments to the Employment Relations Act 2000 make the rest and meal break rules more flexible. The Bill aims to balance the importance of rest and meal breaks with business continuity needs.

The Bill says employees are entitled to reasonable rest and meal breaks to rest, eat, drink and take care of personal matters. The Bill enables employers and employees to negotiate, in good faith, rest and meal breaks that meet legal requirements and allow the business to work.

The Bill:

- ✓ Allows reasonable limits to be agreed or imposed as to when rest breaks and meal breaks can be taken.
- ✓ Gives employers the ability to say when breaks will be taken, if they cannot agree with employees
- ✓ Gives employees the right to be reasonably compensated where the employer cannot reasonably give the employee rest and meal breaks
- ✓ Requires employers to pay employees for rest breaks
- ✓ Stops people contracting out of legal rest and meal breaks or the requirement to give compensation instead of breaks
- ✓ Does not overrule any other law that makes an employee take rest and meal breaks in a certain way.

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