

**MDJ LAW – LEGAL UPDATE  
MAY 2007**

In this update we look at the Government's long awaited KiwiSaver Scheme due to start up on 1 July this year. It is important that employees and employers alike understand the Scheme, because it automatically applies to new employees in particular circumstances unless they opt out.

**KEY POINTS**

- The Scheme only applies to employees/people who live or normally live in New Zealand or those who are employed by State Services and work overseas and New Zealand citizens or people who are entitled to be in New Zealand indefinitely.
- The Scheme also only covers employers if they are a New Zealand resident or if they carry on business from a fixed establishment in New Zealand (as defined by the Income Tax Act 2004).
- The KiwiSaver enrolments rules automatically apply to employees if:
  - (a) They start "new employment";
  - (b) With an employer who is not exempt; and
  - (c) They are between the ages of 18 and 65.
- "New employment" does not include:
  - (a) Temporary employment (casual agricultural workers or employment of 28 continuous days or less).
  - (b) A change of job if the employee stays on the same payroll (this does not apply to employees of state or integrated schools).
  - (c) Situations where employees remain employed in the same business in substance. This covers events such as company amalgamations or the purchase of businesses as going concerns.
  - (d) Situations where business partners receive a salary; people receive parental leave payments or ACC payments (in certain circumstances); people employed as election day or private domestic workers and people who do not have to pay PAYE.
- Employers have to apply to become exempt employers and essentially will only be eligible if they provide their employees with access to a superannuation scheme that complies with the rules in the KiwiSaver Act (ss25-s28).
- When the automatic enrolment rules apply deductions are automatically made from employee's wages (4% of the employee's gross salary or 8% if the employee chooses and gives notice to their employer) and employees are required to become members of a KiwiSaver Scheme unless they opt out.

- Employees can only opt out between the 13<sup>th</sup> and 55<sup>th</sup> day of their new employment by giving notice to the IRD Commissioner or their employer. This time period can be extended however (up to 3 months after IRD receives the first contribution) in certain circumstances. Once an employee opts out, the employer must stop making deductions from their wages/salary.
- An employee has to advise their new employer whether they are a member of a KiwiSaver scheme (among other things) when they start work. They must also either give the employer a KiwiSaver deduction notice (which requires that the employer make deductions from their salary) or evidence that the IRD Commissioner has granted them a holiday from making contributions because of financial hardship (so deductions do not have to be made until the end of the 'holiday'). If the employer is satisfied that the automatic enrolment rules apply to their new employee, they must give notice to the IRD Commissioner of the employee's name, address and tax file number no later than the time the employer is next required to deliver an employer monthly schedule to the Commissioner.
- People to whom the Scheme does not automatically apply are expressly permitted to opt into it by the KiwiSaver Act (ss. 33-37).
- The IRD Commissioner is required to give KiwiSaver information packs to employers who must give them to new employees within 7 days after they start work (if the enrolment rules automatically apply to them). Employers are also obliged to supply employees with an investment statement for the KiwiSaver Scheme they have chosen and advise employees it will apply to them unless they chose another Scheme. Employees can only be a member of one Scheme.
- As referred to above, where employees are suffering or likely to suffer financial hardship if deductions are made from their wages/salaries to a KiwiSaver Scheme, they can apply to the IRD Commissioner for a break or holiday from such deductions. The minimum holiday period is 3 months. If granted and notified by the Commissioner, an employer must stop deductions from an employee's salary.
- The KiwiSaver Act also sets out what Schemes can qualify as KiwiSaver Schemes and prescribes a variety of rules and requirements relating to them, including the establishment of a KiwiSaver Register.
- Finally the Government's Budget (announced on 17 May) contains further details about KiwiSaver, including tax credits for employers and employees, and the phasing in of compulsory matching employer contributions from 1 April 2008.
- For more information about KiwiSaver please go to the Government website [www.kiwisaver.govt.nz](http://www.kiwisaver.govt.nz) or seek specific legal advice.

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