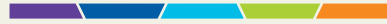


Minimum employment rights and responsibilities



EMPLOYMENT NEW ZEALAND



Disclaimer. This document provides an overview of some of the minimum rights and responsibilities that apply by law to employers and employees, as at 27 July 2020. The Ministry of Business Innovation and Employment are not responsible for the results of any action taken on the basis of information in this document, or for any errors or omissions.

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Minimum employment rights and responsibilities

This guide provides an overview of some of the minimum rights and responsibilities that apply by law to employers and employees.

Employees can't be asked to agree to less than their minimum rights.

Employment contracts (agreements)

Every employee must have a written employment agreement. It can be either a collective agreement (between employees, employers and unions) or an individual agreement (between an employer and employee).

There are things that must be included in employment agreements by law. To write an employment agreement, visit www.employment.govt.nz and search "Employment Agreement Builder".

An individual employment agreement must include:

- › the names of the employer and the employee
- › a description of the work to be performed an indication of the place of work the agreed hours or an indication of the hours that the employee will work
- › the wage rate or salary payable and how it will be paid
- › a plain explanation of how to help resolve employment relationship problems including advice that personal grievances must be raised within 90 days
- › a statement that the employee will get (at least) time-and-a-half payment for working on a public holiday
- › for relevant employees, an employment protection provision to apply if the employer's business is sold or transferred, or if the employee's work is contracted out
- › any other matters agreed on, such as trial periods, probationary arrangements, or availability provisions
- › the nature of the employment if the employment is fixed-term.

The Employment Agreement Builder is a free tool to help create contracts customised to businesses and to each of its employees. It has tips to help decide what to put in an agreement – and what NOT to put in. It covers what you must do by law, and also sets out common mistakes and how to avoid them.

Minimum employment rights must always be complied with, even if they aren't included in an employment agreement or if the agreement states something less than a minimum entitlement.

When negotiating their individual employment agreements (IEAs), employees can get independent advice (for example, from unions, advocates, lawyers, friends or family).

Any changes to the employment conditions must be agreed by the employer and employees. The employer can't change the terms and conditions without the employee's written consent.

For more information, visit www.employment.govt.nz and search "employment agreements".



Right to work in New Zealand

Employers must make sure that every person they employ has a legal right to work in New Zealand.

Immigration New Zealand's VisaView tool allows employers to confirm information about an employees' work entitlement. Visit www.immigration.govt.nz and search "VisaView".

Minimum pay

Minimum wage rates apply to all employees, whether they are full-time, part-time, fixed-term, casual, or working from home, or paid (totally or partly) by commission or piece rates. Employees aged 16 years and over must be paid at least the adult minimum wage rate, unless they are starting-out workers or trainees.

Employers and employees may agree to any wage rate as long as it is not less than current minimum wage rates.

Minimum wages are reviewed each year and current rates are available at www.employment.govt.nz/minimum-wage.

All employees who are involved in training or supervising other employees must be paid at least the adult minimum wage rate.

Starting-out workers must be paid at least the starting-out minimum wage rate, and trainees aged 20 years and over must be paid at least the training minimum wage rate.

The starting-out minimum wage applies to:

- › **Employees aged 16 and 17** who haven't completed six months of continuous employment with their current employer.

- › **Employees aged 18 and 19** who have been paid a specified social security benefit for six months or more, and who haven't completed six months' continuous employment with any employer since they started being paid a benefit. Once they have completed six months' continuous employment with a single employer, they won't be a starting-out worker and must be paid at least the adult minimum wage.
- › **Employees aged from 16 to 19** who are required to undertake industry training for at least 40 credits a year to become qualified in the occupation that their employment agreement relates to.

There is no minimum wage for employees aged under 16 but all other employment rights and entitlements apply. Once they turn 16 and have spent at least six months working for the same employer, they are entitled to the adult minimum wage.

The training minimum wage applies to employed trainees who are:

- › aged 20 years and over, and are
- › required by their employment agreement to undertake at least 60 credits a year in an industry training programme to become qualified for the occupation that their employment agreement relates to.

