

What Protection does an Employee have when a Business is sold?

Section 69A of the Employment Relations Act 2000 provides protection for employees in situations where a business is being sold, transferred or contracted out. This provision applies to employees in the cleaning, food catering, caretaking and laundry services. Section 69K protects all other employees not in the above listed services to cover the majority of employees in New Zealand. In these cases, the employees are entitled to transfer to the new employer on the same terms and conditions of employment. Any employees made redundant due to restructuring by the new employer are entitled to redundancy payments by agreement with the new employer. If an agreement cannot be reached between the parties, then the Authority will determine the employees' redundancy entitlements.

Overall, the intention of this provision is to give continuity of employment and preservation of employee's existing terms and conditions, in industries that are considered vulnerable to restructuring.

Contractor or Employee? – Determining Employment Status

It is important to establish the true nature of an employment relationship, as the law regarding an employer/employee relationship is different to the law relating to contractors. Only an employee can raise a personal grievance for unjustified dismissal under the Act. Employees have rights under the Act and other employment laws, although in areas relating to injuries, both employees and self-employed persons are entitled to weekly compensation from ACC. The amount of compensation for those who frequently move between these relationships may be limited as calculations are based on previous earnings.

Factors used in determining the relationship include:

- Intention – Look at the intention of the parties when entering into a relationship.
- Control – How much control to operate the business is given to the employee?
- Integration - Considers whether the work performed by the alleged employee is done as an integral part of the business and whether he or she has effectively become “part and parcel of the organisation”.

Mediation can help assist in settling the employment status or alternatively, the Authority can determine the matter.

Guideline for Reimbursing Employee Mileage Rates

Employers are now able to use rates published by reputable independent NZ sources to reimburse staff that use their own vehicles for work purposes. The AA calculate reimbursement for business kilometres per year is shown on the next page.

<u>Engine Capacity</u>	<u>10,000</u>	<u>14,000</u>	<u>40,000</u>
Up to 1300cc	54.1	46.0	25.8
1301 – 1600cc	67.8	55.8	28.4
1601 – 2000cc	85.7	69.8	36.5
Over 2000cc	104.0	85.9	44.8

These rates are given on a tax-free basis. Under the Income Tax Act 2004, employers may determine the amount of employee reimbursement exempt for tax purposes.

Check out the IRD website www.ird.govt.nz for more information.

Holidays

With Christmas and New Year holidays behind us, most of us would now be settling back into work.

From 1 April 2007 the Holidays Act 2003 will increase the minimum annual leave entitlement from 3 weeks to 4 weeks. This is a minimum entitlement and does not mean that employees who currently have 4 or more weeks' annual holidays are entitled to another week. Whether the employee will receive an additional week above the minimum requirement will need to be negotiated between the employer and employee.

The Act sets out how and when paid annual holidays are to be taken and provides for the calculation of annual holiday pay in a variety of circumstances.

The general provisions relating to annual holiday entitlements are:

- (a) The entitlement to holiday pay applies to employees, but not to others such as independent contractors, who are not in an employment relationship.
- (b) The statutory entitlement is a statutory minimum, and parties may not "contract out" to pay less, but can agree to additional entitlements.
- (c) Agreements, which claim to enable an employer to "pay as you earn" or "pay as you go", are lawful, so long as the requirements of s 28 of the Act are met.
- (d) Holiday pay is payable before the commencement of the holiday period unless the employee has agreed otherwise.
- (e) Where employment is terminated before the employee has taken the balance of his or her holidays, the employer must pay the balance in the employee's final pay.
- (f) Note the special definitions in the Act regarding "average weekly earnings", "ordinary weekly pay", and "gross earnings".

Under the Act, Labour Inspectors are able to provide assistance for employees in recovering any unpaid wages from their employer.

If you would like further information about any of the topics that have been raised in this newsletter, please telephone Rebecca Emery or Matt Hanna on (07) 827-5147