A–Z OF EMPLOYING

Payroll Essentials

SUPPORTING, FACILITATING & REPRESENTING BUSINESS

BusinessCentral

Contents

Introduction

The management of salary and wages can be complex and raises many issues for employers. The law relating to payroll is taken from a wide range of legislation and established principles. It is important for employers to comply with this law to prevent claims being made by employees at a later date which could result in further liability. This guide provides a working summary of the relevant law and employer obligations. It is aimed at anyone responsible for payroll and/or personnel functions. Because the subject is so large and made up of many different topics, only a brief summary of each area is possible. For further information on any topic please refer to the appropriate EMA Employer Guide and/or A-Z Guide.

Part 1: Types of employment

Casual

A casual employment relationship is short, casual in essence, and there is neither regularity nor continuity of employment. Work may be rejected just as easily as it is accepted. This means that a true casual employee does not gain the advantages of continuous service for the purposes of annual leave entitlements, however they may become entitled to sick and bereavement leave. Casual employees will be paid for public holidays in accordance with the Holidays Act 2003, and if they meet the requirements of the Act, they can be paid annual leave payments “as you go.” Refer to the section on the Holidays Act later in this guide for details of leave entitlements for casuals. Wages will usually be paid on an hourly basis. Casual employees should have a written employment agreement as permanent employees.

Permanent part-time or full-time

Permanent employees have an expectation of ongoing work, and employers have an obligation to provide that work and to pay wages or salary in accordance with the terms and conditions in the written employment agreement. Permanent employees have continuous service for the purposes of leave entitlements. Sick and bereavement leave entitlements for part-time employees will depend on the number and frequency of hours worked. Part-time employees have the same entitlement to annual leave as full-time employees, but the value of that leave will reflect the number of hours worked. Refer to the section on the Holidays Act later in this guide for details of entitlements.

Did you know: Part-time employees have the same minimum entitlements as full-time employees in relation to annual leave, sick leave and bereavement leave. Whilst they do not receive pro-rata entitlements, the payment for these entitlements will often appear to be pro-rata, reflecting the lesser hours a part-time employee works.

Fixed term or temporary

Employers can employ staff on a temporary basis for a specific purpose. Examples of such purposes are: a specific project, seasonal workload, or cover for another employee on leave. The employment agreement must record the reason for the fixed term and when the fixed term will end. This must be either on a specified date, at the occurrence of a specified event, or at the conclusion of a specified project. Fixed term employees are entitled to sick and bereavement leave, and can be paid annual leave “as you go” if the term is less than 12 months.

Salary versus wages

An employee on a salary will generally receive an agreed amount of pay per annum. Whether they are paid extra for any overtime worked will depend on the written employment agreement. It is common for employment agreements to provide that a salaried employee will be required to work some overtime without extra payment. Salaried employees are entitled to the same pay for working public holidays as other employees. Employees on wages are usually paid a set amount per hour worked, and therefore the amount an employee on wages receives can vary depending on work patterns. Employment agreements usually provide for a minimum number of hours of work each week.

Contractors

Employment legislation does not apply to independent contractors, as they are not considered to be employees. This means that they are not subject to the minimum wage and contractors are not entitled to paid holidays and other leave under the Holidays Act. Contractors are not paid wages but are paid on presentation of an invoice. PAYE deductions are not made for contractors, but they are often subject to deduction of schedular payments at a specified rate according to the nature of the service provided. Please refer to the section on schedular payments later in this guide. It is important to distinguish between employees and contractors.

Contracts for Services

In deciding whether a person is an employee or independent contractor, the Employment Relations Act 2000 requires that the Court or Authority must determine “the real nature” of the relationship. This means a consideration of all matters, including the intention of the parties, and any statement describing the nature of the relationship will not be treated as determinative. The Employment Court has held that the application of the statutory test should include the historic common law tests such as the control, integration, fundamental or economic reality, independence, and intention tests. Please refer to the A-Z guide on Contracts for Services for further information about these tests. The Inland Revenue Department has developed a series of checklists of the factors to be examined when determining whether a contract is one “of” or “for” services. Copies of these checklists are contained in an appendix to the A-Z guide.

Employment Agreements

Individual Employment Agreement (IEA)

An employment agreement is an important source of information about the obligations that employers have to employees in relation to payroll issues. Below are some notes on various obligations that may arise through parties’ contractual arrangements which are relevant to payroll.

- Hours of work: This will usually state a standard or minimum number of hours per week and the times between which they are worked. It will also indicate any arrangements for overtime and whether salaried employees are paid for any extra hours worked.

- Salary or Wages: Apart from stating the rate payable, this may also indicate when and how often wages or salary is paid. There may also be provision allowing an employer to make deductions from an employee's pay should the employee owe the employer any money.
- Leave: The Holidays Act 2003 requires that employment agreements include a provision that confirms the right of an employee to be paid at least time and a half for working on a public holiday in accordance with section 50. The Act also requires that at the time an employee enters into an employment agreement with an employer, the employer must inform the employee about his or her entitlements under the Act, and that the employee can obtain further information about his or her entitlements from the union of which the employee is a member, or from the Ministry of Business, Innovation and Employment (formerly the Department of Labour)("the Ministry"). It is good practice for this to be done by attaching a schedule to the employment agreement which outlines the employee's entitlements. An employer and employee may agree to more favourable entitlements such as long service leave, extra annual leave, or the ability to carry over more than 15 days sick leave. However, an employment agreement that excludes, restricts, or reduces an employee's entitlements under the Act has no effect to the extent that it attempts to do so.
- Termination: This should specify the amount of notice required by either party to terminate the agreement. It may also state whether the employer can make payment in lieu of notice, or in the event of an employee not giving the required notice, whether the employer can deduct from the employee's final pay an amount equal to any period of notice not worked.
- Redundancy: This may specify whether or not there is any compensation payable if the employee's position is made redundant. If compensation is payable, a formula for calculating that payment should be included.
- Deductions: This may allow an employer to make deductions from an employee's final pay for any monies owing. If an employee has signed an IEA with a deductions clause, they are deemed to consent to deductions according to the Wages Protection Act. However, an employee can withdraw that consent in writing. Before making any deduction in accordance with a general deductions clause, the employer must first consult with the employee. An employer must not make a deduction from wages payable if the deduction is unreasonable.

From 1 July 2011 employers are required to retain a signed copy of the individual employment, or retain a copy of the terms and conditions of employment that make up the employee's individual terms and conditions.

Collective Employment Agreement (CEA)

A collective agreement covers only those employees who are union members and are caught by the coverage clause of the agreement. If an employee resigns from the union but remains an employee, their employment is bound by an IEA based on the CEA which may be varied by agreement as the employer and employee think fit. Where an employee who is not a union member when the CEA comes into force subsequently joins that union, and is covered by the coverage clause in the CEA, the terms and conditions of that employee's employment may be an amalgam of their IEA and the CEA, provided the terms and conditions of the IEA are not inconsistent with the CEA.

Terms and conditions will not be inconsistent if they are more favourable than those provided by the CEA, or if the terms of the CEA are silent on the matter addressed by the IEA.

New employees who are not union members but whose work is covered by the CEA should be provided with an IEA. Employers must also inform the employee that a CEA exists and the work the employee does is covered by the CEA, inform the employee they can join the union and provide them with details of how to contact the union, if the employee joins the union the employee will be bound by the CEA.

No agreed written terms (verbal contract)

The Employment Relations Act 2000 requires that an employer provide a new employee with a copy of the intended agreement and give the employee reasonable opportunity to seek legal advice on that agreement. Best practice is to reach agreement on the written terms and have the employee sign the agreement before they commence employment. However, often for a variety of reasons this does not happen and the employee starts work for the employer without having signed an employment agreement. This can cause problems later if the employee disputes any of the terms in the agreement. Where an employee continues working but refuses to sign an IEA, the employer may write to the employee and give a reasonable time frame for raising any objections to the terms of the IEA and state that if no objections are raised by that date and the employee continues to work, the employer may presume that the employee intends to be bound by the agreement.

Part 2: Employers' Obligations

Employment Relations Act 2000

Breaks

The Employment Relations Amendment Act effective from the 6 March 2015 repealed the rigid break scheduling that was previously in force. The Act encourages the employer and the employee to negotiate in good faith, rest and meal breaks that comply with legislation without compromising business continuity and flexibility. An employer is still required to provide employees with a reasonable opportunity to take rest and meal breaks that are of an appropriate duration. The Act also proposes to allow an employer to substitute breaks with reasonable compensation therefore allowing for further flexibility.

The Act requires employers to give employees meal breaks and paid rest breaks or provide compensatory measures. Work places will be able to time rest breaks and meal breaks to suit service or production continuity as far as is reasonable (including allowing for those circumstances in which is it is necessary to restrict breaks because of the nature of work being undertaken) with an employer being able to determine the arrangement where an agreement cannot be reached. The rest breaks must be paid and meal breaks are unpaid.

A compensatory measure is defined as a measure that is designed to compensate an employee for employer’s failure to provide rest breaks and meal breaks. It includes(without limitation) a measure that provides the employee with time off work at an alternative time during the employee’s work period, for example by allowing a later start time, an earlier finish time, or an accumulation of time off work that maybe taken on 1 more occasions.

The following is a guideline for breaks appropriate for the duration of the employee's work period:

- Where two hours or more, but not more than four hours have been worked – one 10-minute paid rest break;
- where more than four hours, but not more than six hours have been worked – one 10-minute paid rest break and one 30-minute unpaid meal break; and
- where more than six hours, but not more than eight hours have been worked – two 10-minute paid rest breaks and one 30-minute unpaid meal break.

The default position for rest breaks and meal breaks are to be observed during the middle of the relevant work period. However this can be changed to reasonably suit the work period arrangements.

