

**EMPLOYMENT
NEW ZEALAND**

Minimum employment rights and responsibilities



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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 June 2016. 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 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 and piece rates.

Employment agreements

Every employee must have a written employment agreement. It can be either a collective agreement (binding on employees, employer/s and union/s) or an individual agreement (binding on an employer and employee).

There are things that must be included in employment agreements by law. More information is available on www.employment.govt.nz

The Employment Agreement Builder is a free tool to help create contracts tailored to businesses and to each of its employees. It's packed with 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 made and how to avoid them. Visit <https://eab.business.govt.nz>.

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

When bargaining for changes to their individual employment agreements (IEAs), employees can get independent advice (for example, from unions, advocates or lawyers).

Right to work in New Zealand

Employers must ensure 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 employees' work entitlement. Visit www.immigration.govt.nz/about-us/our-online-systems/visaview.

Minimum pay

Minimum wage rates apply to all employees, whether full-time, part-time, fixed-term, casual, working from home, and people 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 applicable minimum wage rates.

Minimum pay rates are reviewed each year and current rates are available at www.employment.govt.nz.



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.

Starting-out workers are:

- › **Employees aged 16 and 17** who haven't completed 6 months of continuous employment with their current employer.
- › **Employees aged 18 and 19** who have been paid a specified social security benefit for 6 months or more, and who haven't completed 6 months' continuous employment with any employer since they started being paid a benefit. Once they have completed 6 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 16, 17, 18 and 19** who are required by their employment agreement to undertake industry training for at least 40 credits a year to become qualified in the occupation their employment agreement relates to.

There is no minimum wage for employees aged under 16 but all other employment rights and entitlements apply. To work out if an employee who is 16 years or older is a starting-out worker, any time spent employed by an employer before the employee turned 16 must be included when calculating the time that employee has been continuously employed.

Trainees are employees who are:

- › aged **20 years** and over, and
- › required by their employment agreement to undertake at least 60 credits a year in an industry training programme to become qualified for the occupation 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, cheque), employers must get their employees' written agreement.

Employees must give written consent before deductions can be made from their wages.

Some deductions (like PAYE tax, ACC, student loan and child support) are required by law and don't need written consent.

Keeping 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 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.

Break entitlements

Employees are entitled to paid rest and unpaid meal breaks that are reasonable and appropriate for the length of their work day with that employer.

A law change was being considered by Parliament in mid/late 2018 to reinstate set rest and meal breaks, with very limited exemptions for workers such as for those in essential services who cannot be replaced.

The purpose of the breaks is for rest, refreshment and personal matters.

There are no rules for how long, or when, rest and meal breaks should be. Employers and employees should bargain in good faith over the timing and length of breaks.

Common practice is that rest breaks are 10 to 15 minutes long and meal breaks at least 30 minutes long, but these times vary across industries and occupations. If an employee is unsure of the custom and practice in their industry, he or she can check with their industry association or union.

Instead of breaks an employee can have reasonable compensation if an employer can't reasonably provide the employee with breaks because of the nature of the work or the employer and employee agree. There are no set rules about what reasonable compensation is but it can be the same amount of time off work at an alternative time that the employee would otherwise have taken as a rest or meal break; and provided on the same basis as the rest break.

Employers must provide (extra) appropriate breaks and facilities for employees who wish to breastfeed or express breast milk, where this is reasonable and practicable.

The employer doesn't have to pay the employee for these breaks unless agreed.

Visit www.employment.govt.nz for the latest information.

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 up to one 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.

If an employee leaves before completing a full year of employment, 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 (for less than 12 months) can agree to receive holiday pay on a "pay as you go basis" if certain conditions are met. For more information visit www.employment.govt.nz.

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

Public holidays

Employees are entitled to 11 public holidays 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 (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 they would normally work, the employee is also entitled to an alternative paid holiday.

Employers and employees can agree to transfer the observance of a public holiday to another working day, to meet the needs of the business or individual employees. However, the number of public holidays the employee is entitled to can't be reduced. The day the public holiday is transferred to is treated as a public holiday for pay and leave purposes.

Visit www.employment.govt.nz for a list of public holidays and the Relevant & Average daily pay calculator.

Sick leave

After 6 months of continuous employment, all employees are entitled to 5 days' sick leave with pay.

Employees are entitled to 5 days' sick leave for every 12 months after that and can carry over 15 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 or partner is 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 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 is responsible for the costs the employee incurs to gain proof. Employers can't insist employees visit a particular medical practitioner.

Bereavement leave

After 6 months continuous employment all employees are entitled to paid bereavement leave of:

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

The Relevant & Average daily pay calculator at www.employment.govt.nz can help you with leave entitlements.

Parental leave and parental leave payments

Employees may be eligible for parental leave and / or parental leave payments if they meet certain criteria.

Parental leave and parental leave payments are two different things and the criteria for eligibility are different for each.

Parental leave is leave from employment to care for a child. An employee gets this from their employer.

Employees may be entitled to parental leave (partner's leave, primary carer leave and extended leave) if they meet either the 6 month or 12 month criteria.

