



December 2009

INTOUCH

Employment Newsletter

EXPOSING MISCONDUCT AND PROTECTING PRIVACY—CCTV

Light-fingered employees can cost retailers almost as much as shop-lifters. Using CCTV can help prevent staff theft including stock going missing and cash taken from the till. A local security installer has confirmed that since using CCTV many Otago and Southland businesses have experienced large reductions in stock shrinkage.

CCTV or 'closed circuit television' refers to camera surveillance systems that capture images of individuals or information relating to individuals. In the last decade, many more businesses are using CCTV and systems have become more sophisticated.

PRIVACY ISSUES

CCTV captures images of people which can be used, stored and manipulated in so many ways. Businesses must be mindful of **privacy issues** when managing CCTV. New Zealand's Privacy Commission has recently set out guidelines for businesses and other agencies to adhere to.

The Privacy Commission's guidelines focus on the majority of CCTV systems that are:

- **non-convert** (visible and with signage warning that there is a camera);
- in **public spaces**, being spaces completely accessible to the public, including streets and parks; and
- in **semi-public** spaces, being spaces that are accessible during opening hours, including banks, libraries and most businesses.

It is most likely that the guidelines will apply to your business, so you should consider these guidelines both in the set up and use of CCTV.

CONSIDERATIONS IN SETTING UP CCTV

1. Decide whether CCTV will fulfil your purpose

As an employer, you must decide whether CCTV is really necessary and fulfils your purpose. You may wish to detect and capture evidence of crime, or deter it. Consider whether CCTV will serve your purpose and whether other less invasive procedures might address any problems and at less cost. Discuss your proposal with your employees for their feedback.

2. Develop a Clear CCTV Plan

Set out a clear business plan for the CCTV system that clearly identifies your purpose for CCTV. Your plan should include the CCTV's system's expected outcomes and the type of technology and equipment that your business will use. Decide on how you will monitor the system and how you plan to minimise impacts on others' privacy.

3. Create a Privacy Policy about CCTV

Devise a CCTV Privacy Policy right from the start. Circulate your drafted policy with staff and make any changes after consulting staff. Your policy should be full and comprehensive. In your policy, include information about your equipment, including how to operate and monitor the cameras. Describe how incidents captured by CCTV will be reported or acted on, and your rules regarding the access, disclosure and security of images. Highlight what happens if a staff member breaches the policy.

(cont. over page)



4. Give your Staff a Privacy Notice

You are required to tell your staff that their personal information is being collected, including;

- the purpose for which it is being collected;
- if you intend to pass the information on to others, and if so, whom;
- whether the collection of the information is authorised or required under a particular law; and
- the individual's rights to access and correct the information.

5. Appoint a Person Responsible for the Operation for the CCTV system

Your appointed person will work with the CCTV system and deal with public enquiries. The appointed person can train your staff.

6. Train Staff about CCTV

Employers must train staff to make them aware of their CCTV policies. Ensure your staff can answer questions from the public about your CCTV system. Make life easier for staff by giving them hard copies of the policies and keep a hard copy at your reception desk. Put a full privacy notice on your website.

7. Set up Appropriate Equipment. Choose equipment suitable for your purpose, with image quality and zoom appropriate to your purpose. Select and position cameras in an unobtrusive way and set up visible signs to show that the CCTV is operating. Check that the equipment is operating properly.

TIPS WHEN USING CCTV

- **Collect only Images necessary to fulfil your Purpose.** Limit the times that the CCTV cameras operate to hours when it is necessary to be collecting the images.
- **Follow your Policy when using and disclosing images of CCTV.**
- **Use or disclose CCTV footage only for your clearly defined purpose** (for example, to reduce crime). Do not publicly disclose images collected using CCTV unless you have the consent of the individual(s) shown in the footage or you have consulted the Police. Allow individuals access of CCTV images of themselves, while protecting the privacy of others appearing in the footage. Keep a log of individuals' access and the Police's access to CCTV footage.
- **Transmit and Store Images Securely.** You should only retain images for the time period necessary to achieve your purpose. Ensure that CCTV images are protected from loss and unauthorised access, use, modification and disclosure. Imagine how it would affect your business if your footage leaked to the public!
- **Review regularly your CCTV System.** Ensure that the system is working properly.
- **Retrain staff as required** and familiarise any new staff with the CCTV system at the commencement of their employment.

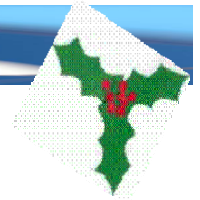
WE CAN HELP!

Seek our assistance to:

- Propose and draft your CCTV Privacy Plan
- Draft your comprehensive CCTV Privacy policy.
- Draft an access request form to view your CCTV images. This form would need to be completed by individuals and the Police.
- Draft a privacy notice to give to your employees and your customers/clients

For full Privacy guidelines, see:

<http://www.privacy.org.nz/assets/Files/Brochures-and-pamphlets-and-pubs/Privacy-and-CCTV-A-guide-October-2009.pdf>



HARNESSING HOLIDAY HULLALABOO

Employers are faced with the task of working out what their employees are entitled to on a public holiday during an often trying time when we all ought to be enjoying Christmas and New Year. We have outlined some tips on how to work out what your employees are entitled to take the strain out of an often stressful situation.

WHAT PUBLIC HOLIDAYS?

New Zealand celebrates and legally recognizes 11 public holidays each year including Christmas Day, Boxing Day; New Year's Day and 2 January. These public holidays must be observed on the dates that they fall. Recent case law confirmed this stance despite a commonly used practice that involved the observation of public holidays on days other than the dates they fell (and the subsequent shifting of entitlements to that other day). Following a legislative change shift workers may now agree with their employer to observe a public holiday on another day within strict limitations.