Union Meetings

Whether or not a union is a party to an applicable collective agreement with an employer, it is entitled to hold union meetings which its members can attend. Employers must allow every employee who is a union member to attend at least two union meetings, of up to a maximum of two hours duration each, each year. Employers are obliged to pay each employee who is a union member and who attends the union meeting, up to two hours ordinary pay, to the extent that the employee would otherwise be working for the employer during the meeting. There is no obligation to pay any employee for any period longer than two hours in respect of any meeting. To assist the employer with the provision of payment for the time in which any employee attended a union meeting, the union must supply the employer with a list of members who attended the union meeting and advise the employer of the duration of the meeting.

Union Fees

Collective and individual agreements are treated as containing a provision that requires the employer that is party to the agreement to deduct, with the employee's consent, union fees from the employee's salary or wages. Agreements can exclude or vary the deduction requirement. Union fees deducted from employees' wages and salaries must be paid to the union concerned in accordance with any agreement made with the union for that.

Employment Relations Education Leave

Employees who are eligible for employment relations education leave must be paid their relevant daily pay (see definition below) for that leave unless they are receiving weekly ACC compensation.

Wage and Time Records

Under section 130 of the Employment Relations Act 2000, employers must keep a record showing:

- The name of the employee; and
- The employee's age if under 20 years old; and
- The employee's postal address; and
- The type of work in which the employee is usually employed; and
- Whether the employee is employed under an individual employment agreement or a collective agreement; and

- In the case of an employee employed under a collective agreement, the title and the expiry date of the agreement, and the employee's classification under it; and
- Where necessary for the purpose of calculating the employee's pay, the hours between which the employee is employed on each day, and the days of the employee's employment during each pay period; and
- The wages paid to the employee each pay period and the method of calculation; and
- Details of any employment relations education leave taken; and
- That the employer has maintained records in sufficient detail demonstrating compliance with minimum entitlement provisions for both waged and salaried employees. It is sufficient compliance to state an employee's usual hours in an employment agreement, or a roster or any other document or record used in the normal course of the employee's employment. An employer must record any additional hours worked even for salaried employees in order to comply with the general requirement to keep records relating to minimum entitlements.
- Such other particulars as may be prescribed.

All or part of the record may be kept electronically and must be kept for 6 years. An employee or their authorised representative has right of access to the record in respect of that employee. Failure to keep or produce such records can result in a penalty of up to $10,000 being imposed by the Employment Relations Authority.

Strikes and Lockouts

The employer of employees participating in a strike or affected by a lockout must keep a record (in the prescribed form) of the strike or lockout, and, within one month after the end of the strike or lockout give a copy of the record to the chief executive of the Ministry.

Employers have the right to suspend employees during strikes and lockouts. The effect of suspension is to remove the right of employees to be paid for the time during which they are striking or locked out. Because this has a direct bearing on employees' wages and time records a copy of a record of strike or lockout should be retained with any source documents kept in respect of employees' wages for 6 years.

Specified pay deductions are allowed in cases of partial strike action. Employers have 2 options for reducing the pay of employees who are party to a partial strike: a proportionate pay deduction made by using the calculation method set out in the Employment Relations Amendment Act 2014 or a fixed deduction of 10 percent. If the employer decides to make pay deductions in response to a partial strike, the Act requires the employer to provide written notification about the deduction to employees before the deduction is made.

Holidays Act 2003

Annual Leave

Employees have an entitlement to a minimum of four weeks' annual leave upon reaching 12 months of completed continuous service. Employees are entitled to be paid while on annual leave at the higher of their average weekly earnings for the 12 months preceding the leave, or their ordinary weekly pay. An employee is entitled to be paid for an annual holiday before it is taken unless the parties have agreed otherwise.

Annual leave entitlements do not expire if the leave is not taken within a certain period – the entitlements remain in place until they are taken as leave or until the employment ends. The Holidays Act 2003 allows an employer to direct an employee to take annual leave if the employer and employee cannot agree as to when it will be taken. It is best practice to consult with an employee where there is a large outstanding leave entitlement, with a view to reaching agreement about when the employee should take leave. If the parties are unable to agree, the employer may provide 14 days' notice and instruct them to take a period of leave.

Average weekly earnings

Average weekly earnings is an employee's gross earnings over a 52 week period divided by 52.

Ordinary weekly pay

Ordinary weekly pay is the amount of pay that an employee receives for an ordinary working week under his or her employment agreement.

It includes:

- Incentive-based payments (including commission);
- Overtime payments;
- The cash value of any board and lodgings if it is a regular part of the employee's pay.

It excludes:

- Productivity and incentive-based payments that are not a regular part of an employee's pay;
- One-off exceptional payments;
- Any discretionary payments not required by the employment agreement;
- Any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

If it is not possible to determine what constitutes ordinary weekly pay for an employee, this must be calculated by taking the total gross earnings for the previous four weeks (or if the normal pay period is longer than 4 weeks, the pay period immediately before the calculation is made), minus any exclusions above, divided by four.

Gross earnings

Gross earnings are all the payments that an employer is required to pay an employee under their employment agreement, including:

- Salary or wages;
- Allowances; (except non-taxable payments to reimburse the employee for any actual costs incurred by the employee related to their employment)
- Payment for an annual holiday, public holiday, alternative holiday, sick leave, bereavement leave;
- Productivity or incentive-based payments (including commission);
- Payments for overtime;

- The cash value of any board or lodgings;
- The first week of compensation paid by the employer under ACC.

It excludes payments that the employer is not bound by the terms of the employment agreement to pay, for example:

- Any discretionary payments;
- Any weekly compensation payable by ACC;
- Any payment for absence from work while the employee is on protected voluntary service;

It also excludes:

- Reimbursements;
- Payment of any employer contribution to a superannuation scheme for the benefit of the employee.
- Compensation payments under redundancy provisions.
- A “cashed up” week of annual leave under section 28B.

A discretionary payment is defined as:

- A payment that the employer is not bound, by the employee’s employment agreement, to pay the employee; but
- Does not include a payment that the employer is bound, by the employee’s employment agreement, to pay the employee, even though:
    - The amount to be paid is not specified in that employment agreement and the employer may determine the amount to be paid; or
    - The employer is required under that employment agreement to make the payment only if certain conditions are met.

Pay as you go

An employer can pay holiday pay as part of an employee’s regular pay at 8% of gross earnings if the employee is:

- Employed under a fixed term agreement of less than one year; or
- Employed so intermittently or irregularly that it is impracticable to provide four weeks’ annual holidays.

The employer may only pay in this way if the employee agrees in his or her employment agreement, and if the annual holiday pay is paid as an identifiable component of the employee’s pay

If an employer incorrectly pays an employee “pay as you go holiday pay” in circumstances other than these, and the employment continues for 12 months or longer, then despite those payments the employee becomes entitled to annual holidays and annual holiday pay without reduction.

Special rules apply where an employee is on a fixed term agreement for less than 12 months and is paid “as you go”, but then accepts an offer of permanent employment. At the end of 12 months’ continuous employment (including the period of the fixed term) the employee will become entitled to four weeks’ annual leave. Any amount the employee has been paid “as you go” under the fixed term agreement may be deducted from this entitlement.

Closedowns

Employers can have one closedown period a year during which they will be able to force their employees to discontinue working regardless of whether they have leave to cover the period of the closedown. Employees must be given 14 days’ notice in writing of the closedown. Different parts of the business may have different closedown periods.

An employee who is entitled to annual holidays at the commencement of a closedown must, if the employer requires them to, take their annual holidays whether they agree to or not. If an employee does not have enough entitlement to cover the whole period of the closedown, the parties may agree that the employee can take the remaining period of the closedown as annual leave in advance.

An employee who is not yet entitled to annual leave at the start of the closedown must discontinue their work. An employer must pay that employee 8% of their gross earnings since they started working or since their last entitlement date less any amount paid to them as leave in advance. An employee will not be entitled to any other remuneration for the period of the closedown however an agreement can be reached that the period of the closedown will be taken as leave in advance.

If an employee without any entitlement to annual leave is required to discontinue their work for a closedown, the employee’s anniversary date for annual leave must be changed to the date on which the closedown began. To avoid having a different date each year, a date may be nominated to be the anniversary date which is reasonably proximate (within a few days) to the actual beginning of the closedown. Employers may also nominate a company closedown date in limited circumstances. Leave in advance

Leave in advance

Prior to reaching their 12 month anniversary date, employees do not have an entitlement to annual leave. However, an employer may allow an employee to take annual leave in advance of their entitlement. Payment for annual leave in advance is at the rate of ordinary weekly pay or, if it is greater, average weekly earnings for:

- The 12 months up to the end of the last pay period before the annual holiday; or
- The period of employment up to the last pay period before the annual holiday, if the employee has worked for less than 12 months (and the divisor reduced accordingly).

Cashing Up

An employer and employee may agree to “cash up” the value of up to one week of annual leave per entitlement year after 1 April 2011. An employee must actually become entitled, that is to pass an anniversary date after 1 April 2011, to annual leave after 1 April 2011 before they may request to have annual leave cashed up. For example, if an employee’s annual leave entitlement date was in December, they would not be able to cash up any annual leave until after December 2011.

Annual leave that is “cashed up” is paid at the normal rate of the higher of the ordinary weekly earnings or the average weekly earnings the same as if the employee took the leave. Payments for “cashed up” annual leave are not considered to be gross earnings. Any request for “cashing up” must come from the employee, and the employer has complete discretion to decline such a request and may even have a policy preventing payout of such a request.

Did you know: Employees and employers cannot agree to ‘trade off’ holiday and leave entitlements against each other, other than as above. The Holidays Act sets out the minimum entitlements which cannot be contracted out of or traded away. However, parties are able to agree to trade off entitlements that are in addition to the minimum legislative provisions, e.g. an extra week’s annual leave.