The 6 month criteria eligibility:

You must have worked for the same employer for an average of at least 10 hours a week for the 6 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 6-month eligibility criteria are entitled to a total of 26 weeks' leave (including up to 22 weeks' primary carer leave. There will be a further increase up to 26 weeks from 1 July 2020).

The 12 month criteria eligibility:

You must have worked for the same employer for an average of at least 10 hours a week for the 12 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 12-month criteria are entitled to a total of 52 weeks' leave (including up to 22 weeks' primary carer leave. There will be a further increase up to 26 weeks from 1 July 2020).

Employees may share extended leave with a partner who also meets either the 6 month or 12 month criteria. The total extended leave taken or shared can't be more than 52 weeks or 26 weeks if they both only meet the 6 month criteria. If one partner is eligible for 52 weeks and the other 26, then the employee with 26 weeks entitlement can't take more than 26 weeks.

A partner who meets the 6 month criteria is entitled to an extra 1 weeks' unpaid partner's leave, and a partner who meets the 12 month criteria is entitled to 2 weeks' unpaid partner's leave.

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

For help understanding entitlement to parental leave, or what to do with an application from an employee, visit www.employment.govt.nz.

Note: To access parental leave payments you must be eligible for primary carer leave.

Parental leave payments (sometimes called paid parental leave) are government funded payments. Employees and self-employed persons may be eligible for this. An eligible person must apply to Inland Revenue for these payments before the earlier of

- › the date they return to work (other than for keeping in touch days), or
- › their baby's first birthday if they or their spouse or partner gave birth to the child, or
- › the first anniversary of the first date on which the person or their spouse or partner became the child's permanent primary carer.

Employees who have been employed (it doesn't have to be with the same employer) for at least 10 hours a week for any 26 weeks of the 52 weeks just before the child's arrival are eligible for government funded parental leave payments of up to 22 weeks – some or all of which may be transferred to a spouse or partner if they also meet the criteria. There will be a further increase up to 26 weeks from 1 July 2020.

To be entitled to payments, the eligible person must either be on parental leave, or otherwise have stopped work (other than for keeping in touch days) during the parental leave payment period.

Inland Revenue has more information about parental leave payments.

Visit <http://www.ird.govt.nz/yoursituation-ind/parents/parents-paid-parental-leave.html>

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.

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. Visit www.employment.govt.nz for more information.

Equal pay and equal rights

Employers can't discriminate in hiring or firing, paying, training or promoting an employee because of 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. Visit www.employment.govt.nz for latest information.

Fixed-term employees

Employers can 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
- › 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.



Trial periods

Employers can make an offer of employment that includes a trial period of up to 90 days. A law change was being considered in mid/late 2018 by Parliament to restrict this to just Small Medium Enterprise (SME) employers with 19 or fewer employees. Visit www.employment.govt.nz for the latest information.

Trial periods are voluntary, and must be agreed in writing and negotiated in good faith as part of the employment agreement.

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.

Unions

Employees have the right to decide whether to join a union and, if so, which union. It is illegal for an employer (or anyone else) to put unreasonable pressure on an employee to join or not join a union.

Employers must, if bargaining has been initiated by a union, enter into bargaining for a collective agreement with that union.

Union members can attend two union meetings (up to 2 hours each) per calendar year on pay and during normal working hours. Employers are required to deduct union fees from employees' wages and pay these to the union if the employee requests this. Some members may be entitled to paid leave to attend employment relations education courses.

Law changes were being considered by Parliament in mid/late 2018 to strengthen collective bargaining and union rights including a union not requiring an employer's consent to visit a workplace. Visit www.employment.govt.nz for latest information.

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 must take reasonable care for their own health and safety, follow policies and procedures, and avoid causing harm to other people by the way they do their work. Employees may refuse work they believe will expose them or others to a serious risk to health and safety arising from an immediate or imminent exposure to a hazard, and have the right to participate in improving health and safety.

Visit www.worksafe.govt.nz

Change and restructuring

Employers must consult in good faith with employees about proposed decisions likely to have an adverse effect on the continuation of an employee's employment.

Employers must provide information to affected employees and give them an opportunity to comment before making their decision. Employers do not have to disclose confidential information if they have a good reason to withhold it.

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.

Special rules apply to employees doing certain catering, cleaning, caretaking, laundry and orderly work where their employer's business is sold or their work is contracted out or given to a new contractor. However, an employer and any associated persons who collectively employ 19 or fewer employees (small and medium-sized enterprise) may be exempt from these rules. A law change was being considered in mid/late 2018 by Parliament to cancel the exemption for Small Enterprise (SME) employers with 19 or fewer employees.

Visit: www.employment.govt.nz for the latest information.

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 resolve the problem, and can have a support person or union/association representative in the discussion. They can get information about rights and responsibilities from www.employment.govt.nz.

If there is still a problem, employees or employers can use MBIE's free Employment Mediation Service. More information on this service and how to request mediation is available at www.employment.govt.nz.

Problems that remain unresolved can be taken to the Employment Relations Authority or later to the Employment Court.

Penalties

There are financial penalties for not complying with employment laws, including pecuniary penalty orders for serious breaches. 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.

