



cullings

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cullings is the newsletter of
**Cullen – the Employment
Law Firm**

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New Employment Law Package

The National Government rolled out its new employment law package this week. Several of the changes, due to be implemented next year, will likely have considerable impact on the way employment relationships operate under the current legislation.

The changes are said to intend to lift the performance of the economy and create more jobs. The details of the changes are yet to be announced.

The Government has said the package includes the following initiatives:

90-Day Trial Periods

The voluntary 90-day trial period for new employees will extend to cover all employers, not just those employing fewer than 20 employees.

The policy behind the introduction of 90-day trial periods in 2008 was to give employers more confidence to hire new employees, and to give employees a greater chance of proving themselves in a job.

The Government has said the trial periods have been successful so far. An evaluation conducted by the Department of Labour has found that employers have acted fairly and many have hired and retained employees they would not have hired without the trial period.

Trial periods must be agreed upon by both parties and written into the employment agreement to be enforceable.

Justification for Dismissal

It is proposed in the package that the test of justification for any action by an employer (including dismissal) will be altered. The legislation is to be amended by replacing the word 'would' with the word 'could' in section 103A of the Employment Relations Act. Rather

than looking at what a reasonable employer would have done, the courts will look at what they could have done.

This approach reverts back to early decisions of the courts in dismissal cases. The shift is said to emphasise employers' actions rather than their processes.

Contrarily though, the Act will also be amended to provide the minimum requirements of a fair and reasonable process. While it provides that an employer's processes will not be subject to "pedantic scrutiny" it will impose a legal process that the employer must follow.

Employment Relations Authority

The Employment Relations Authority will have the ability to filter out vexatious or frivolous claims early on. This has been promoted by the Government as a measure to reduce the cost of disputes, improve confidence in the system and help to resolve employment problems faster. Behaviour that delays the Authority will also be penalised to reduce cost and improve efficiency.

In addition, the Authority will move to a more judicial mode of operation, with the parties having the right to cross-examine witnesses and the Authority having the power to remove cases to the Employment Court on its own motion.

Union Access and Communications during Collective Bargaining

Rules on union access to workplaces will change, so that any access will require the consent of the employer. That consent cannot be reasonably withheld.

The Minister of Labour has said this is not intended to prevent union access, rather to ensure that agreement is reached about times

New Employment Law Package ... continued

unions can access workplaces, to ensure that health and safety and workplace operations are not compromised.

In addition the current law will be amended to make it clear that employers can communicate directly with their staff while collective bargaining is underway, including talking to them about settlement terms.

Holidays

Changes to the Holidays Act are:

Cash Trade-In

Employees will be able to trade one of their four weeks of annual leave for cash. The employee will have to request the trade-in. The employer does not have to agree to the request. The employer cannot raise it in salary negotiations.

Employees who trade in their week's leave for cash will receive a week's worth of wages they would not ordinarily get. The employer will bear this cost (effectively paying 53 weeks' wages each year).

Average daily pay

The Government wants to simplify the calculation of pay for leave entitlements. "Average daily pay" will be used to calculate entitlements. The calculation will be based on an employee's average pay over the previous 12 months. The current system uses a mixture of "relevant daily pay" and "ordinary weekly pay" calculations, depending on the entitlement being calculated.

Proof of Sickness within 3 days

Employers will be able to ask employees for proof of sickness or injury within three days of the employee taking sick leave. Employers must cover the employee's costs in doing this if they require it for less than three days.

Penalties

Maximum penalties will double for employers who don't comply. This increases from \$5,000 to \$10,000 for individuals, and \$10,000 to \$20,000 for companies.

How the new employment law initiatives can help employers

Lunchtime Seminar – 25 August 2010

What are the real implications of the proposed new employment law changes for employers? How will the changes benefit employers going forward? Are there potential risks in the changes that employers should be aware of?

Please join us to hear from Charles McGuinness, senior solicitor, and Jenny Jermy, solicitor, with **Cullen – The Employment Law Firm.**

25 August 2010, 12.00 arrival for 12.15 start – 2pm, at NZIM Central, Level 7, Lumley House 3–11 Hunter Street, Wellington.

Free for members, \$20 for non-members, GST Incl.

To register for this seminar visit www.nzimcentral.co.nz