Annual Leave and Illness/Bereavement

If an employee falls sick or suffers a bereavement before they are scheduled to go on annual leave the employer must allow them to use the leave as sick or bereavement leave.

Once a period of annual leave has started, if an employee falls sick the employer may allow them to take the time as sick leave. However, if an employee suffers a bereavement during a period o`f annual leave the employer must allow them to take the time as bereavement leave.

If an employee’s sick leave or bereavement leave has been exhausted the employer may allow them to use their annual leave.

Sick Leave

All permanent employees become entitled to a full 5 days of sick leave after six months’ current continuous service regardless of how many hours they work a week or whether they are full-time or part-time employees. Sick leave is paid at the rate of relevant daily pay (see below).

A “casual” employee will become entitled to 5 days sick leave if they have, over a period of 6 months, worked for an employer for:

- At least an average of 10 hours a week during that period; and
- No less than 1 hour in every week or no less than 40 hours in every month.

Employees who qualify for sick leave will be entitled to a further 5 days sick leave every 12 months of employment after their initial entitlement has arisen (e.g. at 6 months, 18 months and 30 months). An employee may carry over up to 15 days sick leave so that it accumulates to a maximum of 20 days current entitlement. An employee is not entitled to be paid for any unused sick leave when their employment ends.

An employer may allow an employee to take sick leave in advance. The amount of sick leave can be deducted from an employee’s entitlement when they next become entitled to sick leave. Employers should ensure that the deductions clause in the employment agreement allows for the recovery of any sick leave in advance, should the employment terminate before the next entitlement date is reached.

Relevant daily pay

Relevant daily pay is the amount employees are entitled to be paid for each day they are on sick leave, bereavement leave, for a public holiday or for an alternative day. Relevant daily pay is the amount of pay an employee would have received had they worked on the day concerned.

It includes:

- Productivity or incentive based payments (including commission);
- Payments for overtime;
- The cash value of any board or lodgings provided.

It does not include:

- Any payment of any employer contribution to a superannuation scheme for the benefit of the employee.

Average daily pay

If it is not possible or practicable to determine an employee's relevant daily pay as above or if the employee's daily pay varies within the pay period when the holiday or leave falls, an employer may use the average daily pay calculation. Average daily pay is calculated by taking the gross earnings over the previous 52 calendar weeks before the end of the pay period and dividing that by the number of whole or part days during which the employee earned those gross earnings.

Sick Leave and ACC

An employer is not required to pay an employee sick leave and cannot force an employee to take sick leave when they are receiving compensation from ACC. However, an employee can use sick leave for the first week of incapacity if they suffer a personal injury that is not work related. If the employee suffers a work related injury the employer will be liable for 80% of lost earnings for the first week of incapacity and cannot deduct this from the employee's sick leave. However, an employer can "top up" the difference between compensation from the employer for the first week of a work related injury or ACC compensation and the employee's ordinary weekly pay and deduct 1 day of sick leave for every 5 days they make that payment.

Bereavement Leave

All permanent employees become entitled to bereavement leave after six months current continuous service regardless of how many hours they work. Bereavement leave is paid at the rate of relevant daily pay.

A "casual" employee will become entitled to bereavement leave if they have, over a period of 6 months worked for an employer for:

- At least an average of 10 hours a week during that period; and
- No less than 1 hour in every week or no less than 40 hours in every month.

An employee will be entitled to 3 days of bereavement leave for each bereavement suffered on the death of an employee's:

- Spouse;
- Parent;
- Child;
- Brother or sister;
- Grandparent;
- Grandchild;
- Spouse's parent.

An employee will be entitled to 1 day of bereavement leave for each bereavement suffered on the death of any other person if the employer accepts that the employee has suffered a bereavement as a result of the death. In considering whether the employee has suffered a bereavement, an employer may have regard to:

- The closeness of the association between the employee and the deceased person;
- Whether the employee has responsibility for any funeral arrangements;
- Any cultural responsibilities of the employee in relation to the death.

Bereavement leave is an unlimited entitlement which arises for each bereavement an employee suffers.

Public Holidays

Employees are entitled to 11 public holidays per year. An employee will be entitled to have the day off and to be paid their relevant daily pay if a public holiday falls on a day that is otherwise a working day for an employee. An employee for whom the public holiday is not otherwise a working day and who does not actually work on the day is not entitled to any payment for the day.

Transfer of a public holiday

An employer and employee may agree in writing, whether in an employment agreement or not, to transfer a whole or part of a public holiday to another day. A part transfer may be used where a shift spans midnight and has the effect of making the whole of one shift a public holiday and the whole of the other shift not a public holiday, even when both shifts have some time during the calendar public holiday. A whole transfer may be used to transfer a public holiday to a completely different day, which could be for example one on which the employee has a significant religious or cultural connection with.

Otherwise working day

An employer will need to ascertain whether the day on which the public holiday falls is "otherwise a working day" for that employee to determine their entitlements on a public holiday. Employers should ask themselves - "if it wasn't for the public holiday would the employee normally work on this day of the week/month?" Rosters and work patterns can help to determine whether an employee would normally work on a particular day.

If it is not clear whether a day would otherwise be a working day, the parties must take into account:

- The employee's employment agreement;
- The employee's work patterns;
- Any other relevant factors, including:
    - Whether the employee works for the employer only when work is available;
    - The employer's rosters or other similar systems;
    - The reasonable expectations of both parties that the employee would work on the day concerned;
- The reasonable expectations of both parties that the employee would work on the day concerned;

All employees for whom the day is otherwise a working day will be entitled to payment for the public holiday regardless of whether they have just commenced employment or whether they are permanent, fixed term or casual employees.

Time and a half

Every employee who works on a public holiday is entitled to be paid "time and a half" regardless of whether the day is otherwise a working day or not. Time and a half is defined as being the greater of:

- The portion of the employee's relevant daily pay (less any penal rates) that relates to the time actually worked on the day plus half that amount again; or
- The portion of the employee's relevant daily pay (including penal rates) that relates to the time actually worked on the day.

A penal rate is an identifiable additional amount that is payable to compensate an employee for working on a particular day of the week or a public holiday but does not include, for example, an additional payment for a sixth or seventh day of work.

Alternative Days

An employee who works on a public holiday that is otherwise a working day is entitled to a whole working day off known as an alternative holiday (regardless of the amount of hours actually worked on the public holiday). Employees who are on call on a public holiday may also be entitled to an alternative holiday if the nature of the restriction of them being on call on their freedom of action is such that for all practical purposes, the employee has not had a whole holiday. An employee is not entitled to an alternative holiday if they work only for the employer on public holidays.

An alternative holiday is paid at the employee's relevant daily pay for the day which is taken as an alternative holiday. If an employee has not taken their alternative holiday before the day their employment ends, the alternative holiday is to be paid at the rate of the employee's relevant daily pay for his or her last day of employment.

An employee may request to exchange their entitlement to an alternative holiday for payment if 12 months have passed since the entitlement to an alternative holiday arose. If the employer agrees to this request the alternative holiday can be paid out at the amount agreed to between the employer and the employee.

Public Holidays and Annual Leave

A public holiday that occurs during an employee's annual holidays must be treated as a public holiday and not as annual leave. An employee who has an entitlement to annual leave at the time their employment ends will be entitled to be paid for any public holiday that would have occurred had they taken their remaining entitlement immediately after the date on which their employment ended. An employer only has to project forward by the amount of entitlement to annual leave an employee has and not by the amount of annual leave an employee has "accrued" through an incomplete year.

Public Holidays and Sick Leave

Where a public holiday falls and an employee was expected to work on that day, but was unable to work due to illness or injury, the employee is to be paid for the day as a public holiday not worked. The employee would not be eligible for time and a half or an alternative day. No sick leave should be deducted from the employee's entitlement for that day.

Easter Sunday

Easter Sunday is not defined as a public holiday. However, there are often trading restrictions that will apply to an employer making it unable to provide work for employees on the day. If an employee works on Easter Sunday, they are entitled to their usual rate of pay (as it is not a public holiday) unless the employment agreement provides otherwise. If the day is a normal working day for an employee, but the employer does not require the employee to work due to shop trading restrictions, any payment obligations will depend on the agreement between the parties.

Under common law principles, where an employee is ready, willing and able to perform work on a contracted day of work, the employer will have an obligation to provide work. If the employer does not provide work, this may give rise to an obligation for payment for the day. An employment agreement can specify whether an employee will be required to work on Easter Sunday and whether the day will be paid or unpaid.

Unpaid leave

For the purpose of ascertaining when an employee becomes entitled to annual leave, continuous employment includes any period during which an employee was:

- On paid holidays or leave under the Holidays Act 2003;
- On parental leave;
- On protected voluntary service or training;
- Receiving weekly compensation from ACC;
- On unpaid sick leave or unpaid bereavement leave;
- On unpaid leave for any other reason for a period of no more than 1 week.

On unpaid leave for any other reason for a period of no more than 1 week.

Did you know: If you have an employee who is on agreed unpaid leave when a public holiday falls, you may not be required to pay them for the public holiday. If an employee is already on unpaid leave, then the day would not be considered to be a day that they would otherwise have worked as the parties have already agreed that the employee is not expected to be at work during that period.

Parental Leave and Employment Protection Act 1987

Parental leave is a form of employment protection for employees who are having or adopting children. Where the employee is eligible for parental leave, the employer will have to keep the employee's position open for the employee's return. Parental leave is not paid for by the employer, unless the parties have agreed to this as part of the employment agreement.

Depending on the employee's length of service (see A-Z Guide to Parental Leave), an employee may be entitled to maternity to maternity leave of 18 weeks, paid by the government. This 18 weeks is also known as primary carer leave. There may also be an entitlement to unpaid extended leave of up to 52 weeks, and to unpaid special leave of 10 days during the pregnancy. Partners may have an entitlement to unpaid partners' leave of either one week or two weeks, as well as unpaid extended leave of up to 52 weeks.

