

**EMPLOYMENT  
NEW ZEALAND**

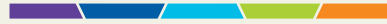
# Minimum employment rights and responsibilities



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INNOVATION & EMPLOYMENT**  
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New Zealand Government

# 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 1 April 2019. 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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**[www.employment.govt.nz](http://www.employment.govt.nz) | 0800 20 90 20**

# Minimum employment rights and responsibilities

This guide provides an outline of some of the minimum rights and responsibilities that apply by law to all employers and employees. For more detailed information about every topic you should visit [www.employment.govt.nz](http://www.employment.govt.nz).

## **Employees can't be asked to agree to less than the minimum rights.**

An employee is anyone who has agreed to be employed, under a contract of service, to work for some form of payment. This can include wages, salary, commission piece rates or other benefits.

## **Employment contracts (agreements)**

Every employee must have a written employment contract. It can be either:

- › a collective agreement, this is binding on employees, employer/s and union/s
- › an individual agreement, this is binding between the employee and the employer.

An employment contract must have some mandatory things included by law.

The Employment Agreement Builder is a free tool to help create employment contracts between businesses and each of their employees. It's full of tips to help employers decide what to put in a contract – and what not to put in. It covers what employers must do by law, and also shows how to avoid common mistakes. Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Employment agreement builder".

An employer must always give employees their minimum employment rights, even if they aren't included in an employment contract or if the contract has something less than a minimum right.

When asking for changes to their individual employment contract, employees can get independent help, for example including from family/friends, unions, advocates and lawyers. Advocates are people whose job is to speak on behalf of a person(s) to make sure that their rights and needs are recognised. Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "employment agreements".

## **Right to work in New Zealand**

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

Immigration New Zealand's VisaView tool helps employers check an employee's work visa, visit [www.immigration.govt.nz](http://www.immigration.govt.nz) and search "VisaView".



## Minimum wage

The minimum wage applies to all employees, whether they are:

- › full-time
- › part-time
- › fixed-term
- › casual
- › working from home
- › paid fully or partly by commission or piece rates.

Employees aged 16 years and over must be paid at least the adult minimum wage, unless they are 'starting-out workers' or 'trainees'. Employees under 16 years old don't have to get the minimum wage.

Employers and employees may agree to any wage as long as it is at least the minimum wage.

The minimum wage is reviewed each year, visit: [www.employment.govt.nz](http://www.employment.govt.nz) and search "minimum wage" to find out today's minimum wage.

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

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

Starting-out workers are employees aged:

- › **16 and 17 years** who haven't completed 6 months of continuous employment with their current employer.

- › **18 and 19 years** who have both:
  - been paid a social welfare benefit for 6 months or more, and
  - not completed 6 months of continuous employment with any employer since they started being paid a benefit.
- › **16, 17, 18 and 19 years** whose employment contract means they must do industry training for at least 40 credits a year to become qualified in their job.

If an employee is supervising or training other workers, then they must be paid at least the adult minimum wage.

Once they have completed 6 months of continuous employment with a single employer, they must be paid at least the adult minimum wage.

'Trainees' are employees who are both:

- › aged **20 years** and over, and
- › required by their employment contract to do at least 60 credits a year in an industry training programme to become qualified for the job.

### **Employees aged under 16 years**

There is no minimum wage for employees aged under 16, but they have all other employment rights.

If the employee was employed before and after turning 16, the employer must work out if the employee is a starting-out worker. When calculating how long the employee has been continuously employed, the employer must include any time the employee was employed before turning 16.

Visit: [www.employment.govt.nz](http://www.employment.govt.nz) and search "types of wage rates".

### **Paying wages**

Employers must pay their employees in cash, except for the Crown and local authorities. To pay wages another way – for example, direct credit or cheque – employers must get their employees' written consent.

**Employees must also agree in writing before employers can take money from their wages.** Although, employers must make some deductions by law, which don't need the employee's written consent; examples include PAYE tax, ACC, student loan repayments and child support.