Paying wages

Employers must pay their employees in cash (except for the Crown, and local authorities). To pay wages another way (eg, direct credit or cheque), employers must include this in the employees' written employment agreement.

Employees must be paid for all the hours they have worked including activities at the start or end of shift eg a retail employee must be paid for opening and closing up a shop.

Employers cannot deduct any money, excluding what is allowed by law (eg. income tax, student loans and ACC), unless they have the employee's written consent.

For more information visit, www.employment.govt.nz and search "Types of pay".

Employers must keep accurate records

Employers must keep an accurate record of an employee's time worked, payments, holidays and leave taken, and entitlements.

They must keep a signed copy of the employment agreement or current signed terms and conditions, and must provide a copy on request to the employee.

They should also keep written copies of:

- › agreements to transfer public holidays, or
- › agreements to cash-up annual holidays, or
- › requests to transfer public holidays, or
- › requests to cash-up annual holidays that the employer did not agree to, or
- › permission to make deductions from wages.

For details on what information must be recorded, visit www.employment.govt.nz and search "Keeping records".

Rest and meal breaks

Employees have the right to get set rest and meal breaks. How many and how long these breaks are depends on the hours they work, eg:

- › an eight-hour work day must have at least two 10-minute paid rest breaks and one 30-minute unpaid meal break.
- › a six-hour work day must include one 10-minute paid rest break and a 30-minute unpaid meal break.

Breaks are for rest, refreshment and personal matters. Rest breaks are good for workplaces because they help employees work safely and productively.

Employers and employees should agree when the employee takes their breaks in their employment agreement. If they cannot agree, the law will require the breaks to be taken at times as specified in the Employment Relations Act 2000, so long as it's reasonable and practical.

Employers must also give extra breaks and have facilities to employees to breastfeed or express breast milk, where this is reasonable and practical. The employer doesn't have to pay the employee for these breaks unless they want to.

For more information visit, www.employment.govt.nz and search "Rest and meal breaks".

Availability clause

An employment agreement can't have an availability clause put in (ie working is conditional on the employer making work available to an employee and they're required to be available to accept any work that the employer offers) unless:

- › the employment agreement specifies agreed hours of work and includes guaranteed hours of work among those agreed hours, and the availability clause is in addition to those guaranteed hours of work, and
- › the employer has genuine reasons based on reasonable grounds for including the availability clause and the number of hours of work specified, and
- › the availability clause gives the employee reasonable compensation for making themselves available to work.

If an employment agreement doesn't have a valid availability clause that provides reasonable compensation, then an employee can say "no" to work that isn't part of any guaranteed hours in their employment agreement. An employer can't disadvantage an employee if they turn down the work.

For more information, visit www.employment.govt.nz and search "Hours of work".

Annual holidays

At the end of each year of continuous employment with any one employer, an employee becomes entitled to 4 weeks' paid annual holidays.

Employees can ask (in writing) to cash-up a maximum of 1 week of their annual holidays each year. Employers can't pressure employees to cash-up annual holidays, and requests to cash-up can't be included in employment agreements.

Annual holidays are paid at the rate of the greater of:

- › the employee's ordinary weekly pay as at the beginning of the annual holiday; or
- › the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

That calculation should include any commission the employee received as part of their employment agreement.

If an employee leaves before completing a full year of employment, their annual holiday pay is 8% of gross earnings less any holiday pay already received.

Genuinely casual employees (those who work intermittently) and fixed-term employees (employed for less than 12 months) can agree to receive holiday pay as above (at 8%) if certain conditions are met. For more information visit, www.employment.govt.nz and search "pay as you go".

Employers can make employees take annual holidays during a closedown period once a year (eg at Christmas), if they give at least 14 days' notice. If an employer has a closedown period that includes public holidays, then the employee is entitled to be paid public holidays if they would be otherwise working days for them.

For more information, visit www.employment.govt.nz and search "Annual holidays".

Public holidays

Every 12 months, employees must have 11 paid public holidays, if they are days when the employee would normally work.