Return to work

An eligible employee receiving a parental leave payment can perform up to 40 hours of paid work for his or her employer while they are receiving parental leave payments.

Where an employee fails, without good cause, to return to work following a period of parental leave or informs the employer that they have decided not to return to work, their employment shall be deemed to have ended as from the day on which the period of parental leave began.

Parental Leave and Annual Leave

Any time away from work on statutory parental leave is deemed to be continuous service and the employee will retain their normal anniversary date.

If an employee's anniversary date falls during either:

- Any period when the employee is on parental leave; or
- A period of preference; or
- The period of 12 months commencing on the date on which the employee returns to work after a period of parental leave or a period of preference; then

The employee becomes entitled to annual holidays. However, the value of those annual holidays is affected by the taking of parental leave.

When an employee who has become entitled to annual holidays in any of the above circumstances takes those annual holidays, the employer must pay the employee annual holiday pay for the agreed portion of the entitlement at the rate of the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday. This is not at the greater of ordinary weekly pay or average weekly earnings, and includes any weeks in which the employee was not earning due to parental leave.

This differing method of calculation where parental leave is involved only applies when the employee takes annual leave to which they have become entitled; there is no statutory provision for when annual leave is taken in advance. Therefore, should an employee take annual leave in advance of an entitlement date for a year that includes parental leave, it is arguable that they should be paid the higher of average weekly earnings or ordinary weekly pay. In short, should the employee take annual leave in advance, it likely will be worth substantially more than had they waited until after their entitlement date.

Did you know: Employees commencing a period of parental leave should not be 'paid up' their outstanding annual leave entitlements. An employee may take a period of annual leave before going on parental leave, or between entitlements (for example, between paid maternity leave and unpaid extended leave) by agreement with the employer, but they should never be 'paid out' their annual leave entitlement as though their employment had ceased, unless they make a request for one week to be paid out under section 28A of the Holidays Act 2003.

Volunteers' Employment Protection Act 1973

Unpaid "volunteers' leave" is available to members of the territorial or reserve forces in the following 3 circumstances:

Protected Voluntary Service

For periods of whole and part-time voluntary service or training of, respectively, 3 months and 3 weeks in any training year. A training year runs from 1 July in one year to 30 June the following year. An employee who takes 3 months "whole-time" service is entitled to an extended leave period not exceeding 7 days when service ends. The leave may be further extended because of sickness or other reasonable cause.

The employer can refuse to allow a casual, temporary or seasonal employee to return to employment if, having regard to general conditions applying in the industry concerned, his or her work would not normally have continued until the end of the leave of absence period. Otherwise the employee is entitled, on returning to work, to be re-employed in the job he or she was doing at the time leave began. All employees are eligible for leave of this kind, regardless of how long they have worked for their employer.

In times of War or Emergency

Where the employee is called out for continuous service in New Zealand or elsewhere, in a time of war or emergency, including any state of emergency declared under the Civil Defence Emergency Management Act 2002. Leave in this circumstance is for an unspecified period of time. Eligibility for employment protection in this situation requires employees to be employed by their employer for at least 10 hours a week. An employee does not have to have worked for a continuous period for the same employer over the previous 12 months.

National Interest

Where an Order in Council has declared that it is in the national interest for members of the territorial or reserve forces to offer themselves for special service, those who respond are protected by the Act for a period of up to 12 months. Leave must be taken as a continuous period and is unpaid.

To be eligible for employment protection under this section of the Act employees must have been employed for 12-months for at least an average of 10 hours a week and no less than 1 hour every week or no less than 40 hours in every month.

If an employee is absent on special service in the national interest for a period exceeding 28 days, the employer may be entitled to be paid (by the government – regulations made under the Act are to provide for this) an amount equal to the highest minimum wage rate for the days or hours, or both, during which the employee would usually perform work for the employer.

Continuous service entitlements

When an employee takes leave under any of the three categories of volunteers leave outlined above, the employee's service is treated as unbroken in respect to any rights and benefits conditional on unbroken service and any period of leave is treated as time served under the employee's employment agreement (with certain exceptions in relation to annual and public holidays and superannuation – required contributions must still be paid).

National service, Annual Leave and Public Holidays

An employee is entitled to take all or part of his or her annual holiday entitlement (except where the employee requests otherwise) at a time that is not a period of voluntary service or training.

Where the entitlement to an annual holiday arises while the employee is on leave, during the preference period, or during the 12 months following a return to work, annual holiday pay is paid only at the rate of average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.

Where a paid public holiday occurs during a 3 month or 3 week period of voluntary service or training, the employer is not obligated to pay the employee for the public holiday. It is presumed that this would also apply to periods of leave for service in the national interest or in time of war or emergency.

Health and Safety in Employment at Work Act 2015

The Act provides for paid leave for representatives to attend health and safety training, as well as establishing obligations on employers for the provision of protective equipment.

Health and Safety Training

Subject to your organisation's employee participation system, you may have an obligation to allow a health and safety representative two days' paid leave each year to attend health and safety training as approved by Minister of Labour.

You must pay the employee (unless they are a volunteer) their relevant daily pay for every day or part of a day taken by the employee as such leave, unless the employee is being paid weekly ACC compensation.

Protective Equipment

The Act requires employers to "provide, make accessible to, and ensure the use by the employees of suitable clothing and equipment to protect them from any harm that may be caused by or may arise out of the hazard". In workplaces where protective clothing, footwear or other protective equipment is needed to protect employees from harm, it is the responsibility of the employer to provide this clothing or equipment without cost to the employee. Employers may pay for and provide the equipment to employees, or may make an agreement to reimburse the employee upon presentation of the receipt for purchase.

Contractual Obligations

In addition to obligations on employers arising through legislation, an employer may agree on additional terms and conditions in the employment agreement. These are obligations an employer chooses to be bound by, as opposed to obligations which are imposed by legislation.

These terms often vary widely depending on the industry. Employment agreements may contain entitlements to benefits such as (amongst others) redundancy compensation, long service leave, bonuses, overtime and allowances. The difficulty in assessing how these entitlements are to be paid to employees arises because they are the result of a specific agreement between the employer and employee (or union), and not the result of legislative obligation. Therefore, the employment agreement must be specific in stating how the entitlement is to be met, and what conditions apply, as there is generally no legislation to help interpret or determine what the parties had intended at the time of making the agreement.

Below are some common features of employment agreements and some of the payroll difficulties that might arise.

Long Service Leave

Agreements may provide for a number of "weeks" long service leave where an employee has been employed by the employer for a particular term. The agreement should specify how these weeks are to be paid, for example, whether they are calculated as per statutory annual leave or whether a different calculation will be used. If the agreement does not state a method of calculation, the employer and employee will have to agree on an appropriate method for payment.

Redundancy compensation

Redundancy compensation is not currently required under legislation, but it may be an agreed term of an employment agreement or part of company policy. Difficulty often arises where an employee has taken some form of long-term leave, for example ACC, parental leave or unpaid leave, and the redundancy provisions do not specify whether this leave is considered to be part of the employee's continuous service. There may also be difficulty where the employment agreement provides an entitlement to a number of 'weeks' compensation, without defining how these 'weeks' are calculated. Parties should be careful in the wording of agreements to state how the entitlement will be calculated. Depending on how the redundancy clause is structured, the employer may find itself liable to include the value of additional benefits, for example health insurance or the use of a motor vehicle, in redundancy compensation calculations.

Overtime

Some agreements provide for an overtime or penalty rate where hours are worked outside of, or in addition to, the usual hours of work. The rate may be the employee's usual hourly rate of pay, or it may be a higher rate. Agreements may alternatively state that the salary amount compensates employees for any additional hours worked, so that the employee does not receive extra payments when they work extra hours.

There can be confusion where an overtime or penalty rate is provided but the employee has been absent from work. For example, if an employee is entitled to 'time and a half' for all hours above 40 per week, and the employee took 8 hours' sick leave during that week (making a total of 40 hours), should they be entitled to overtime rates if they reach a total of 45 hours that week? Often this will depend on how the overtime clause is worded. If it is specifically stated that only hours that are physically worked will be counted towards the employee's number of hours for overtime purposes, then there will be no requirement to pay overtime for those extra hours due to the sick leave. If this is not made clear, an employer could be liable to pay overtime where employees have not actually been at work.

Enhanced entitlements

Agreements can provide for enhanced entitlements to statutory benefits. For example, an additional week of annual leave, extra or unlimited sick leave, or employer-paid parental leave. Because the terminology used to describe these extra benefits is often similar to the statutory (compulsory) entitlement, there is sometimes confusion as to whether the rules of the statute also apply to the extra benefit. Employment agreements should be specific as to whether the parties intend to apply the rules of the statute to the extra entitlement. Unless those rules are excluded, the employer may find that it is required to apply the statutory rules. One example is the provision of an extra week of annual leave, where the agreement is often silent as to whether the payment for the extra week is calculated according to the Holidays Act, or in some other way. Another example is where extra sick leave is provided, but the agreement is silent as to whether medical certificates must be provided with each absence that is above the statutory amount.

Payment date

Many employment agreements provide for when an employee is to be paid. This may state that payment is weekly, fortnightly or monthly, or on a particular date, and it is important to be aware that this is a contractual obligation.

Changing the payment date

Where a public holiday or other non-working day falls on the date on which employees would usually be paid, employers may be unable to meet that obligation. In these situations, it is best practice to make the payment at least one or two working days before the public holiday. If proposing to make the payment after the public holiday, the employer should consult with employees (or the union) to get agreement as to a suitable alternative date for payment.

