

MAJOR CHANGES TO KIWISAVER

Employers should ensure that they understand their obligations around new minimum requirements introduced by the Employment Relations (Breaks and Infant Feeding and other matters) Amendment Act (the "Act"). Significantly, employers who currently pay compulsory employer contributions as part of the total remuneration package of an employee may need to start paying it in addition to the salary or wages or employees. Furthermore, treating an employee differently because they belong to KiwiSaver risks being exposed to a personal grievance.

KIWISAVER

The Act establishes a new ground for a personal grievance where an employee's employment is adversely affected because they belong to a KiwiSaver scheme or a complying superannuation fund (a "scheme"). The changes apply to all employment agreements and variations to existing employment agreements entered into on or after 2 September 2008.

"Adversely affected" is defined as involving a situation where:

- The employee belongs to a scheme;
- Put side by side with comparable employees, the employer refuses, or fails to offer or afford to the employee, the same terms of employment, conditions of work, fringe benefits or opportunities for training, promotion, and transfer to the employee; and
- The employer has treated the employee differently either partially or wholly because the employee belongs to a scheme.

Your employment agreement may contain a clause that states:

The parties agree that all wages and any other taxable payments paid to the employee pursuant to this agreement are inclusive of the Employer's compulsory employer contributions pursuant to the KiwiSaver act 2006

If your workplace employment agreements contain the above clause we recommend that it is removed from all future agreements. Where any agreements entered into prior to 2 September 2008 are subsequently amended, we recommend that you remove the clause from all future variations and/or agreements.

BREAKS, INFANT FEEDING AND OTHER MATTERS...

REST AND MEAL BREAKS

The Act requires employees to be provided with minimum rest and meal breaks, and breastfeeding facilities and breaks during a work period, as far as is reasonable and practicable in the circumstances. From 1 April 2009, an employee becomes entitled to rest and meal breaks during a work period as follows:

- When working between two and four hours - one paid ten minute rest break.
- When working between four and six hours - one paid ten minute rest break plus one thirty minute meal break.
- When working between six and eight hours - two ten minute rest breaks and one thirty minute meal break.
- Upon completing eight hours - as if they had started work afresh. For example, an employee becomes entitled to three ten minute breaks and one thirty minute break if they work ten hours.

An employer and employee can agree when to take breaks. However, failing agreement, an employer must, so far as is reasonable and practicable, provide the employee with breaks in an evenly distributed way throughout the work period. Note that if the employment agreement or other applicable legislation provides for better or extra breaks, the provisions in the agreement and/or the other legislation must be followed.

BREASTFEEDING BREAKS

An employer must ensure that from 1 April 2009:

- Appropriate facilities are provided in the workplace for an employee who wishes to breastfeed; and
- Appropriate breaks are provided to a breastfeeding employee who wishes to do so during work hours in the workplace.

The requirement to provide appropriate facilities probably requires the employer to at least provide a fridge in which to store expressed breast milk and a private area in which to breastfeed.

Our team is happy to help with any questions about this new legislation - just get in touch.

CONCLUSION

Employers should check whether their workplace employment agreements and practice currently meet minimum requirements. Employers must not offer different terms of employment to an employee because they belong to scheme as this risks exposure to a personal grievance alleging that they have adversely affecting that employee's employment. Where an employment agreement entered into prior to 2 September 2008 contains a clause that allows for compulsory employer contributions to be paid as part of the total remuneration package, we recommend excluding this in the future.

If you wish to discuss your legal obligations, please contact us for advice.