

## **MDJ LAW – LEGAL UPDATE JUNE 2009**

### **90 day Trial Provision amendment - effective from 1 March 2009**

This provision differs from what the Employment Relations Act 2000 ("the Act") describes as a probationary period.

The provision applies for employers who employ fewer than 20 employees, and only in limited circumstances – including, the clause needs to be worded in accordance with the Act and can only be included in the employment agreement by agreement between a "new employee" (employed on or after 1 March 2009 and who has not been previously employed by the company) and employer.

The potential effect of a "90 day trial" provision is that the new "*employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal*" (Emphasis added). It does not however prevent an employee bringing other personal grievances or other legal proceedings, for example for discrimination or unjustified disadvantage.

### **Lots of change effective 1 April 2009**

On 1 April 2009 a number of changes came into effect, including:

- Increase in the adult worker national minimum wage to \$12.50 per hour;
- Changes to the Kiwisaver scheme;
- Introduction of legislative obligations in terms of breastfeeding facilities and breaks, and rest breaks and meal breaks.

### **Breastfeeding facilities and breaks**

In summary, the employer must ensure that "so far as is reasonable and practicable in the circumstances" appropriate breaks and facilities for this purpose are provided. The breaks are unpaid unless otherwise agreed between the parties or by agreement the break takes place at the same time as a standard paid rest break.

A code of employment practice is to be issued, which is currently due in July 2009.

A penalty can be awarded against an employer for a breach so if this is a potential issue for you it is important to seek advice on how it affects your particular workplace.

## **Rest breaks and meal breaks**

The amendment provides for various paid and unpaid rest and/or meal breaks depending on the number of hours worked. For example, in the case of a standard 8 hour day the employee is entitled to:

- Two paid 10 minute rest breaks; and
- One 30 minute meal break.

The amendment also deals with the timing of such breaks, and that an employment agreement can provide for enhanced or additional entitlements to rest breaks and meal breaks.

A penalty can be awarded against an employer for a breach, so it is important to review your current arrangements to see if they comply.

## **Conclusion**

As is clear from the above the new changes are potentially complex and could impact significantly on an individual and businesses generally.

We are happy to provide more detailed advice on how these changes could affect you.

For advice from our employment law specialists either call us on 04 801 5427 or contact us via email:

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