Changing the pay frequency

An employer may want to change the pay frequency, for example from weekly pay to fortnightly pay periods. If there is no written agreement between the employer and employees (or union) regarding pay frequency, the employer should follow a fair consultation process, considering in good faith any concerns employees may have about the change before implementing the new pay frequency.

If the employment agreement provides for a specific frequency of pay, the employer may only alter this through agreement with its employees or the union. A similar consultation process should be followed, with any agreement recorded in writing as a signed variation.

Part 3: Paying Wages

Wages Protection Act 1983

The Wages Protection Act ensures that an employee receives the wages or salary owed to them in an appropriate form, without unauthorised deduction and without any stipulation as to how the wages or salary is spent.

Wages to be paid in money

The Act stipulates that employees are to be paid in cash, or with the employee's written consent by another method specified by the Act. Crown and local authority employees are an exception to this and may be paid by cheque. The methods by which, with written consent, an employer may pay an employee are:

- postal order;
- money order;
- specified cheque; or
- lodgement at a financial institution to the credit of an account standing in the name of that worker or in the name of that worker and some other person jointly.

The employee's consent can be varied or withdrawn with two weeks written notice of cancellation or change of the previous authority.

Mode of spending

An employer cannot impose any requirement on an employee as to the manner in which they will spend their wages and cannot dismiss an employee due to the manner in which they spend their wages.

Wage deductions

Employees have the right to receive the entire amount of wages payable to them unless they have consented in writing to a wage deduction, or the deduction is made in accordance with a statutory requirement (such as PAYE deductions or deductions under the Child Support or Student Loan Scheme Acts). This is so even though the employee may owe a debt to the employer

Before making any deduction in accordance with a general deductions clause, the employer must first consult with the employee. An employer must not make a deduction from wages payable if the deduction is unreasonable.

An employee can withdraw any written consent previously given by providing the employer with written notice. When an employer receives that notice, they must, within two weeks if practicable or as soon as practicable in every other case, cease making or vary the deductions concerned as required. This does not apply to a deduction agreed to in a current collective employment agreement, or to a deduction made in terms of a statutory authority as above.

Overpayments of wages

An employer must have an employee's written consent to recover overpayment of wages in most circumstances. One way in which written consent can be obtained is in the employment agreement by way of a "Deductions Clause". For example:

"The employer may make a deduction from your next salary/wage payment, should any overpayment have been made to you. You agree in the event of the termination of your employment, to the deduction from your final pay of any proven debt owing to the Company."

Without written consent, employers can only recover overpayments where:

- The overpayment results from strike action or the employee being absent from work without the employer's authority; and
- The method or equipment used in paying the employee made it impractical to avoid the overpayment; and
- Notice of the employer's intention to recover the overpayment has been given to the employee no later than the next pay day; or
- the first day upon which that worker attends work after the next pay day during normal working hours in the case of an employee who did not attend work during normal working hours on the next pay day; or
- the first day upon which that worker attends work after the next pay day during normal working hours in the case of an employee who did not attend work during normal working hours on the next pay day; or
- The overpayment is recovered not later than 2 months after the notice was given.

Written notice to the employee should include that the authority to make the deduction is contained in section 6 of the Wages Protection Act 1983.

Note: An employer may seek, under the Judicature Act 1908, to recover any wages paid by mistake. The money will be recoverable, in whole or in part, unless the court considers that it was received in good faith and the employee altered his or her position in reliance on it.

Further Information

There are other areas covered by the Wages Protection Act, such as a prohibition against charging a premium for employment and the ability of an employee to recover wages in the Employment Relations Authority. There are also penalties for breach of the Act. More information can be found in the A-Z guide to Wages Protection.

Minimum Wage Act 1983

The Minimum Wage

The minimum wage rates are reviewed every year and changes generally take e ect in April each year. The current rates came into force on 1 April 2017.

The current rate is:

$15.75 per hour for those 16 years and over (except those on the starting out wage and those under a training contract).

$12.60 per hour for those on the starting out wage and those under a training contract.

There is no minimum wage for persons working who are under 16 years of age.

Fortnightly Minimum Wage

Until June 2014, the minimum wage could only be assessed on an hourly, daily or weekly basis. This approach did not take into consideration current work practices such as salaried employees operating on a fortnightly basis. In response, the Fortnightly Minimum Wage Order took e ect on June 26 2014. This permits employers to average this fortnightly so that workers are to be paid $1,260 per fortnight plus the minimum hourly rate for each hour above 80 hours per fortnight.

Trainees

Training wage rates apply to employees aged 20 years or over whose contact of service requires them to undertake at least 60 credits a year of an industry training programme in order to become qualified for the occupation to which the contract relates.

The Starting-out Wage Rate

The Minimum Wage (Starting-out Wage) Amendment Bill came into effect on 1 May 2013 and replaced the new entrants rate and the training rate for under-20s:

- 16 and 17 year olds in their first six months of work with every new employer. After six months that employer must pay the young person at least the adult minimum wage
- 18 and 19 year olds who have been paid a benefit for six months or longer, and who have not completed six months of continuous work with any employer since starting on a benefit. After six months the employer and any future employers must pay the young person at least the adult minimum wage even if they should return to further time on a benefit
- 16 to 19 year old workers in a recognised industry training course involving at least 40 credits per year. Once the young person stops doing at least 40 credits a year they must be paid at least the adult minimum wage, provided they do not meet other criteria for a starting-out wage.

The starting-out wage is set at 80 per cent of the adult minimum wage.

Exceptions to the minimum wage

An employee who satisfies a Labour Inspector that he or she is incapable of earning wages at the rate prescribed by the Act may be permitted to accept wages at lower rates, as specified in an under-rate workers' (employee's) permit.

Deductions

The Act provides for deductions for:

- The cash value of board or lodging, where the board or lodging is provided by the employer. The deduction from an employee's wages for board may not exceed 15% of the employee's gross earnings and the deduction from an employee's wages for lodging may not exceed 5% of the employee's gross earnings.
- The time lost by reason of the default of the employee. The employee is in default when the employee is responsible for the failure to work. The time lost by reason of the employee's illness or injury.

KiwiSaver Act

All new, eligible employees who commence employment on or after 1 July 2007 will be automatically enrolled in KiwiSaver and can choose to contribute 3%, 4% or 8% of their before-tax pay. Where an amount is not chosen, the default rate of 3% of their gross wages will be deducted by the employer starting with their first pay packet. Employees can also choose to increase their contributions once every three months, but can be within a shorter timeframe if the employer agrees. To do this, the request to change the rate must be made in writing to the employer.

The money is sent to the Inland Revenue Department (IRD) when the employer forwards their PAYE payments. IRD will then pass that money on to approved fund managers who will invest that money for the employee.

When contributions on behalf of a particular employee are sent to IRD for the first time, IRD will hold that money for three months to ensure all the administration is sorted out. However, after that initial three month period the money will be forwarded on to the fund managers, and all future contributions will be forwarded to the fund managers as soon as practicable.

Opting Out

If the employee does not wish to belong to KiwiSaver, they can opt out between Day 13 and Day 55 of starting their new job. If the employer has made deductions but not yet paid it to IRD, the employer can refund those deductions to the employee when they receive notification that the employee has opted out. If those deductions have been forwarded to IRD, the employee can request IRD to refund that money to them.

Taking a contributions holiday from KiwiSaver

An employee can take a 'holiday' from KiwiSaver if they meet the holiday criteria. The IRD will notify you if an employee is going on a contributions holiday. A contributions holiday can be between three months and five years. Whilst an employee is on a contributions holiday you do not deduct a KiwiSaver contribution from their pay, nor is a compulsory employer contribution required.

Compulsory Employer Contributions

From 1 April 2013 employers are required to contribute to employee's KiwiSaver account or complying fund at 3% of their gross salary or wage. KiwiSaver employer contributions need to be paid with PAYE while contributions the employer makes to the employees' complying funds need to be paid directly to the applicable scheme. From 1 April 2012 compulsory employer contributions are no longer exempt from Employer Superannuation Contribution Tax (ESCT).

Once an employee is 65 years and has been in KiwiSaver for 5 years, employer contributions are no longer compulsory.

Voluntary employer contributions

An employer can choose to make voluntary contributions to a KiwiSaver account. Voluntary employer contributions include any contributions over and above the compulsory employer contribution rate to employees are subject to Employer Contribution Superannuation Tax (ECST).

Total Remuneration Arrangements

An employer's compulsory contributions must be on top of an employee's regular pay unless otherwise agreed in good faith. Good faith requires that an employee's total remuneration is not reduced by overall by the inclusion of a total remuneration clause; instead the compulsory employer contribution should have been offset by pay increases since KiwiSaver came into effect.

Please refer to the A-Z Guide to KiwiSaver for further information.

Automatic enrolment

Automatic enrolment rules apply to every employee who:

- Starts new employment with an employer that is not an exempt employer; and
- Is aged 18 years or over, but less than the qualification age for New Zealand superannuation.
- However, exceptions may apply (see below).

New employment excludes:

- Temporary employment; and
- Employment in respect of which the employee remains on the same payroll; and
- Employment with an employer that carries on the same business. For example there is an amalgamation, sale or transfer of the business. (Note: The employer must give notice to the IRD).

Temporary employment is where:

- Employment is under a contract of service that is for a period of 28 continuous days or less; or
- The employee is a casual agricultural worker (as defined in the Income Tax Act) for less than 3 months; or
- From 1 April 2008: Employment is as described in Section 28(1)(a)(ii) of the Holidays Act: "Works for the employer on a basis that is so intermittent or irregular that it is impracticable for the employer to provide the employee with 4 weeks annual holidays".

A temporary employee is captured by the automatic enrolment rules when:

- A decision is made to extend the contract of service beyond 28 days; or
- A casual agricultural worker's employment is extended beyond 3 months; or
- The employment ceases to be as described in section 28(1)(a)(ii) of the Holidays Act.

