



Two Employment Law Changes that might impact Employers

Introduction

In the ever-evolving landscape of employment law in New Zealand, the past two months have seen notable changes, potentially bringing both challenges and opportunities for employers. In this blog post, we'll unpack the alterations to the 90-day trial period legislation and the shift away from the use of Fair Pay Agreements. Understanding these two changes is crucial for employers as they adapt to the evolving legal framework that is coming about as a result of the recent change of government.

1. Changes to the 90-Day Trial Period Legislation

As of 23 December 2023, the 90-day trial period legislation underwent a significant modification that impacts which employers can now use this provision. Since the last change to this aspect of the Employment Relations Act, which occurred on 6 December 2018, only employers with 19 or fewer employees could utilise a trial period wherein the termination of an employee's employment agreement during the first 90 days of their employment was exempt from an unjustifiable dismissal personal grievance claim. However, with the December 2023 change, a trial period can now be applicable to all employers, irrespective of their size going forward. This means larger employers are again also eligible to implement the 90-day trial period going forward.

Important points to note when considering implementing a trial period:

Notice and Timing Requirements: When employers wish to make an offer to a candidate who hasn't worked for them before, and they wish to include a trial period clause, they must provide a written employment agreement that includes the correct trial period provision e.g. it must clearly identify when it takes effect and the notice that would be required during a trial period. The candidate must be advised that they can seek independent advice about the trial period clause (and the rest of the terms and conditions of employment being offered) and they must be provided with sufficient time to seek advice if they wish to do so. Then, once an employment agreement is finalised and signed by both parties, one copy must be returned to the employer before the new employee has started any work. If these requirements aren't met, the trial period will not be enforceable.

Personal Grievance Protection: An employee on a valid trial period cannot raise a personal grievance for unjustifiable dismissal. They can however still raise a personal grievance on grounds other than about their dismissal, such as discrimination, sexual or racial harassment, pressure about union membership, continuity of employment under Part 6A of the Employment Relations Act 2000 or if the employer does something that unjustifiably disadvantages them.

While the trial period remains a useful tool for enabling a period of time for both the employer and employee to see if the employment arrangement is likely to be right for them, employers must be mindful of not breaching their good faith obligations if they want to

consider terminating an employee's employment under the trial period provision.

2. Changes Regarding the Use of Fair Pay Agreements

Fair Pay Agreements (FPAs) are another area of employment law that has undergone recent changes.

The previous government had looked to introduce FPAs as a mechanism for collective bargaining across entire industries. FPAs were intended to set minimum terms and conditions of employment, including wages, across specific sectors, and the decision to not proceed with FPAs has elicited mixed reactions.


While some applaud the decision, citing relief for businesses navigating post-pandemic recovery, others argue that without FPAs, disparities in pay and conditions may persist across industries. The government has emphasised its commitment to promoting fair work practices and suggests that alternative mechanisms may be explored to achieve these goals without imposing mandatory sector-wide agreements. The evolving conversation around fair work practices highlights the ongoing challenge of finding a balanced approach that addresses the needs of both employees and employers in New Zealand's dynamic economic landscape.

Conclusion

We are likely to see a few more changes to employment law in New Zealand during the term of the current government. Staying abreast of developments will be vital for employers to enable them to maintain compliance and navigate the evolving employment landscape.

Do not hesitate to contact me if you would like to discuss either of these changes further.

Employers wanting to implement a 90-day trial period going forward will need to review and update their employment agreements. Given the complexity of the trial period requirements, seeking advice to ensure compliance is advisable. I can provide tailored guidance based on the specific circumstances of each employer.

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