

Important employment law changes

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LEGAL MATTERS

Several changes to employment laws came into force this month. They include restrictions on deductions from wages, recording of hours worked and payments made, recording of agreed hours of work, restrictions on zero hours contracts, payment for cancelled shifts, restrictions on prevention of secondary employment and penalties up to \$200,000 and/or 3 years' imprisonment and/or 10-year bans from being an employer.

In this article I will deal with record-keeping and availability clauses that replace zero hour contracts. Other topics will be covered next week.

EMPLOYMENT RELATIONS ACT

Key records must be kept in sufficient detail to demonstrate compliance with minimum entitlements (for example, holidays, minimum wages, wages protection etc).

Employers must specify, in the

employment agreement, the agreed hours of work including detail on:

- Number of guaranteed hours.
- Days of the week on which work is to be performed.
- Start and finish times.
- Any flexibility in days/times.

Zero hours contracts have been restricted.

If an employment agreement provides that the employee will be available for work, the "availability" provision relates only to hours in addition to the guaranteed hours. The employer must have genuine reasons for including an availability provision and for the number of hours specified and must provide reasonable compensation for the employee being available for those extra hours.

In deciding if there are genuine reasons the following must be considered:

- If it is practicable to meet business demands without an availability provision.
- The number of hours the employee is required to be available.

■ The proportion of those hours to the agreed hours of work.

In deciding what is reasonable compensation under the availability provision, factors that must be taken into account include:

- The number of hours the



Workers have fought hard to improve zero hours contracts.

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employee is required to be available.

- The proportion of those hours to the agreed hours.
- Any restrictions that arise from the availability provision.
- The rate of pay for work available for.
- If paid by a salary, the amount of the salary.

Employees may agree that their salary includes compensation for availability. They can refuse work if there is no proper compensation.

provision.

It is unlawful for a worker to be adversely treated for refusing to perform work if there is no compensation provision.

Adverse treatment is given a wide meaning and includes the terms of employment, conditions of work, fringe benefits, training, promotion, transfer, dismissal or action that causes an employee to retire or resign.

PENALTIES

Persistent offenders can be fined up to \$100,000, have to pay compensation and/or be banned from being an employer, being an officer of an employer and/or being involved in hiring or employment of employees.

The ban can be up to 10 years. Anyone breaching a ban can face a fine up to \$200,000 or three years in prison or both.

To make sure employers personally pay the fines it is unlawful to take out insurance against fines.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484 or raineycollins.co.nz. If you have an inquiry you would like discussed in this column email alorowley@raineycollins.co.nz. Our next free public seminar, on dealing with relationship property issues, will be on April 27, 12.15pm till 1.15pm. See our website.