Employment in State or Integrated Schools

For employees in a state school or integrated school, the Board of Trustees is the employer for the purposes of KiwiSaver. Therefore a change of schools is treated as new employment and the employee will be subject to KiwiSaver despite the fact they stay on the same payroll. A bill is currently before Parliament to amend this situation, so that employees transferring between schools will not be subject to automatic enrolment.

Other situations

The automatic enrolment rules do not apply if the person is an employee only because they are:

- Receiving a payment relating to Working partners (see Income Tax Act);
- Receiving paid parental leave under the Parental Leave and Employment Protection Act;
- Receiving certain ACC payments;
- An election day worker;
- A private domestic worker; or
- Not required to have tax deductions from salary or wages.

Overseas workers

The automatic enrolment rules only apply to employees who are both living, or normally living, in New Zealand in person; and New Zealand citizens or entitled to be in New Zealand indefinitely.

Secondments

Employees who have been seconded to another organisation are specifically excluded from automatic enrolment both when they start the secondment and when they return to their original organization, even if they change payroll systems.

Important Notes

1. The date for ceasing deductions, starting deductions or changing the deductions rates between 3%, 4% and 8% is to be calculated in the next pay after receiving notification. This means that if the payroll has already been calculated, but a notice is received before the pay is actually credited to the employee, the changes take effect in the next pay cycle.
2. An employee, who is a member of KiwiSaver, does not have the option of opting out again when they change jobs.
3. The IR345 form is to be completed by employers and sent at the time of paying PAYE. If this is not done, the employer will not be entitled to the employer tax credit on its contributions and the payment will be deemed by IRD to be a short payment.

Calculating contributions

The employer is obliged to deduct a minimum of 3% (4% or 8% if the employee requests) of an employee's gross salary or wages. The compulsory employer contributions are also calculated on gross salary and wages.

In summary, salary and wages includes all payments including overtime, allowances, bonuses, commissions and extra payments that attract PAYE.

The following are excluded from gross salary and wages:

- Redundancy payments;
- The value of overseas accommodation and cost of living allowances;
- The value of providing board or lodging (or an allowance for this purpose); and
- Retirement pensions.

Paid parental leave under the Parental Leave and Employment Protections Act and ACC payments are included in the employee contributions, but not in the employer contributions.

A retiring gratuity paid upon leaving is included in KiwiSaver calculations.

For complying funds only, bonuses and commissions are not included if they were excluded in the complying fund.

Employer Checklist

1. Consider if an employee is subject to the automatic enrolment rules. If not, there is nothing more for the employer to do.
2. If so, immediately:
    a. Deduct 3% gross salary and wages as KiwiSaver contributions (unless an exception applies); and
    b. Pay the compulsory employer contributions.
3. First 7 days - give new employees a KiwiSaver information pack obtained from IRD (unless they complete a form saying they are already part of KiwiSaver).
4. Include name, address and tax number details of new employees eligible for KiwiSaver when you send your monthly schedule to IRD.
5. Send KiwiSaver contributions to IRD when you send the PAYE.
6. Send KiwiSaver contributions to IRD when you send the PAYE.
7. Advise IRD if you receive a KiwiSaver opt out form from the employee.
8. If IRD writes to you about KiwiSaver in relation to a particular employee, follow those instructions as at the next time you calculate the pay.

Tax and KiwiSaver

As of 1 April 2013 the compulsory employer contribution rate is 3% of the employee's gross salary or wages.

employee's gross salary or wages. Any employer contributions which are voluntary to KiwiSaver schemes are subject to ESCT. The following scenarios where voluntary employer contributions are made will attract ESCT:

- over and above the compulsory employer contribution rate
- to employees aged under 18 or over 65 years (and who have been a member for more than five years)
- to employees on a contribution holiday, or
- to employees who are on leave without pay.

KiwiSaver Grace Periods

A 'Grace Period' is given to employers where they have not correctly deducted KiwiSaver contributions from an employee's wages or paid employer contributions.

What is a grace period do and when does it apply?

An employer does not have to pay a compulsory employer contribution for a payment of gross salary or wages to an employee in a grace period, if, for the whole of the relevant grace period,—

a. or more of the following apply:
    - the automatic enrolment rules apply to the employee:
    - . the employer does not receive a notice from either the employee or IRD that the employee has opted in; and

b. the employer does not deduct KiwiSaver contributions from an employee's salary or wages; and

c. the employer does not receive a notice from IRD informing that the person should have been automatically enrolled or opted in.

d.

How long does the grace period last?

The grace period time is —

i. the period starting on the day that the employee starts new employment and finishing on the earlier of the day—
    - that is 1 year after the day that the employee starts new employment:
    - that the employee ceases employment:

ii. the period starting on the day that is 1 year after the day that the employee starts new employment and finishing on the earliest of—

iii. the day that is before the day on which the employer receives a KiwiSaver Opting In Form (KS1) or notice from IRD that an employee has opted in directly to a KiwiSaver Provider:

iv. the day that is before the day on which the employer receives a notice from IRD (s61 notice) that requires the deduction of contributions for the employee:

v. the day that the employee ceases employment.

ACC

First week compensation

Employers are liable to pay first week compensation when an employee suffers:

- A work-related personal injury including a motor vehicle injury; and
- A motor vehicle injury that is defined as a motor vehicle injury rather than a work-related personal injury.

Under this Act, employers have a duty to pay this compensation, which is 80% of the amount of employee earnings lost during the first week of incapacity. There is a presumption that the earnings an employee loses as a result of the incapacity is the difference between:

- The employee's earnings in the 7 days before the incapacity commenced, and/li>
- The employee's earnings in the first week of incapacity.

The presumption about an employee's lost earnings may be rebutted. If the employee in the 7 days prior to the incapacity was rostered off or worked part-time, then the amount of lost earnings will be artificially low. You may determine the amount of lost earnings yourself, however you may be liable for an offence under the Act if you fail to pay all the first week compensation to which the employee is entitled. An option available to you is to apply the calculations that the Accident Compensation Corporation applies:

- The employee's earnings as an employee in the 4 weeks immediately before the incapacity commenced; divided by
- The number of full or part weeks during which the employee earned those earnings as an employee in those 4 weeks.

The duty is to pay all the first week compensation to which the employee is entitled. If your employee is employed elsewhere and as a result of the accident the employee loses earnings from that employment, those earnings are part of the earnings lost by the employee as a result of the incapacity.

Before paying first week compensation you may require your employees to meet reasonable requirements as to the production of proof of either their work-related personal injury or their motor vehicle injury. This will usually be the Accident Compensation Claim form or a medical certificate provided by the registered health professional who first provided the employee with treatment for the injury. However, it may be a medical certificate provided by a registered health professional at your expense if you require independent evidence that the injury in question is work-related

Public holidays and ACC

If a public holiday falls on an otherwise working day during the first week following a work-related accident the employer must pay for the holiday at the appropriate rate (80% of earnings for the 7 days prior to incapacity). In the first week of a non-work related injury an employee will be entitled to payment for a public holiday if it falls on a day that would otherwise have been a working day for the employee. After the first week, payment for public holidays becomes the Corporation's responsibility.

Sick Leave and ACC

An employee may use sick leave in the first week of incapacity for a non-work related injury. An employer cannot require an employee to take sick leave during the first week of employer paid compensation for a work-related injury or while on weekly compensation with ACC. However, if an employer pays the difference between the employee's first week compensation or weekly compensation from ACC and their ordinary weekly pay, the employer may agree with the employee that he or she may deduct from the employee's current sick leave entitlement, 1 day for every 5 whole days that the employer makes that payment.

Annual holidays and ACC

Under section 16 of the Holidays Act 2003, continuous employment includes any period an employee on is ACC compensation and therefore their entitlement to annual holidays continues to accrue while they are absent from work on weekly compensation under the accident compensation scheme.

Income Tax

PAYE

PAYE is the basic "pay as you earn" tax which is deducted from payments of wages and salaries to employees. Each new employee needs to fill out an IR330. These forms are kept by the employer and if the employee's tax status or code changes at any time then they will need to fill in a new IR330 to reflect the change.

Employers file details of employees and contractors' earnings, PAYE and any other deductions every month. All earners in New Zealand are required to pay an ACC earner levy to cover the cost of non-work related injuries. The IRD collects this on behalf of the Accident Compensation Corporation. The IRD's PAYE tax tables have the ACC earner levy built into them and the payments are made as part of the PAYE to the IRD. Almost all earnings that are subject to PAYE are also liable for the levy. This includes:

- Wages and salaries;
- Overtime pay;
- Back pay and holiday pay;
- Long-service leave pay;
- Bonuses or gratuities;
- Taxable allowances;
- Shareholder-employee salaries from which PAYE is deducted; and
- Salaries to partners in a partnership.

The exceptions are:

- Schedular payments;
- Retirement payments;
- Redundancy payments;
- Relocation payments;
- Jury fees;
- Witness fees;
- Taxable and non-taxable pensions; and
- Tax-free allowances.
    - Meal allowance;
    - Overtime meal allowance;
    - Sustenance allowance;

Tax codes

Tax codes are incidental to each employment relationship and the job the employee is employed to do. If an employee changes job within an employment relationship and their income increases or decreases dramatically then their tax code may need to be reviewed. If an employee changes employment then the new employer will ask them to complete an IR330 for that new relationship and job. All employees are required to advise their employer of the appropriate tax code to be used in deducting PAYE from their salary or wages.

A completed IR330 must include the employee's name, IRD number and tax code. Where an employee fails to complete the IR330 as required the employer is legally required to use the no-notification rate (formerly known as the no-declaration rate) of PAYE. The no-notification rate is:

- PAYE of 46.45 cents in the dollar for employees (this includes the ACC earner levy); or
- 15 cents in the dollar on top of the normal schedular payments (formerly known as withholding tax) for non-employees receiving schedular payments..

