

NEWSLETTER - JANUARY 2009

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NEW GOVERNMENT MAKES PROMISED CHANGES TO KIWISAVER

In December 2008, Parliament enacted under urgency several changes to the KiwiSaver scheme. Many of these changes were signaled by the National Party during the election campaign and are intended to ensure that KiwiSaver can endure in the long term.

The key changes, which will take effect from 1 April 2009, are:

1. The minimum employee contribution rate is reduced from 4% to 2% of gross salary or wages. The default rate for new members joining after 1 April 2009 will be 2%, but existing members will retain their current contribution rate unless they elect to reduce to the new 2% rate. The effect is that employees will now have a choice of contributing at 2%, 4% or 8% of their gross salary or wages.
2. The compulsory employer contribution is capped at 2% of the employee's gross salary or wages (rather than the previous plan of a maximum of 4% by 2011).
3. The Employer Tax Credit is removed completely.
4. The Employer Superannuation Contribution Tax (**ESCT**) exemption is reduced and capped at 2% of the employee's gross salary or wages.
5. The member fee subsidy of \$40 per year is removed completely. This was not part of National's pre-election plans, but is intended to provide savings which will allow the government to retain the Member Tax Credit at effectively a dollar for dollar match up to \$1042.86.

The new legislation also allows a return to a "total remuneration" approach to KiwiSaver. While the core legislation still retains the earlier requirement that employer contributions are paid on top of an employee's total gross salary or wages, the latest legislation also allows an employer and employee to disregard this requirement and

agree their own contractual terms. An employee's total remuneration package may therefore be such as to include the KiwiSaver employer contributions.

This total remuneration approach has been made available as of 15 December 2008. However, the default option will remain as under the earlier legislation – i.e. unless an employer and employee have agreed to disregard the requirement, the employer contribution will be paid on top of an employee's gross salary or wages.

Employers may wish to inform employees to seek advice on the relevant changes to KiwiSaver and to amend any information designed for incoming employees. Employers may also wish to assess the compliance costs associated with these changes, particularly the loss of the employer tax credit and the reduction in the ESCT exemption.

PERSONAL GRIEVANCE PAYOUTS VARY ACCORDING TO LOCATION

An analysis of personal grievance awards by the Employment and Manufacturers Association (Northern) has revealed that the amount of compensation awarded by the Employment Relations Authority (**ERA**) in personal grievance claims varies according to where the

employee lives. The analysis is based on figures covering the last few years, the most recent of which are for the calendar year 2007.

According to David Lowe, Employment Services Manager for EMA (Northern), the average award for hurt and humiliation in 2007 was \$8,536.00 in Wellington, \$6,630.00 in Christchurch and \$5,526.00 in Auckland. These figures compare to a national average of \$6,804.00. Overall, the regional variations are similar to those seen in 2006 – Wellington again provided the highest average award at \$7,023.00 with Auckland and Christchurch at \$5,526.00 and \$5,696.00 respectively and a national average of \$6,197.00.

Mr Lowe stated that the basis for the variations was not known as the exact reasons for any amount of compensation awarded to a successful claimant were often not detailed in the ERA's final determination. However, the analysis also indicates that regional variations are just as pronounced – if not more so – in relation to redundancies. In 2007, employees in Wellington were awarded an average of \$14,166.00 while those in Auckland and Christchurch received just \$7,473.00 and \$7,636.00 respectively.

EMPLOYMENT LAW BRIEFS

PERSONAL GRIEVANCE PAYOUTS VARY ACCORDING TO LOCATION (Con't)

Overall, the analysis indicates that the total number of personal grievance claims in 2007 had fallen by 19% compared to figures for 2006. In Christchurch, this reduction was slightly more noticeable, with 26% fewer claims in 2007 compared to the previous year.

Finally, of those claims which were brought in 2007, the success rate for the employee was approximately 60% in all three centres (64% in Christchurch) with a national average of 63%. This success rate is fairly similar to figures for 2006.

IDENTIFYING CAUSES KEY TO PREVENTING WORKPLACE STRESS

The purpose of the Health and Safety in Employment Act 1992 (Act) is that every employer shall take all practicable steps to ensure the safety of employees while at work and protect them from harm. "Harm" is defined in the Act as:

- illness, injury or both; and
- includes physical or mental harm caused by *work related stress*.

The way for employers to meet these requirements under the Act is to identify sources of workplace conflict and then to eliminate, isolate or minimise them.

Workplace Conflict Management – Blaine Donais Model

Blaine Donais, a Canadian employment lawyer, has identified four sources of workplace conflict. Donais is the author of *Workplaces That Work – A Guide to Conflict Management in Union and Non Union Work Environments* (Canada Law Book Company, 2006).

In September 2008, Donais presented two workshops on workplace conflict management in Auckland and Wellington, hosted by LEADR NZ.

The four sources of workplace conflict for Donais are:

- **Interpersonal:** These are the most easily identifiable sources of conflict and range from a clash of personality, stress, office politics, through to ethnic, cultural or gender issues (sometimes leading to harassment and drive for achievement).
- **Organisational:** Organisational conflict stems from a variety of managerial and structural sources including hierarchies, which create power differences and communication blockages, differences in work styles and management styles, competition for resources, distribution of work tasks within roles, risk taking and responsibility and accountability.
- **Trends/Change:** Changes in the workplace can be both internal change, such as restructuring or the addition of new technology or systems, and economic change such as downsizing and creating redundancies.

- **External Factors:** Conflict can also arise due to external influences such as economic pressures, the demands and needs of clients and suppliers, and political pressures.

Donais suggests considering the external factors first and working up to the more specific sources. At each stage the employer gives thought to what pressures may be placed on the workplace. The overall exercise will paint a picture of the stresses and potential risk areas.

Interpersonal relationship issues in the workplace are very common, and when they occur can be very time consuming and destructive. For the employer, where there is often no fault to begin with, if you do not resolve these issues quickly, then blame can quickly shift and become your problem.

EMPLOYEES CAN BE GIVEN FLICK WITHIN 90 DAYS

Under the National led Government, legislation has been passed to enable employers to terminate staff within the first 90 days of their employment. The legislation is directed at businesses with fewer than 20 staff, enabling them to terminate employment without notice within the first 90 days. This can be done without exposure to claims for unjustified dismissal. This does not preclude employees from accessing complaints processes for discrimination, and good faith provisions will still apply.

However, National has made it clear that this will not be a means for employers to escape normal contractual provisions through the sacking and rehiring of staff. Labour Minister Kate Wilkinson said that the aim of the amendment was to encourage employers to give new workers a chance, and until now New Zealand was one of only a few countries who had no such provisions concerning trial periods.

Nevertheless The Labour Party and unions have rallied against the proposal and the fact that it is been put through under 'urgency' in the first 100 days of National's term. They consider any legislation that prohibits remedy for unjustified dismissal requires time for lengthy debate and public input. The Council of Trade Unions said that this had the potential to affect up to 100,000 workers at any one time. The bill was passed on 12 December 2008 and is set to come into effect in March 2009.

EMPLOYMENT RELATIONS TEAM

If you have any queries in respect of the above, or any other employment law issues, please contact a member of Lane Neave's Employment Relations Team: **Glenn Jones, Andrew Shaw, David Caldwell, Amy Shakespeare and Fiona McMillan.**