



# Sweeping Workplace Changes in New Zealand

Insights

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On April 1, 2011, the Government's *Employment Relations and Holiday Act* went into effect, setting forth several key workplace changes for employers with operations in New Zealand. This article will discuss the practical issues that employers must focus on while implementing the requirements of this new law.

## Union Access

Employers must respond to union requests to access the workplace within one working day. Where access is refused, the employer must give written reasons by the end of the working day after the refusal. Employers should ensure that their managers know their obligations and rights, including how to respond to these union requests.

## Communication During Collective Bargaining

Employers are now able to speak directly with their employees during collective bargaining on matters relevant to the bargaining. If employers communicate with their employees during the bargaining period, employers must be mindful that those communications are consistent with the employer's duty of good faith.

## Trial Periods

All employers may use 90-day trial periods for new employees. Previously, the voluntary 90-day trial period only existed for new employees of businesses with less than twenty employees. It is expected that courts will strictly interpret trial period clauses. Thus, for the trial clause to be effective, the employment agreement containing the trial clause should contain simple language and must be signed by both parties before the employment starts. Remember, employees who agree to a 90-day period will not be able to raise a personal grievance for dismissal within that period.

## Transfer of Public Holidays

Employers and employees may agree to transfer the observance of either whole or part of a public holiday to another identified working day. These agreements cannot be made with the purpose of ensuring that the employee does not receive time and a half for working the public holiday. However, an employer may adopt a policy that generally prohibits these agreements.

## Cashing Out Annual Leave

Employees may request to have up to one week of their minimum statutory leave paid out in cash. Employers who do not want to cash out leave should adopt a policy that states they will not consider

these requests. In the absence of such a policy, employers must consider each request and advise the result in writing within a reasonable time.

### **Sick Leave**

Employers can now require proof of sickness or injury for an illness that last more than three days. In these circumstances, the employer must inform the employee as soon as possible that a medical certificate is required and meet the cost for obtaining that proof. It is best for employers to update leave policies as soon as possible so employees are aware of this new employer right going forward.

### **Written Employment Agreements**

Effective July 1, 2011, employer must retain a signed copy of each employee's individual employment agreement to be available to the employee on request. In addition, employers must retain a copy of any intended agreement even if it has not been signed or agreed upon.

### **What Else Should Employers Do?**

As employers head into summer, now is the time to review employment agreements and policies to make sure that they are consistent with the workplace changes. With respect to employment agreements, employers must make sure that employees who are provided with written employment agreements actually sign those agreements. Under the new law, intended agreements (unsigned agreements) will not be treated as the employment agreement unless the employee has signed the agreement and acquiesced to the terms and conditions of employment. Likewise, under the new law, employers have an opportunity to decide whether they want to implement the options afforded to them under the new law. However, employers must communicate these changes to their employees through written, easy-to-understand employment policies to fully implement these new rights.