Employers must pay employees their relevant daily pay or average daily pay (if applicable) for the public holiday.

If an employee works on a public holiday they must be paid at least time-and-a-half for the time worked. If the public holiday falls on a day the employee would normally work, they are also entitled to an alternative paid day off.

Employees can decline to work on public holidays unless their employment agreement says something different.

For more information, visit www.employment.govt.nz and search "Public holidays".

Sick leave

After six months of continuous employment, all employees are entitled to 10 days' paid sick leave.

After the initial 10 days, employees are entitled to an extra 10 days' sick leave for every 12 months. After that and can carry over 10 days of unused sick leave up to a maximum of 20 days.

Sick leave can be taken if:

- › the employee is sick or injured, or
- › the employee's spouse, partner or children are sick or injured, or
- › a person who depends on the employee for care is sick or injured.

Employers must pay employees their relevant daily pay or average daily pay (if applicable) for their sick leave.

Minimum sick leave entitlements increased from 5 to 10 days from 24 July 2021. Employees get the extra five days when they reach their next entitlement date – either after reaching six months’ employment or on their sick leave entitlement anniversary (12 months after they were last entitled to sick leave).

Employers can request proof of the illness, such as a medical certificate. If the employer asks for proof within the first 3 days of the sickness or injury, the employer must pay the costs of the doctor. Employers can’t insist employees visit a particular doctor. After three days of sickness, the employee has to pay for the doctor appointment.

For more information, visit www.employment.govt.nz and search “Sick leave”.

Bereavement leave

After six months continuous employment all employees are entitled to paid bereavement leave of:

- › three days on the death of a spouse or partner, parent, child, sibling, grandparent, grandchild, or parent of a spouse or partner.
- › one day if their employer accepts they’ve suffered a bereavement involving another close person not included above.

For more information, visit www.employment.govt.nz and search “Bereavement leave”.

Employees affected by family violence

People affected by family violence have extra legal protections at work.

These rights do not apply to the people who are violent or abusive to someone they’re in a family or domestic relationship with. This includes a partner, ex-partner, someone in their family or whānau, or by a flatmate or someone they might not live with.

Violence can be physical, sexual or psychological abuse. It’s also when someone is bullying or threatening, or tries to control what they do or think. Some examples are:

- › intimidation
- › harassment
- › damaging their things
- › threatening to abuse them
- › financial or economic abuse
- › emotional or psychological abuse.

To help employees deal with the effects of family violence, the law says that people affected by family violence have the right to:

- › take up to 10 days of paid family violence leave each year – on top of annual leave, sick leave and bereavement leave
- › ask for short-term flexible working arrangements – lasting up to two months
- › not to be treated adversely in the workplace because they might have experienced family violence.

Employees have these rights even if the family violence happened in the past.

In a case of family violence, the employee should ask in writing for leave and the employer must answer in writing within 10 working days at the latest. If the employee asks for flexible work the employer has two months to get back to them.

For more information including a translated booklet in multiple languages, visit www.employment.govt.nz and search “family violence”.



Parental leave and parental leave payments

Parental leave is leave from employment to care for a child.

If they meet certain criteria, employees may be eligible for:

- › unpaid parental leave , and
- › payments for parental leave (also called paid parental leave).

Employees may be entitled to unpaid parental leave (including partner's leave, primary carer leave and extended leave) if they meet either the six-month or 12-month criteria.

The six-month criteria eligibility

The employee must have worked for the same employer for an average of at least 10 hours a week for the six months before your baby's due date (or the date you become responsible for the care of a child under 6 years on a permanent basis).

Employees who meet the six-month eligibility criteria are entitled to a total of 26 weeks' unpaid leave (including the primary carer leave).

The 12-month criteria eligibility

The employee must have worked for the same employer for an average of at least 10 hours a week for the 12 months before the baby's due date (or the date they become responsible for the care of a child under 6 years on a permanent basis).

Employees who meet the 12-month criteria are entitled to a total of 52 weeks' unpaid leave (including the primary carer leave).