### **Keeping accurate records**

Employers must keep a truthful record of an employee's time worked, payments, holidays and leave taken, and other rights.

They must keep a signed copy of the employment contract or current signed terms and conditions. If the employee asks for it, the employer must give them a copy.

The employer should also keep copies of any agreements or requests about holidays and deductions from wages. These include:

- › transfer of public holidays
- › cash up annual holidays (including those the employer did not agree to)
- › agreements to make deductions from wages.

Visit: [www.employment.govt.nz](http://www.employment.govt.nz) and search "Keeping accurate records".

## Rest and meal breaks

From 6 May 2019, 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, for example:

- › 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. If they cannot agree, the law sets out that the breaks must be in the middle of the work period, as long as it's reasonable and practical.

The rules are different for employers in certain essential services or national security services.

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.

Visit: [www.employment.govt.nz](http://www.employment.govt.nz) and search "Rests and breaks".

## Annual holidays

An employee has the right to 4 weeks of paid annual holidays – also called annual leave – at the end of each year of continuous employment with any one employer.

Employees can ask in writing to cash up up to one week of their annual holidays each year. 'Cash up' means to get the value of the leave in money instead of taking the time off.

Employers can't force employees to cash up annual holidays, and requests to cash up can't be part of employment contracts.

If an employee leaves before completing a full year of employment, they get annual holiday pay that works out as: 8% of their gross earnings – earnings before tax and other deductions – minus any holiday pay they've already taken.

Two types of employees can agree to get holiday pay on a "pay as you go basis" in certain conditions. These types of employees are:

- › genuine "casual employees" (this usually refers to a situation where the employee has no guaranteed hours of work, no regular pattern of work, and no ongoing expectation of employment).
- › fixed-term employees with a contract for less than 12 months.

Employers can ask employees to take annual holidays during a closedown period once a year as long as they give at least 14 days of notice. An example of a closedown period is when a business closes over the Christmas period. If an employer has a closedown period that includes public holidays, then the employee has the right to be paid public holidays if they would be otherwise working days for them.

Visit: [www.employment.govt.nz](http://www.employment.govt.nz) and search "Annual holidays".

## Public holidays

Employees have the right to 11 public holidays. This means they get time off work on pay, if they are days when the employee would normally work.

Employers must pay employees their Relevant Daily Pay or Average Daily Pay 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. 'Time and a half' means they are paid their usual hourly rate plus half of their usual hourly rate. If the public holiday falls on a day they would normally work, the employee also has the right to an alternative paid holiday.

Employers and employees can agree to transfer the public holiday to another working day, to meet the needs of the business or individual employees. Even so, the employee has the right to the same number of public holidays.

See a list of public holidays and the Relevant & Average Daily Pay calculator, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Relevant & Average Daily Pay calculator" and "Public holidays and anniversary dates".

## Sick leave

All employees have the right to 5 days of paid sick leave after they have 6 months of continuous employment or meet the 'hours worked test'.

Employees have the right to 5 days of sick leave for every 12 months after that. They can carry over unused sick leave each year. The most sick leave they can carry over is 20 days.

Sick leave can be taken if:

- › the employee is sick or injured
- › the employee's spouse or partner is sick or injured
- › 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 for sick leave.

Employers can ask for 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 for the doctor's appointment. Employers can't insist that employees visit a certain doctor.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Sick leave".

## Bereavement leave

All employees have the right to paid bereavement leave after they have 6 months of continuous employment or meet the 'hours worked test'.

An employee can take bereavement leave of:

- › three days per death of a spouse or partner, parent, child, brother, sister, grandparent, grandchild, or spouse or partner's parent, and
- › one day per death if their employer accepts they've suffered a bereavement of someone not listed above.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Bereavement leave".

## Domestic violence leave

All employees who are affected by domestic violence, have the right to up to 10 days of paid domestic violence leave each year, if they have 6 months of continuous employment with the same employer or meet the 'hours worked test'. The leave does not apply to people who have committed domestic violence.

