

Employment Law

Update - NZPPA



Anmol Shankar

Director, PwC Legal

Phone: +64 27 257 6248

Email: anmol.v.shankar@pwc.com

Agenda

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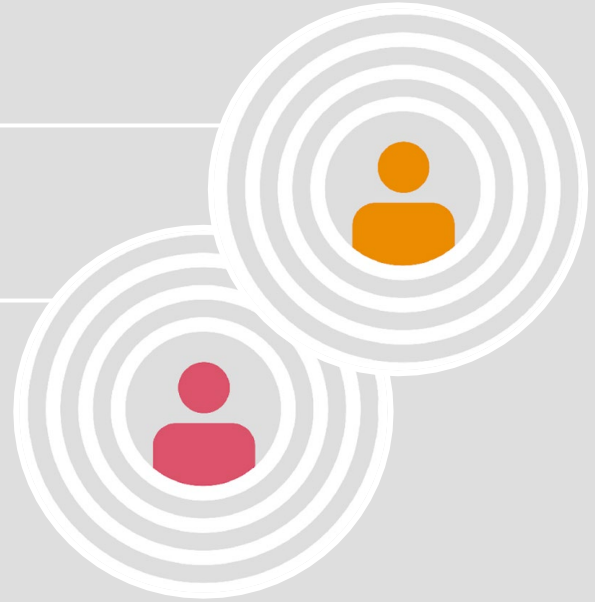
Legislative updates

2

Upcoming changes

3

Trends and issues to watch



1

Legislative
updates



New Legislation



Worker Protection (Migrant and Other Employees) Act 2023



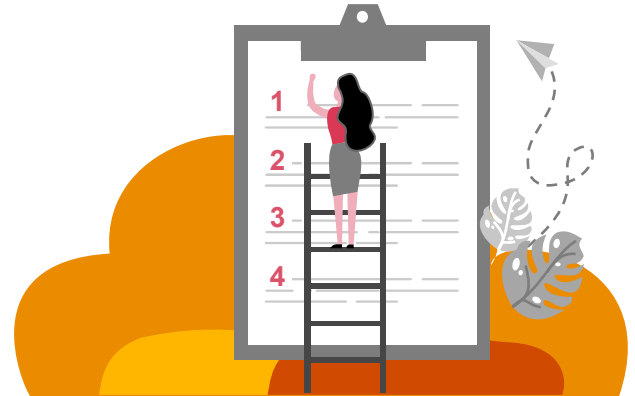
Employment Relations (Trial Periods) Amendment Act 2023



Fair Pay Agreements Repeal Act 2023



Minimum wage increase - from \$22.70 to \$23.15 per hour



2

Upcoming
changes



Upcoming legislative changes

Regulatory Systems (Immigration and Workforce) Amendment Bill

Introduced to Parliament on 23 May 2024, this bill would amend:



The **Employment Relations Act 2000** to require employers to retain a copy of an employment agreement, ensure it is in writing and includes minimum requirements, and create an infringement offence for failure of an employer to ensure a written agreement is in place.



The **Health and Safety at Work Act 2015** to change the definition of a notifiable incident, require reimbursement of costs for enforceable undertakings if requested by the regulator, allow individuals to notify the regulator of their interest in enforcement action, increase funding levy.



The **Parental Leave and Employment Protection Act 1987** to apply eligibility criteria for parental leave payments to employees and self-employed persons, allow preterm baby payments in addition to other leave durations, and provide entitlement to parental leave payment for primary carers who stop working.



Upcoming legislative changes

Holidays Act reform

The Minister for Workplace Relations and Safety has announced that an exposure draft of a Bill that will implement reforms to the Holidays Act will be released for targeted consultation in September this year. Changes proposed in the draft will include:

A proposed approach to pro-rating sick leave so that there is some proportionality to how much an employee works

Moving from a weeks-based entitlement system to a weeks-based accrual system for providing annual leave entitlement

Simpler methodologies for calculating use of leave that do not require pay systems to access data about daily hours of work

Objective criteria for using pay-as-you-go for annual leave and a less burdensome review process

Clarification that only full pay periods need to be included in 13-week reference periods



Other potential areas of reform



**Personal
grievances**



**Independent
contractors**



Immigration



Legislation unlikely to pass into law



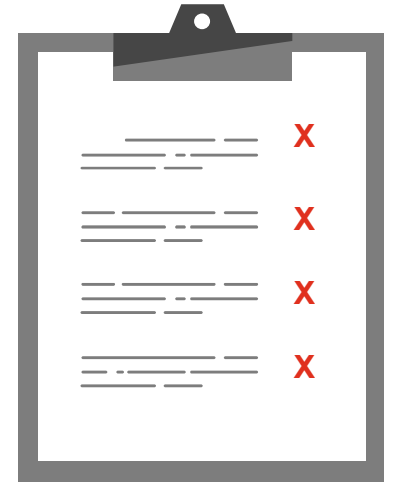
Employment Relations (Employee Remuneration Disclosure) Amendment Bill