Employees may share unpaid parental leave with a partner, who also must meet either the six-month or 12-month criteria.

Pregnant mothers are entitled to up to 10 days' unpaid special leave for pregnancy-related reasons before parental leave begins.

For help understanding entitlements to parental leave, visit www.employment.govt.nz search “parental leave”.

Parental leave payments (sometimes called paid parental leave) are government funded payments, managed by the Inland Revenue. A person may be able to get parental leave payments even if they don’t qualify for parental leave from their employment.

Parental leave payments are generally attached to the birth mother or the chosen primary carer (if they are becoming the permanent primary carer of a child under 6).

Inland Revenue has more information about parental leave payments, visit www.ird.govt.nz and search “parental leave”.

Other leave rights

Employees may be entitled to other types of leave, for example if they’ve been injured in a work accident or are training in the armed forces.

For more information about other leave rights, visit www.employment.govt.nz and search “Other types of leave”.

Flexible working arrangements

All employees have a statutory right to request a change to their hours of work, days of work, or place of work. Employers must consider a request and can refuse it only on certain grounds.

For more information, visit www.employment.govt.nz and search “flexible working”.

Discrimination

Employers can’t discriminate in hiring or firing, paying, training or promoting an employee because of their race, colour, national or ethnic origin, sex or sexual orientation, marital or family status, employment status, age, religious belief or political opinion, disability, or participation in certain union activities, or if they are affected by family violence. This also includes people who are applying for jobs.

They all have the same employment rights and are entitled to receive the same pay as someone doing the same job, with similar experience.

For more information, visit www.employment.govt.nz and search “Discrimination”.

Fixed-term employees

Employers can only offer fixed-term employment if:

- › there are genuine reasons – like seasonal work, project work, or where the employee is filling in for a permanent employee on leave, and
- › the employer tells the employee the reasons, how or when the employment will end, and the employee agrees to this in their employment agreement.

Like other employment agreements, fixed-term agreements must be in writing.

For more information, visit www.employment.govt.nz and search “Types of employee”.

Casual employees

'Casual employee' isn't defined in employment legislation, but the term is usually used to refer to a situation where the employee has no guaranteed hours of work, no regular pattern of work, and no ongoing expectation of employment. The employer doesn't have to offer work to the employee, and the employee doesn't have to accept work if it's offered. The employee works as and when it suits both them and the employer.

This can sometimes happen because it's hard for the employer to predict when the work needs to be done, or when the work needs to be done quickly. Each time the employee accepts an offer of work it is treated as a new period of employment.

If an employee is employed to do casual work, the arrangement must be made clear in their employment agreement.

Employment rights and responsibilities also apply to casual employees, but the way in which annual holidays, sick and bereavement leave are applied can vary for these employees.

For more information, visit www.employment.govt.nz and search "Types of employee".

Contractors versus employees

Employees and contractors have different rights and responsibilities and there are legal tests to help tell the difference. For example, contractors typically have more control over when and how to do their work. It is important to get this right to avoid penalties.

For more information, visit www.employment.govt.nz and search "Contractor versus employee".

Trial periods

Only employers who have 19 or fewer employees can make an offer of employment that includes a trial period (up to 90 days).

Trial periods are voluntary. They must be agreed in writing and negotiated in good faith as part of the employment agreement, before the employee's employment starts.

An employee who is dismissed before the end of a trial period can't raise a personal grievance on the grounds of unjustified dismissal.

They can raise a personal grievance on other grounds, such as discrimination, harassment or unjustified action by the employer.

Employees on trial periods are entitled to all other minimum employment rights.

For more information, visit www.employment.govt.nz and search "Trial periods".

Unions

A union is an organisation that supports employees in the workplace by speaking on their behalf to employers. Employees have the right to decide whether to join or not a union and, if so, which union. An employer or anyone else must not pressure an employee to join or not join a union.

Employers must:

- › give new employees a form to indicate if they intend to join a union in the first 10 days of starting their job



- › return the form to the union, unless the employee states they don't want their details passed on
- › pass on information about the role and function of unions to future employees.