The special case of the Christmas and New Year period complicates matters. Where Christmas day and/or Boxing Day, and New Years Day and/or 2nd January fall on a Saturday and Sunday and those days are not normal working days for the employee, the day on which they are observed must be transferred to the following Monday and Tuesday respectively.

For example, this year, those employees who normally work Monday to Friday, would observe Boxing day on 28 December 2009 and the second new years holiday on 4 January 2010. Those who normally work in the weekend would observe them on the days they occur. No employee becomes entitled to more than four public holidays over the Christmas/New Year period.

EXCHANGE DAYS – SWAPPING ENTITLEMENTS ON PUBLIC HOLIDAYS?

While many employers do already simply observe public holidays on the day they fall, some may have been caught out by the 2007 Supreme Court decision *NZALPA IOUW Inc V Air NZ Ltd* [2007] NZSC 89; [2007] 1 ERNZ 884; [2008] 2 NZLR 1 (SC).

Prior to this decision, employers were able to fairly easily adjust Public Holidays to suit their business and their staff, by agreeing with their employees to observe them on another day. This was a way to give the employee certainty that they can still have the paid holiday off work, but on a different day that may have fitted in better with the business, or meant an employee did not have to apply for annual leave to take time off.

For example, an employer and employee could agree to transfer New Year's Day to be observed on 25th January instead of on 1st January because the employee wants to observe a religious festival that day, or to go to a wedding or other event on that day.

Exchanging public holidays for another day is partially condoned for Shift Working Employees in limited circumstances. Parties in shift working operations may redefine a public holiday to an alternative 24 hour period if agreed in writing by both parties. The transfer may only occur where an employee works a shift covering at least some time in a public holiday and this shift extends across midnight to a normal working day that is not a public holiday.

For example, if Joanne worked a nightshift starting at 11pm and finishing at 7am the following day, she could agree with her employer to redefine a day to extend from 11pm until 11pm instead of midnight to midnight. If she would have worked 1 hour on Boxing Day and 7 hours on 27 December, by redefining the period she would not work Boxing Day at all. Such an agreement allows parties to agree that they will treat days so that a shift covers the entirety of a public holiday, rather than splitting shifts across a public holiday and a normal working day. This ensures flexibility for both employer and employee without affecting entitlements nor compelling employers to split shifts unnecessarily if they wish to reduce the cost of public holidays to their business.

ENTITLEMENTS TO PUBLIC HOLIDAYS AND ALTERNATIVE HOLIDAYS

An employee becomes entitled to be paid on public holidays where it is normally a working day for them. The employer may require an employee to work on a public holiday if the public holiday falls on a day that would otherwise be a working day for the employee "but for it being a public holiday," and the employment agreement provides that the employee agrees to work public holidays if so required.

An employer complies with the rules around public holidays if the employee does not work on the public holiday, or if the employee does, he or she gets paid at least time and a half for it relating to the time actually worked on the day. An exception to this general rule exists: Where the employee would normally only work on days that are public holidays, they would be entitled to an alternative holiday.

PAYMENTS FOR PUBLIC HOLIDAYS AND ALTERNATIVE HOLIDAYS

- All employees who work on a public holiday receive at least their relevant daily pay plus half that amount again ("time and a half") for each hour worked.
- On a day that would not otherwise be a working day for an employee, they can choose to work and be paid time and a half but will not receive an alternative holiday.
- If a public holiday falls on a day that would otherwise be a working day for an employee, they can choose not to work and be paid their relevant daily pay for that day, or choose to work (or be on call restrictively) and be paid time and a half and take an alternative holiday at a later date.
- An alternative holiday must be taken on a day agreed by the parties on a day that would otherwise be a working day. The day is paid at the employee's relevant daily pay for the day taken. For example, if the employee was scheduled to work 3 hours on the day the alternative day is taken then 3 hours pay is given.
- Failing agreement, the employee, in light of the employer's preference, can elect a date to take the alternative holiday on 14 days' notice. This day can be for any amount of hours provided it comprises an entire day off.
- 12 months after working the public holiday, an employer can select a date for the employee to take the alternative holiday. Otherwise, after 12 months after the entitlement arose, an employee can ask their employer to pay them an amount for their alternative holiday as soon as practicable and this does not need to be at the rate of the relevant daily pay.
- Upon termination an alternative holiday must be paid out at the rate of the employee's relevant daily pay for their last day of employment and in the pay that relates to the employee's final period of employment.

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

UPDATE ON BREAKS LEGISLATION

We informed you in November regarding proposed changes to breaks legislation that may have passed into law before the end of 2009. The Government introduced the Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill in October to provide urgent relief to employers struggling to comply with the rigid requirements of existing breaks legislation. Proposed changes would repeal the requirement for at least two paid 10 minute rest breaks and one unpaid 30 minute meal break every 8 hours and provide exceptions to the proposed new requirement that employers provide employees with a reasonable and opportunity during the employee's work period for rest, refreshment and to attend to personal matters. The Bill is set to undergo its first reading in the new year. We will keep you up to date as changes occur. If you wish to receive our updates as soon as possible please subscribe to our regular updates by contacting us to be put on our email distribution list: Progressive@WeAreHR.co.nz.

MERRY CHRISTMAS!



Thank you to all our clients for your support in 2009. We wish you a happy and blessed Christmas and look forward to seeing you next year.

Our Invercargill, Queenstown and Dunedin offices close on 23 December for the Christmas period. We re-open fully on 21 January. Sheena Naughton will be available in our Queenstown and Invercargill offices from 5 January 2010 for advice and support.