Employment Relations (Protection for Kiwisaver Members) Amendment Bill



Crimes (Theft by Employer) Amendment Bill



3

Trends and issues
to watch



Restructuring - Need to consult early



Birthing Centre Limited v Matsas [2024] NZCA 139

Background

- The Birthing Centre Ltd (BCL) looked to transfer services of one of their birthing centres to a DHB.
- The agreement between the BCL and the DHB specified that services would continue from the premises, but staff would not automatically be offered employment.
- BCL did not give staff any information about the transfer of services or the employment consequences before the agreement was signed.
- Staff became aware of the changes to their employment through a public statement.
- Staff only became aware of potential adverse employment consequences through their union.
- BCL further advised there was no redundancy compensation or payment in lieu of notice.

Key Takeaways

- Failure to consult with employees before a transfer was a **breach of good faith** obligations;
- The lack of formal notice of termination or redundancy compensation **violated employee contracts** ; and
- **Confidentiality clauses** within the transfer agreement **did not justify** the lack of consultation with employees.



Restructuring - issues around phasing



New Zealand Steel Ltd v Haddad [2023] NZEmpC 57

Background

- New Zealand Steel (NZ Steel) proposed changes to IT department.
- Two-phase approach used by NZ Steel, with a “target state” identified in stage 1, whilst stage 2 proposed changes to roles and reporting lines.
- Mr Haddad (IT manager) was not consulted during stage 1, and was only presented with a change proposal for stage 2.
- Mr Haddad raised several concerns and resisted redundancy, however the feedback was ignored and change confirmed.
- NZ Steel did not properly consider redeployment.

Key Takeaways

- Employers must reasonably show “**evidence of an open mind**” when consulting employees on a restructure proposal.
- Excluding employees from discussions until late in the process risks **predetermining** an outcome.
- Employers must **consider redeployment** when restructuring, and must **proactively engage** with affected workers.
- Genuine business reason for change must be complemented by **fair process** .



Restructuring - in the media



Television New Zealand Limited v E Tū Incorporated [2024] NZEmpC 93

Background

- TVNZ experienced decline in revenue, decided in November 2023 that cutting jobs was only option.
- Staff not aware of proposal to cut jobs until March 2024.
- TVNZ argued telling staff before Christmas break would have “catastrophic impact on morale”.
- Clause in collective agreement specified employees needed to be involved in workplace change decisions.
- Many TVNZ decision makers attested to being unaware of relevant provision in collective agreement.

Key Takeaways

- Commercial performance and financial viability **does not justify** failure to comply with collective agreements.
- Potential for **personal grievances** to be raised for unjustified dismissal.
- Collective or individual agreements may hold more **onerous obligations** than standard restructuring processes.





Independent Contractors

Update on worker status



The Employment Court has found that four drivers were in an employment relationship while carrying out work for **Uber**, and the Court of Appeal has granted Uber leave to appeal the decision.



Former **Gloriavale** community members have been found to be employees, not volunteers, in two Employment Court decisions.



Reform on protections for independent contractors delayed.

Key Takeaway: Uncertainty continues to surround the distinction between contractor/employee/volunteer and this area remains in the judicial/ legislative spotlight.



Independent contractors

Uber - leave to appeal granted

On 8 June 2023, the Court of Appeal granted Uber leave to appeal the Employment Court decision *E Tū Inc & Anor v Rasier Operations BV & Ors [2022] NZEmpC 192* (which found that four drivers were in an employment relationship while carrying out work for Uber) on the following points of law:

Did the Employment Court err by misdirecting itself on the application of section 6 (the meaning of “employee”) of the Act?

Did the Employment Court err by misapplying the test in section 6 of the Act or, alternatively, was the Court’s conclusion so insupportable that it amounts to an error of law?

Did the Employment Court err in finding that joint employment may arise in New Zealand simply because of a number of entities being sufficiently connected and exercising common control over an employee?

Key Takeaway: The **Uber** hearing was held on 19 March. When released, the Court of Appeal’s judgment will provide important guidance as to the employee/contractor distinction in the shifting labour market. Given the Act party’s intent to reform the law related to independent contractors ability to challenge their employment status, the employee/contractor distinction is an important area to continue to watch.



Thank you / Ngā mihi

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