Domestic violence leave helps an employee deal with the effects of domestic violence. It does not apply to a person who commits domestic violence. Domestic violence is also called family violence. It can be physical abuse, sexual abuse or psychological abuse.

Someone is affected by domestic violence if:

- › they have experienced domestic violence themselves
- › a child who is a victim of domestic violence lives with them, even if it's not all the time.

Employees can take domestic violence leave when they need it, like sick leave and bereavement leave. Employees can take domestic violence leave even if the domestic violence took place before they became an employee or before 1 April 2019.

An employee cannot:

- › carry over any domestic violence leave that they don't use it in 12 months
- › be paid for unused domestic violence leave when they stop working for their employer.

See more information about domestic violence leave including calculating payments, proof of being affected by domestic violence and employer obligations to make payments, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Domestic violence leave".

## Parental leave and parental leave payments

Employees get the right to parental leave and / or parental leave payments if they meet certain conditions.

Parental leave and parental leave payments are two different things and the rules for getting them are different.

**Parental leave** is leave from employment to look after a child, and includes:

- › partner's leave
- › primary carer leave
- › extended leave.

An employee gets parental leave from their employer. Employees have the right to parental leave if they meet either the 6-month or 12-month rule.

If employees meet the:

- › 6-month rule, they get 26 weeks of parental leave
- › 12-months rule, they get 52 weeks of parental leave.

Employees may share extended leave with a partner who meets either the 6-month or 12-month rule.

Pregnant mothers have the right to up to 10 days of unpaid special leave for pregnancy-related reasons before parental leave begins.

See more about eligibility, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Parental leave eligibility".





**Parental leave payments** are also called paid parental leave. The government pays parental leave payments to employees and self-employed people who qualify.

To get parental leave payments, you must qualify for primary carer leave.

To have the rights to parental leave payments, the worker must either:

- › be on parental leave, or
- › have stopped work during the parental leave payment period.

People who qualify for parental leave payments must apply to Inland Revenue (IR) by a certain time.

See more about parental leave payments, visit [www.ird.govt.nz](http://www.ird.govt.nz) and search “paid parental leave”.

### **Other leave rights**

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

See more about other leave rights, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search “Other types of leave”.

### **Flexible working arrangements**

All employees have the right to ask for changes to their hours of work, days of work, or place of work. Employers must think about a request carefully and can refuse it only for certain reasons.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search “Flexible working arrangements”.

## **Short-term flexible working arrangements in relation to domestic violence**

Employees who are affected by domestic violence have the right to ask for short-term flexible working arrangements. Employees can ask for changes in their working arrangements for up to two months to help them deal with the effects of domestic violence. **They can ask for it at any time**, even if the domestic violence took place before they became an employee or before 1 April 2019.

Employees must ask in writing and include certain information.

The employer must reply in writing within 10 working days. They must see to this request urgently because the employee may wish to change their working arrangements to stay safe.

The employer can only refuse for certain reasons, set out in law.

See more about short-term flexible working related to domestic violence including, employer obligations to provide information about support services, proof that the employee is affected by domestic violence and employer's rights to refuse requests, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Domestic violence leave short-term flexible working".

## **Equal pay and equal rights**

Employers can't discriminate – or treat someone unfairly – when they are 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, participation in certain union activities or if they are **affected by domestic violence**. This also includes people who are applying for jobs.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Pay and employment equity" and "discrimination".

If employees think their employer has treated them unfairly for being affected by domestic violence, they can either:

- › raise a personal grievance under the Employment Relations Act.
- › complain about discrimination under the Human Rights Act.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Domestic violence leave personal grievance and human rights".

## **Fixed-term employees**

Employers can offer fixed-term employment only if:

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

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

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Types of employee".

## **Trial periods**

Effective 6 May 2019, 90-day trial periods can only be used by businesses with 19 or fewer employees.

Trial periods are voluntary, and employers and employees must discuss them in good faith. Employers and employees must agree to trial periods in writing as part of the employment agreement. The employee must sign the contract before they start working.

