Trialling Employment Law Changes

By Lucia Vincent

Employers face big changes to breaks, trial periods and business sale situations this year. Union rules get a shake up, too. From 6 May 2019, the majority of the Employment Relations Amendment Act 2018 comes into force. Are you and your business ready?

Trial. Period.

Currently any business, irrespective of size, may use a trial period in an employment agreement for a new employee. If used correctly, employers can dismiss a worker with no reason and reduce risk of a personal grievance. Changes mean solely smaller employers (19 or fewer staff) may claim immunity. Signed someone up just before 6 May 2019? The trial period will still apply into August.

Gimme a Break!

Employers already give staff reasonable rest and meal breaks appropriate to the time worked. Changes ditch our currently flexible system (allowing reasonable restrictions and compensatory measures instead of breaks). We revert to a rigid regime requiring an employer to provide at least two 10-minute paid breaks, and one half-hour unpaid break, evenly each eight hours. Exceptions are reserved for essential services and national security. Other legislated breaks may trump the regime if they are better or required (think: truck drivers).

Transfers

Currently, smaller businesses can claim "*exempt employer*" status, when buying a business with vulnerable staff (such as cleaners, caterers and caretakers). If an exempt employer provides a written warranty, it avoids an

obligation it would otherwise have to take on existing staff as a new employer on the same terms and conditions. Changes remove any exemption and restore rights for vulnerable staff to elect to transfer to a new employer.

Take me Back!

If ordered by the Employment Relations Authority or Employment Court, reinstatement forces an employer to take back an unjustifiably dismissed employee. Changes will again make reinstatement a primary remedy for a personal grievance for unjustified dismissal, wherever reasonable and practicable (making it easier to get).

Collective Rules

- Changes restore the rule covering all new employees with the terms and conditions in the main collective agreement in the workplace, for the first 30 days of employment.
- Good faith will once again require parties to conclude a collective agreement unless a genuine reason exists not to (based on reasonable grounds). It's unreasonable to object in principle to collective bargaining; opposing a multi-employer collective agreement is okay (if you oppose it on reasonable grounds …).
- Unions gain a head start when initiating bargaining (20 days).
- A collective agreement must contain the rate of wages or salary payable to employees or types of employees or work. Plus it has to indicate how to get a pay rise (how rates might increase during the term)!
- If requested, an employer must provide information about the role and function of a union to prospective employees in the form provided, unless exceptions apply (ie, material being confidential or containing misleading material about the employer). Failing to respond to a request from a union within 15 working days is a "*yes*" by default to comply with the request.
- Union delegates get reasonable paid time off during normal work hours, to undertake union activities (such as representing employees), without unreasonably disrupting the employer's business or the

delegate doing their job. This might be on notice to the employer or if agreed, randomly.

Impact

Changes impact all employers in some way. Get ready for employment law changes by reviewing your employment practice and policy now, to ensure you and your business are ahead of the game.

For specialist employment law advice on these and other changes, contact Webb Farry Partner Lucia Vincent at lvincent@webbfarry.co.nz.