Employers should enter "ND" or "No Notification" as the tax code on their Employer Monthly Schedule (IR348) for each employee who is taxed at the No-notification rate because of their failure to complete their IR330.

Special tax code or deduction rate certificates (IR23) are issued by the IRD when employees or other workers have circumstances that the IRD has decided warrants either a special tax rate or a zero tax rate. If the employee does not supply the certificate verifying the rate of tax to the employer then the employer must deduct the normal rate of tax and other deductions.

The certificate should contain the valid:

- Name of the employee; and
- IRD number of the employee; and
- Signature by IRD Manager; and
- Tax year, and period to which the special tax rate applies; and
- Rate of tax deductions; and
- Signature of the employee.

If any student loan repayment deductions are required they will be shown separately on the certificate.

Special types of workers

Employers should be aware that for the following list of workers, different tax rules may apply and employers should contact the IRD for more information.

- Casual agricultural workers
- Commission agents
- Directors
- Drovers and musterers
- Election day workers
- Fishers
- IR56 taxpayers
- Jockeys and trotting drivers
- Musicians, dance bands and orchestras
- Non-residents
- Partners in a partnership
- Piece-workers and outworkers
- Shareholder-employees in close companies
- Shearers, shed hands and shearing contractors
- Spouses – wages paid to your wife or husband
- Students
- Subsidised workers
- Workers engaged in “activity in the community” projects
- Workers under labour-only contracts in the building industry.

Record Keeping

IR330 forms must be retained for 7 years after the last payment to the employee and all wage records must be kept for at least 7 years. This includes all pay sheets and PAYE deduction payment receipts. Records must be in English or in any other language approved by the IRD. Employers using a manual payroll system must keep full records; cheque butts are not sufficient. Employers using a computerised payroll system must keep all the same records as for a manual system. Records may be stored on disc, but they must be accessible and printable if the IRD requires.

The following information should be retained:

- Total gross earnings including taxable allowances (this is the amount before PAYE is deducted);
- The amount of the PAYE deductions;
- Any child support deductions;
- Any student loan repayment deductions;
- Any specified superannuation contribution Schedular Payments; and
- The value of tax-free reimbursing allowances and supporting evidence for their justification.

Filing and Payment

Every employer is required to deduct PAYE from employees' wages and salary, and pay the deductions to the IRD by the due date. Every employer is required to file the appropriate forms with the deductions.

If your gross annual PAYE deductions are less than $500,000 you are a SMALL employer and must pay your PAYE by the 20th of the following month. You will file your Employer Monthly Schedule (IR348) and Employer Deductions (IR345) at the same time as making the payment.

If your gross annual PAYE deductions are greater than $500,000 you are a LARGE employer and must pay your PAYE twice a month. You will pay your PAYE by the 20th of the month for wages paid between the 1st and 15th of the same month, and by the 5th of the following month for wages paid between the 16th and the end of the month. However, the second 2 weeks of December are payable by the 15th of January (an extension of 10 days). You will file your Employer Deductions (IR345) twice-monthly at the same as time as making each payment, and you will file your Employer Monthly Schedule (IR 348) by the 5th of the following month to coincide with the second of the twice-monthly payments. Large employers must file their IR348 electronically, unless they have an exemption from the IRD.

Emolument payments and Extra-emolument payments

The word emolument means "payment to a miller for the grinding of corn". In other words, it means the profit or gain from employment. Emolument payments are those that are based on profit or gain from employment. They are effectively earnings because the employee gave their labour in exchange for the payment. They are contractual and often described as obligatory bonuses.

Examples of emolument payments are performance, incentive or production bonuses, whether paid on a regular or infrequent basis.

Extra-emolument payments are effectively gifts. The employer may have contractually agreed to make these payments in certain circumstances, but they are nevertheless discretionary because they do not arise out of earnings.

Examples of extra-emolument payments are:

- Special bonuses that an employer is not obliged to pay (and which may coincide with an event such as Christmas);
- Redundancy payments;
- Retiring allowances;
- Restrictive covenants and inducement payments;
- Gifts; and
- Back pay.

The IRD treats emolument payments and extra-emolument payments differently.

Emolument payments, or obligatory bonuses, are taxed in the period in which they are earned. If the employee was paid weekly for a month and was then paid a bonus with applied to the month, then the PAYE payable would be the PAYE payable for the entire month's earnings minus what had already been deducted.

Extra-emolument payments are treated as a lump sum and are taxed according to the employee's annualised earnings for the last 4 weeks. Not all extra-emolument payments are treated the same however, and while all have PAYE deducted, not all are liable for the ACC levy or FBT deductions.

Fringe Benefit Tax

Employers must pay fringe benefit tax (FBT) on anything provided for the private use and enjoyment of the employee. The prescribed rate will usually be 49.25%, however multiple different rates may apply in different circumstance

FBT is usually due quarterly; however again, there are some exceptions. Where the employer was not an employer in the preceding year or gross tax deductions and specified superannuation schedular payments deductions payable in the preceding year did not exceed $500,000, the employer may elect to pay FBT on an annual basis. The Commissioner must be notified of this intention not later than 30 June in the tax year beginning on 1 April. The tax is then to be paid by 31 May in the following year, together with an amount in the nature of interest.

Childcare provided on the employer's premises, or funded by the employer, is not subject to FBT, nor is employer-provided clothing worn in the course of employment. Such clothing must carry a prominent name, logo or some other means of identification or be of a pattern, colour scheme or style readily associated with the employer.

For exhaustive information on FBT please see the IRD fringe benefit tax guide (IR409).

Schedular Payments

Schedular Payments are the earnings paid to people (not companies) who earn income from contracting their services. It applies to all contractors who do not hold a valid Certificate of Exemption (IR331) or a Special tax code or deduction rate certificate (IR23).

Schedular payments are paid to non-employees only, and cannot be used for salary or wages or extra-emoluments. Schedular Payments tax only applies to services actually performed in New Zealand, and is paid to the IRD in the same way as PAYE deductions from wages and salaries are paid. Tax on Schedular Payments is included in the monthly summary of deductions in the Employer Monthly Schedule (IR348).

Contracting for services may occur because the nature of work a person does means that they have multiple clients to whom they provide their services, (e.g. consultants) and it may occur because the work is a project of a determinate duration and scope (e.g. constructing buildings). The people who work in these environments are frequently contractors, and as such are responsible for their own income tax returns at the conclusion of the financial year. Contractors are required to complete an IR330 for each tax-year they receive Schedular payments, before they receive any payments for that year. While the deduction of tax on from the Schedular payments due to them is the hirer's (payer's) responsibility, contractors are themselves responsible for their own ACC earner premiums and student loan deductions.

Tax is deducted at a flat rate on the gross amount of the Schedular Payment paid to a contractor. It should be deducted from all contract payments, except payments that solely reimburse for costs and certain labour-only contracts. It is deducted at the time the Schedular Payment is made. If the contractor to whom the Schedular Payment is being paid is registered for GST and that contractor has invoiced the hirer for the schedular payments, then the Schedular Payments are calculated on the GST exclusive amount.

Please refer to Page 4 of the IR 330 form for rates of tax on Schedular payments for contractors providing particular services.

Payroll Giving

With the passing of the Taxation Bill, employees are now able to request an automatic 'donation' from their pay on an ongoing basis. This would be implemented through the electronic PAYE system of IRD. The advantage of the program is that employees would derive immediate tax benefit from their donations instead of having to wait until the end of the financial year to claim a tax refund.

For an employee to use a payroll giving scheme, their employer must currently be using electronic filing of the monthly schedule with IRD. AND The employer must VOLUNTARILY agree to partake in payroll giving.

The IRD stipulates the criteria for those that qualify for donations. They are called Donee Organisations and a list is held on the IRD website at

The definitions for qualification can be found by downloading the IR255 form from IRD. The employer pays the Donee Organisation directly. The employee has a tax credit worked out by the following calculation –

Total donations x 33 1/3 %

Total donations are defined as the total amount of all payroll donations made by the person by payroll giving.

The employer then applies the tax credit to the employees pay and advises IRD in the monthly schedule. The donation credit is offset against the total PAYE the employer pays IRD.

The law has not stipulated a minimum or maximum donation amount for any period. However payroll giving payments can only be given from wages after other deductions, firstly any tax obligation they may have and second any statutory or legal requirement they may be obliged to meet from their PAYE income payment. This will include child support or attachment orders made to their salary

Volunteers and Honoraria Payments

The government has updated legislation regarding payments made to people who volunteer their time and service. When a volunteer, in undertaking a voluntary activity, derives an amount that is a reimbursement payment to cover actual expenses incurred by them, the amount is exempt income of the volunteer. This means that the reimbursement will not be subject to schedular payments. The volunteer can also have estimated expenditure reimbursed before the actual costs are incurred.

The law already allows a payment to be made, however it has never been very clear. The payment is called an Honoraria payment. Honoraria are liable for tax as they are classed as schedular payments and as such the organisation must deduct as part of PAYE.

If the person paying the amount to the volunteer makes a payment to them that is only partly a reimbursement of expenses, the person must identify the portion of the amount that is the reimbursement, and treat the remainder as an honorarium, being a schedular payment to which the PAYE rules apply.

Personal Grievance Payments

Personal grievance payments may include one or more of the following:

- An award for loss of earnings, related to either a dismissal or change of position;
- An award for loss of benefits;
- An award for compensation for humiliation, loss of dignity or injury to feelings.

Under Public Ruling BR Pub 01/06, the IRD rules that the payment of an award for lost wages or other remuneration (including loss of benefits) under the Employment Relations Act 2000 is “monetary remuneration” and as such it is gross income of the employee from which the employer must deduct PAYE (including the ACC earner levy) and other deductions in the normal way.