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

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

Employees on trial periods have all other minimum employment rights.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search "Trial periods".

## **Unions**

Union representatives and employers must follow the law when working together.

A union is an organisation that supports employees in the workplace by speaking for them with employers.

Employees have the right to decide whether to join a union and, if so, which union.

An employer or anyone else must not pressure an employee to join or not join a union.

Effective from 6 May 2019, employers must:

- › give new employees an approved 'active choice form' in the first ten days of starting their job.
- › return the form to the union, unless the employee states they don't want their details passed on.

The employee has 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 contract.

Effective from 6 May 2019, employers must let 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 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.

Effective from 6 May 2019, employers must 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.

Visit [www.employment.govt.nz](http://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, **at the employer's cost**. This includes identifying, evaluating and getting rid of – or at least minimising – risks and hazards, and investigating health and safety incidents. Employers also must report serious injuries at work to WorkSafe New Zealand.

Employees must:

- › take reasonable care for their own health and safety
- › follow policies and procedures
- › avoid causing harm to other people by the way they do their work.

Employees may refuse to work when they believe that there are serious risks to their own health and safety or that of other people. Employees have the right to take part in improving health and safety at work.

See more about health and safety at work, visit [www.worksafe.govt.nz](http://www.worksafe.govt.nz).

## Change and restructuring

Employers must consult in good faith with employees about decisions they're thinking about that are likely to affect whether an employee still has a job.

Employers must give information to affected employees and give them a chance to provide feedback before deciding what to do. Employers do not have to share confidential information if they have a good reason.

Every employment agreement must have an 'employee protection provision' that sets out what happens if a business is sold, contracted or transferred out.

There are special rules for certain jobs like catering, cleaning, caretaking, laundry and orderly work.

From 6 May 2019, employees in certain ‘vulnerable industries’ can transfer on the current terms and conditions in their employment contract if their work is restructured. It does not matter how big or small their employer is.

Employees in these ‘vulnerable industries’ must also have at least 10 working days to decide whether to transfer to the new employer.

Visit [www.employment.govt.nz](http://www.employment.govt.nz) and search “Workplace change”.

## Employment relationship problems

If an employment problem comes up at work, employers and employees should clarify the facts. They should talk to each other to try to fix the problem. The employee can have a support person or union representative in the discussion.

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

Visit [www.employment.govt.nz](http://www.employment.govt.nz)

Call **0800 20 90 20**

If there’s still a problem, employees or employers can use the **free** Employment Mediation Service from Employment New Zealand. Both employee and employer must agree to go to any mediation.

During mediation, a trained person helps the employer and employee talk about what’s wrong and agree how to resolve it. Mediation is free, confidential and does not take one side.

See more about mediation and how to make a request, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search “Mediation”.

If the problem isn’t resolved at mediation, employees can go to the Employment Relations Authority (ERA). If this doesn’t solve the problem, employees can bring their case to the Employment Court.

See more about the ERA and the Employment Court, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search “Escalating unresolved issues”.

## Penalties for employers

Employers that break employment law may have to pay a penalty.

If the employer is an individual, they might have to pay a personal penalty of up to \$50,000.

If the employer is a company or other body corporate, they might have to pay a penalty of either:

- › up to \$100,000
- › three times the financial gain they made from breaking the law.

The employer might have to pay higher penalties for serious breaches of the law.

An employer might also be fined or prosecuted for not following workplace health and safety laws.

See more about penalties for employers, visit [www.employment.govt.nz](http://www.employment.govt.nz) and search “Employers who have breached minimum employment standards” and visit [www.worksafe.govt.nz](http://www.worksafe.govt.nz) and search “enforcement”.

## **Employment Learning Modules**

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 from 10 to 15 minutes to complete each and they are available for employers and employees alike. 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.

Visit [www.employment.elearning.ac.nz](http://www.employment.elearning.ac.nz) or [www.employment.govt.nz](http://www.employment.govt.nz) and search "Know your rights".



