

## MINIMUM REDUNDANCY ENTITLEMENTS

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### THE BILL

Government introduced the Employment Relations (Statutory Minimum Redundancy Entitlements) Amendment Bill on 5 August 2009. Parliamentary Member Darien Fenton put forward the bill but opted to delay the first reading to enable parties to further consider their support.

The Bill represents a significant change because currently no minimum entitlement to notice or compensation exists for employees whose positions are made redundant. However an employer must adhere to any relevant provisions in an employment agreement addressing such matters.

### PROPOSED CHANGES

The Bill proposes to amend the Employment Relations Act 2000 to provide for minimum statutory entitlements for employees in the event of a dismissal for redundancy. It was a response to a report generated by the Public Advisory Group on Restructuring and Redundancy in 2008 which recommended the consideration of minimum statutory compensation and notice to redundant employees.

The Bill defines redundancy as the “*substantial disappearance of the work performed by an employee, by reason of the restructuring, downsizing, going into receivership or administration, or cessation of operations of the employer.*”

The changes would apply to those employees made redundant after having been continuously employed for one calendar year or more. These employees become entitled to receive from their employer:

- At least four weeks’ notice of redundancy; and
- Compensation for redundancy in the amount of four weeks’ remuneration for the first full year of the employee’s continuous employment with the employer, plus two weeks’ remuneration for each subsequent full or partial year of the employees’ continuous employment with the employer, up to a maximum of 26 weeks remuneration.

As a minimum, any entitlements contained in an employment agreement that are more favourable would override the statutory requirement.

### CONSEQUENCES

If the Bill passes, irrespective of the agreed compensation and notice periods outlined employment agreements, employers would need to provide at least the statutory minima to redundant employees.

# ACC TOP UPS

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## PREVIOUS LIABILITY TO TOP UP ACC COMPENSATION PAYMENTS

In our publication on the case *Davies v NZ Police* [2007] NZCA 484, we outlined the Court of Appeal's confirmation of the liability of offenders to their victims for an order of reparation in the context of personal injury. The decision highlighted the **potential liability of employers to injured employees** for "topping-up" ACC compensation payments (typically 20%). No automatic entitlement or liability for this deficit existed prior to this decision, although employers could agree to top up the payment by way of sick leave or annual leave.

A potential spin off of the Court of Appeal decision was that if convicted of a criminal offence under the Health and Safety in Employment Act 1992, an employer may have been held liable to their employees for the deficit. Such a possibility heightened the importance of employers observing their health and safety obligations with consequences for contravening these obligations extending beyond those contained in the Act itself.

## SUPREME COURT DECISION

In *Davies v NZ Police* [2009] NZSC 47 the Supreme Court overturned that decision by a 4:1 majority. It affirmed that s 32(5) of the Sentencing Act 2002 prohibits an order for reparation against an offender where it compensates victims for the difference between a resulting loss of income and the amount of compensation received under the Injury Prevention, Rehabilitation, and Compensation Act 2001.

The reversal will represent welcome relief for employers. Potential convictions under the Health and Safety in Employment Act 1992 for an employer already include hefty penalties. For example, under s 50, a penalty of up to \$250,000 applies to every person who commits an offence if they fail to comply with the requirements of Part 2 (except s 16(3) that attracts a maximum \$10,000 fine), s19B, and various sections in other parts of the Act or related regulations.

## DECREASED LIABILITY?

Although the Supreme Court's decision confirms that employers are not liable for topping up weekly earnings compensation payments, employers should still be mindful of the need to reinforce their health and safety workplace policy and practice and to observe their obligations under related legislation. Although no automatic entitlement or liability for a deficit exists, employers may agree to top up any weekly earnings related compensation payments by way of sick leave or annual leave.

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