

Employment law becoming simpler, more practical

Phil O'Reilly

For many businesses, planned changes to employment law are likely to be very positive.

Law that is easier to understand and less expensive to comply with, including simpler calculation of holiday pay and more flexibility in managing staff, should be helpful for most businesses.

Later this year the Government intends amending the Employment Relations Act and Holidays Act in line with suggestions from small and large businesses from all over New Zealand.

Businesses have said they want less complexity, less process and more flexibility in the laws around workplaces to help them get more productivity and workplace harmony.

To achieve that, the legislative changes will include:

Trial periods

For the last year, small firms have had the option of taking on new workers on a trial basis for the first 90 days of employment.

That option will soon be available for larger firms also.

In smaller firms trial periods have given employers more confidence to hire and helped more people 'at the margins' into jobs.

Having that option also available for larger firms is sensible.

The change will bring our law into line with other countries. The many developed nations that use trial periods include the UK, USA, and Australia, Canada and European and Scandinavian countries.

Being able to choose to institute trial periods, if desired, gives workplaces more options around staff management.

Holidays

The Holidays Act will be simplified to make compliance easier and to reduce payroll administration costs.

The formula for calculating pay for public holidays and other leave days will be clarified and made less complex.

Employees will also get the option to cash in one week of their annual leave if they want to and if the employer agrees - employers commonly report requests for this.

The option will only be able to be initiated by the employee, not the employer.

Employers and employees will be able to agree to transfer the observance of public holidays to another working day

This ability to choose will help increase flexibility in the workplace and will also better recognise and celebrate the fact that New Zealand workplaces are becoming ever more culturally diverse.

Personal grievances

The laws around personal grievances will be changed to focus more on substance and less on process.

Currently there are loopholes encouraging bogus or trivial personal grievance claims.

Refocusing the law should be a relief for many smaller employers who stand to lose thousands of dollars in legal fees and other costs if they get a minor procedural step wrong in circumstances where dismissal is necessary.

Having to let an employee go because of non-performance is not something an employer looks forward to.

On occasions where it is necessary, the threat of an unjustified dismissal claim based just on a procedural misstep brings a great deal of risk to a small firm.

The new law will maintain fairness to all parties while reducing the current risk for small businesses.

Sick leave

Employers will be able to ask for proof of illness or injury more quickly, after one day's absence.

This will not mean that everyone will have to produce a doctor's certificate for every single day that they take sick leave.

It is intended only as an option for an employer to use in managing a case where a problem pattern of absences has occurred.

The cost of gaining proof of injury or illness – a doctor's certificate or other – will have to be borne by the employer.

This move will be helpful in the workplace, not least for employees who currently have to cover for those who abuse sick leave provisions.

Union access

The law that permits union reps to have access to the workplace is to be changed, so that the agreement of the employer will be required.

The new law will state that the employer's agreement must not be unreasonably withheld.

This will still be a more permissive law than in many other countries.

Requiring the agreement of the employer to union access will be a better demonstration of good faith than the current rules and is really just good manners.

For those industries where union behaviour has been a problem, the requirement to seek the employer's permission will be welcome.

Other changes

Other areas of employment law where changes will occur include a more professional approach to the responsibilities of labour inspectors, a code of ethics for employment advocates and more options around wage bargaining and mediation.

These changes are a practical and 'good practice' approach to employment relations that should help achieve more productive workplaces.

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