

Employment Law Update

Flexible Working Arrangements

From 1 July 2008 employers are required to consider employee requests for flexible working arrangements, where the employee has the care of a person and has been employed by the employer for at least 6 months. The employer must consider the request and may only refuse it where business grounds exist that make acceptance unworkable. Possible business grounds are:

- inability to organise work among existing staff;
- inability to recruit additional staff;
- detrimental impact on quality or performance;
- insufficient work during proposed work hours;
- planned structural changes;
- burden of additional costs;
- customer demand constraints.

We recommend that if a flexible working arrangement is approved, that a trial period and review process also be agreed, to allow possible change if it does not work as envisaged.

Rest + Meal Breaks

From 1 April 2009 employers will be required to provide employees with the following breaks:

- 2 – 4 hours: 10 minute paid rest break;
- 4 – 6 hours: 10 minute paid rest break and 30 minute meal break;
- 6 – 8 hours: two 10 minute paid rest breaks and one 30 minute meal break;
- Where the employee works for longer than 8 hours, there is an entitlement to specified breaks that correspond to the extra time worked.

Breastfeeding

From 1 April 2009 employers must provide appropriate facilities and breastfeeding breaks to employees who require it. The obligation is limited by what is “reasonable and practicable in the circumstances”, having regard to the operational environment and resources available. The new legislation does not require breastfeeding breaks to be paid.

KiwiSaver Update

From 2 September 2008, employers will no longer be able to use the “total remuneration” approach to KiwiSaver. That is, the new law says a KiwiSaver member cannot be offered lesser terms in comparison with a “comparable” non-KiwiSaver employee of similar skills, experience and circumstances. This is a back-tracking move by the government as a law was passed late in 2007 that expressly allowed total remuneration agreements, provided they were entered into on or after 13 December 2007.

Shift Workers Holidays Act Amendment

The Holidays Act has been amended to allow employers and shift workers to transfer a public holiday in line with their business needs. This will allow employees working shifts that span two days to enjoy the application of a public holiday to one whole shift rather than being required to work up to midnight prior to a public holiday, and then completing the shift immediately after the public holiday.