

## NEWSLETTER - FEBRUARY 2010

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**SMALL INCREASE IN MINIMUM WAGE**

The Government has announced from 1 April 2010 the minimum wage will be increased by 25 cents an hour to \$12.75.

Labour Minister Kate Wilkinson has said that the small increase is in line with the Consumer Price Index, ensuring that workers are not forced out of their jobs and that the increase will not overly discourage businesses to hire new staff.

*"The Government is focused on the need to find a balance between protecting jobs and ensuring a fair wage."*

The training and new entrants' minimum wages will also be increased from \$10.00 to \$10.20.

The decision was made despite an earlier New Zealand Herald survey of 2,300 people which found 61 percent in favour of an increase to \$15.00.

The Employers and Manufacturers' Association (Northern) Chief Executive, Alasdair Thompson, had suggested earlier an increase of between \$0.25 and \$0.50 an hour. However, Unite Union head, Matt McCarten has said suggested an increase of \$0.50 to \$1.00 would be realistic.

The Maori Party, Green Party and Labour all supported an increase to \$15.00 an hour. Labour MP Trevor Mallard said a rise to \$13.75 this year would pave the way for the \$15.00 goal next year however, he was concerned the Government may not increase the wage at all.

**PAYROLL DONATION SCHEME BEGINS**

From 7 January 2010 employees can receive an immediate tax break if they donate money to charities from their income. Employers need to sign up to the scheme for employees to do so.

Payroll giving allows employees to donate money directly from their income to approved charities. They will then get a tax credit directly each pay day, rather than have to collect receipts and submit claims at the end of the tax year.

The immediate tax credits do not apply to one off donations.

World Vision New Zealand Acting Chief Executive Les Stephenson said this meant people making monthly donations of \$40.00 under its Child Sponsorship Scheme would receive tax credits on average of \$13.20 per month.

Employers can sign up to the scheme through the IRD website at [www.ird.govt.nz](http://www.ird.govt.nz).

**90 DAY RULE TESTED**

The Employment Relations Authority has recently released a decision finding that an employer unjustifiably dismissed an employee who was still on a probationary period (not to be mistaken for a trial period): *Schneider v BBX Distribution Pty Limited* (ERA, Christchurch, January 2010).

The employee began her employment 26 March 2009, which was subject to an individual agreement which included a three month probationary period, which if terminated by either one of the parties only required one day notice.

The employee enjoyed her first couple of weeks at work until she received more duties which she had not been trained for. After being put down by seniors of the office place for requesting more training, the employee complained to the Administration Manager. The employee received an apology and was given other work which she believed she was completing without fault.

Just under three months of her employment, the employee filled out a performance review sheet which was then forwarded on to the company's head office. That same day, the employee was later told by the New Zealand Manager on the phone that her employment was terminated without reason. Immediately after the phone call the employee was then handed a dismissal letter which was personally signed by the company's Managing Director, who was in Australia at the time.

The employee brought an action on the basis that she believed she was unjustifiably dismissed as she did not have an opportunity to be heard and also felt she had been disadvantaged due to an unjustifiable action by the employer by not providing her with adequate training.

# EMPLOYMENT LAW BRIEFS

## 90 DAY RULE TESTED (Con't)

Although the employer raised an argument that the employee was dismissed due to the company being wound up, the Authority found that the company's name was only changed thus the representation was deliberately intended to mislead.

The Authority found that the three month trial period did not exempt an employer from the duty of providing an opportunity for an employee to be heard when a dismissal is contemplated.

In this case, the dismissal letter was given to the employee immediately after the phone call, which was the first notice of a possible dismissal. Ultimately, this meant that the employee was dismissed in the course of a performance review without any warning that her position may be at risk. The fact the Managing Director instructed the employee's superior to provide a more negative performance review of the employee; the use of the New Zealand Manger to implement the dismissal and his failure to give a reason for it; and the handling of a pre-prepared letter from the Managing Director to the employee all indicated there was a pre-determination and lack of good faith or fair process.

The employer was held to have unjustifiably dismissed and unjustifiably disadvantaged the employee thus was ordered 13 weeks remuneration under section 123(1)(b) of the Employment Relations Act 2000 and \$9,000 in compensation without deduction under section 123(1)(c)(i) of the Act.

This case highlights to employers that even if an Employment Agreement allows for a probationary period, due process still needs to be followed.

## WHAT IS REASONABLE DAILY TRAVELLING DISTANCE?

The Inland Revenue Department (IRD) has recently released an article on the meaning of "reasonable daily travelling distance", one of the prerequisites relating to work-related relocation in the Income Tax Act 2007.

Work-related relocation requires two things. Firstly, that the relocation means that the employee does not live within a "reasonable daily travel distance" to the workplace. Secondly, the relocation is a result of either taking up new employment with a new employer, taking up new duties at a new location with their existing employer or continuing in their same position at a new location. However, the Act's application has been somewhat difficult as "reasonable daily travelling distance" has not been defined.

IRD guidelines, released this month, base its interpretation on the assumed time it would take the average person to drive to and from work. This therefore assumes that the employee will choose the most efficient route to work. However, factors such as density of traffic may play a role thus a longer distance may be required if it means it is a faster

route. A public transport alternative for instance may mitigate density of travel. Accordingly, all transport options must be considered forming the quickest and feasible course of travel.

There may also be special circumstances that allow an employer or employees to consider a lesser distance or time, for example if the employee had a disability limiting their capability of driving for a long period of time.

Road conditions may also affect the distance of travel, for instance if the roads are winding, straight, uphill or flat.

IRD has noted that many employees are willing to travel for up to an hour each way between work and home however this does not provide us with a precise formula. Some employees for instance may be prepared to travel a greater time or distance one way if the route back is substantially shorter.

Therefore it appears that a general rule of thumb of "whether, taking the two legs in combination, the employee has to on the relevant day, travel more than two hours at the time the employee needs to travel to get from home to work and from work to home" may be applied. Accordingly, if it does take longer than two hours then it can be assumed that this is not within "reasonable daily travelling distance" thus work-related relocation costs must be given.

## 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 and Fiona McMillan.**