Unions must pay for the costs of using printed materials if they want the material to be passed on.

Employees have 30 days to give the form back to their employer. This gives them time to talk to their union representatives before deciding whether to join the union. If they join the union, they will change to the collective agreement. If they don't join the union, they will stay on their individual employment agreement.

Employers must let any employees who are union delegates carry out their union activities within working hours and be paid their normal hourly rate. An example of a union activity is representing employees in collective bargaining.

Employees who are union delegates must agree with their employer when they will carry out their union activities or at least tell them before. The employer can disagree if it will unreasonably disrupt the business or affect how well the employees carry out their duties.

Union representatives can enter workplaces without consent, provided the employees are covered under or bargaining towards a collective agreement. Representatives can still only enter a workplace for certain purposes, must be respectful of normal operating hours, and follow health, safety and security procedures.

For more information, visit www.employment.govt.nz and search "Unions" and "Employment Relations Amendment Act".

Health and safety

Employers must provide a safe workplace, with proper training, supervision and equipment.

This duty includes identifying, assessing and eliminating (or minimising) risks and hazards, and investigating health and safety incidents. Employers are also required to report serious injuries at work to WorkSafe New Zealand.

Employees are also responsible for their own health and safety. They must follow all health and safety policies and procedures and avoid causing harm to other people by the way they do their work. Employees may refuse work if they believe it will expose them or others to a serious risk to health and safety. Employers must consult with their employees in relation to any health and safety policy.

For more information, visit www.worksafe.govt.nz.

Redundancy, work changes or restructuring

Employers must consult in good faith with employees about any proposal likely to have an adverse effect on an employee's work conditions. This includes any changes to their current employment agreement, such as reduction of hours or days

Employers must give all the related information to affected employees and give them enough time to provide feedback before making a decision.

Employers must look at the feedback in good faith, make any necessary changes and communicate the final decisions to the affected employees. Employers must consider redeployment and training for existing staff.

Every employment agreement must contain an 'employee protection provision' to support a 'fair' process and protect employees if a business is sold, contracted or transferred out.

There are special rules for employees working in catering, cleaning, caretaking, laundry and orderly work if the business is sold or their work is contracted out or given to a new contractor. For details visit www.employment.govt.nz and search "Restructuring when a business is sold or transferred".

For more information on this topic, visit www.employment.govt.nz and search "Workplace change".

Employment relationship problems

If an employment problem comes up at work, employers and employees should first clarify the facts and try to find a solution themselves. They should talk to each other, and an employee can have a support person or union/association representative in the discussion. They can get information about resolving problems, visit www.employment.govt.nz and search "Steps to resolve."

If there is still a problem, employees or employers can use Employment New Zealand's free mediation service. For more information on this service and how to request mediation, visit www.employment.govt.nz and search for "mediation".

Problems that are not self-resolved or resolved at mediation can be taken to the Employment Relations Authority within 90 days when the problem arises or to the Employment Court.

Employers and employees can get information about their rights and responsibilities from Employment New Zealand.

Visit www.employment.govt.nz

Phone 0800 20 90 20 toll free.

Penalties

There are financial penalties for employers not complying with employment laws. These can be up to \$50,000 for individuals; and for companies, the greater of \$100,000 or three times the amount of the financial gain made by the company as a result of the breach.

An employer may also be fined or prosecuted for not complying with workplace health and safety laws.

For more information, visit www.employment.govt.nz and search “Employers who have breached minimum employment standards”, and visit www.worksafe.govt.nz and search “enforcement”.

Want to learn more about employment law?

Employment New Zealand (MBIE) have developed free e-learning employment modules, where you can learn more about essential employment information in easy steps.

The modules take around 15 minutes to complete each and they are available for both employers and employees. They are a useful source of information to ensure that employers and employees understand their rights and responsibilities and comply with New Zealand employment laws.

Sign up today at www.employment.elearning.ac.nz or visit www.employment.govt.nz and search “modules”.