The appropriate tax rate is dictated by the total value of the employee’s annual salary or wages and the payment.

This ruling does not apply to an award for compensation for humiliation under section 123 (c)(i) of the Employment Relations Act 2000.

Out of Court Settlements, often described as full and final settlements, should be treated in the same way as awards made by the Employment Relations Authority pursuant to the Employment Relations Act 2000.

You should understand that if you are a party to a full and final settlement and you characterise or describe a payment as being compensation for humiliation when it is in fact for lost wages or benefits, this transaction could be considered illegitimate, and may be challenged by the IRD.

Redundancy Payments & Retiring Allowances

These payments are treated as lump sum payments in terms of PAYE but they are not liable to the ACC earner levy or to FBT (but they may be subject to other deductions). The appropriate tax rate depends on the grossed up annual value of the employee recipient's last 4 weeks' earnings and the payment.

The tax rate applicable to the payment thresholds are as follows:

- $14,000 or less – is 11.89% or 11.89 cents in the dollar;
- Between $14,001 and $48,000 – is 18.89% or 18.89 cents in the dollar;
- Between $48,001 and $70,000 – is 31.39% or 31.39 cents in the dollar;
- Greater than $70,001 – is 34.39% or 34.39 cents in the dollar.

The following payments are not redundancy payments or retiring allowances:

- Accumulated annual, long service or sick leave;
- Payments made in the event of a merger or takeover or reconstruction where the employee has ongoing employment in the same or a substantially similar position, or the employee is re-hired within 6 months.

To treat any payment as a redundancy payment or retiring allowance the employee must have terminated their employment.

Holiday Pay

Holiday pay is taxed in the pay period when it is paid, and, according to a weekly payment. If annual holidays is paid in one sum, and it is for a 3-week period, then the lump total sum must be divided into 3 and the PAYE (and other deductions if relevant) deducted for each weekly sum. This applies where an employee is being paid holiday when they are exercising an entitlement and when they are taking a holiday in advance of entitlement or have terminated employment part-way through an anniversary year.

From 1 April 2016, the IRD are applying a new approach to the payment of holiday pay in certain circumstances:

Holiday pay paid in substitution of the employee's ordinary salary or wages when the employee takes annual paid holiday: This type of holiday pay is "salary or wages". The gross amount of holiday pay should be appropriately allocated to the number of days/weeks of leave taken and then the PAYE tables applied.

Annual accrued holiday entitlement paid as a lump sum on the termination of an employee's employment: This type of payment is treated as an "extra pay" and PAYE should be deducted using the rates for extra pay.

Annual accrued holiday entitlement paid as a lump sum before the holiday is taken (holiday pay paid in advance): This type of payment is to be treated as an "extra pay" and PAYE should be deducted using the rates for extra pay.

Holiday pay paid as a lump sum payment on the termination of employment where either there is no accrued entitlement (employment terminated within first 12 months of employment) or before a further entitlement has arisen: The Holidays Act 2003 requires that holiday pay is calculated at 8% of the employee's gross earnings since the start of employment or since the last entitlement to paid holidays arose. For PAYE purposes, this type of payment is treated as an "extra pay" and PAYE should be deducted using the rates for extra pay.

Holiday pay paid as part of an employee's regular pay at the rate of 8% of the employee's gross earnings: This payment is treated as part of the employee's regular salary or wages. The PAYE tables should be applied to the gross amount of holiday pay together with the regular salary and wages.

Allowances

There are 2 types of allowances that occur: those that benefit the employee which are described as benefit allowances, and those that reimburse the employee which are described as reimbursing allowances.

Benefit

Benefit allowances are paid to compensate the employee for inconvenience and/or benefit the employee and are taxable in the hands of the employee. A benefit allowance is income so the allowance is added to the salary or wages for the pay period and then PAYE is calculated on the total amount.

Food or accommodation provided to employees may also be a benefit allowance however the taxable portion is the difference between the market value of the benefit (food or accommodation) and the amount the employee has actually paid. If the employee has not paid anything then the entire market value of the benefit is taxable.

Reimbursement

Reimbursement allowances are paid to reimburse the employee for expenditure incurred by the employee in gaining or producing income for the employer. A reimbursement allowance is usually (but not always) not income to the employee and hence is non-taxable in the hands of the employee. Meal allowances, mileage allowances and tool allowances are generally reimbursement allowances.

Reimbursements of specific expenses such as taxi journeys or airline tickets between business meetings are clearly non-taxable, because the employee has gained no benefit from the expense. The IRD allows for the employer to use either the actual cost to the employee (proved by receipts etc) or a reasonable estimate of costs. The tax-free amount is not to be shown on the Employer monthly schedule (IR348).

Reimbursements of specific expenses such as taxi journeys or airline tickets between business meetings are clearly non-taxable, because the employee has gained no benefit from the expense. The IRD allows for the employer to use either the actual cost to the employee (proved by receipts etc) or a reasonable estimate of costs. The tax-free amount is not to be shown on the Employer monthly schedule (IR348).

Benefit allowances (accommodation, meals or clothing) are paid to compensate the employee for inconvenience and/or benefit the employee and are taxable in the hands of the employee. A benefit allowance is income so the allowance is added to the salary or wages for the pay period and then PAYE is calculated on the total amount.

Food or accommodation provided to employees may also be a benefit allowance however the taxable portion is the difference between the market value of the benefit (food or accommodation) and the amount the employee has actually paid; if the employee has not paid anything then the entire market value of the benefit is taxable.

The tax treatment of employer-provided accommodation or accommodation payments and payments made to cover meal or clothing allowances may be exempt from tax provided certain conditions are met.

There is a transitional rule for employer-provided or paid accommodation for employees working on Canterbury earthquake reconstruction projects over the period 4 September 2010 to 31 March 2019.

The rules around accommodation and meal allowances can be applied retrospectively subject to certain conditions and changes to the definition of the term “expenditure on account of an employee”.

Previously whether an accommodation, meal or clothing allowance was taxable was also dependent on how it was paid, i.e. as an allowance, employer provided or reimbursed. When an employer reimburses or otherwise meets a specific employee expense, this payment is known as “expenditure on account of an employee” and could be deemed as non-taxable.

This definition has been amended so that any accommodation or food, regardless if they’re paid as an allowance, employer provided or reimbursed, will now come under their own rules and can no longer be treated as “expenditure on account of an employee”.

Note: The IRD changes its rulings from time to time on the distinction between what is a non-taxable reimbursement allowance and what should attract fringe benefit tax. Employers should seek assistance from the IRD or their chartered accountant on a regular basis about these matters.

Child Support Act 1991

Child support is money paid by parents who are not living with their children to help financially support them until they are up to 19 years old. The parent with custody of the child must apply to IRD for child support. The IRD will then, using a standard formula, calculate how much child support must be paid by the liable parent on a monthly basis. The IRD collects the payments through the liable parent’s employer and passes them on to the person who has custody of the child or the government if the custodian is receiving a benefit.

Deductions

Employers are legally required to deduct from an employee’s wages, the amount or amounts specified in an Inland Revenue Department deduction notice (CS 503) as due from that employee (being a liable parent) for child support purposes (deduction notices remain in force until revoked). The deduction should be made as required by the particular deduction notice and the employer should not, in any circumstances, agree with the employee or anyone else, not to make the deduction. Deduction notices advise the employer of the pay period the employer must start deducting child support and the amount to deduct. An employer must pay the deductions to the IRD not later than the 20th day of the following month and supply them with the required particulars (a form is provided by the IRD for this purpose).

Employers are legally required to deduct from an employee's wages, the amount or amounts specified in an Inland Revenue Department deduction notice (CS 503) as due from that employee (being a liable parent) for child support purposes (deduction notices remain in force until revoked). The deduction should be made as required by the particular deduction notice and the employer should not, in any circumstances, agree with the employee or anyone else, not to make the deduction. Deduction notices advise the employer of the pay period the employer must start deducting child support and the amount to deduct. An employer must pay the deductions to the IRD not later than the 20th day of the following month and supply them with the required particulars (a form is provided by the IRD for this purpose).

Child support payments take priority over other deductions from an employee's pay other than PAYE. After deducting PAYE, the employer must deduct child support before they can deduct other payments (for example, student loan payments, insurance or union fees).

Record Keeping

An employer will need to complete and return to the IRD employer deductions forms and monthly employer schedules which show the total child support deducted for the period. Records should be kept of all child support payments deducted, or required to be deducted, for a period of no less than 7 years.

Privacy/Discrimination

It is an offence under the Act for an employer to discriminate against an employee because of their child support obligations. An employer who prejudices employees, refuses to employ, dismisses or threatens to dismiss, terminates or threatens to terminate employment, refuses to pay wages or imposes any pecuniary penalty because of their child support liability – can, if convicted, be ordered to take action to reduce the loss or damage an employee has suffered or pay compensation. Employers must also ensure that information about the employee's liable parent obligations are kept private and not divulged to other employees.

Protected Net Earnings

Employees must be allowed to keep 60% of their net (after tax) earnings. The employer should not deduct the full amount of child support payments if this leaves the employee with less than 60% of their net earnings. However, this protection does not apply to all deductions. Other types of payments which can be taken from the protected 60% of an employee's net earnings include, for example, union fees, student loan payments and KiwiSaver contributions.

District Courts Act 1947

Attachment Orders

An attachment order is an order issued by the District Court for an employer to deduct from an employee's wages money the employee owes to a third party by way of a proven debt. The attachment order will specify the person to whom the payments are to be made and the amount (known as the protected earnings rate), below which the net earnings of the employee cannot be reduced in relation to the deduction. An employer must deduct the sum specified in an attachment order issued by the District Court from the salary or wages of an employee who is in debt, and pay this to the specified person by the 20th of the following month.

An employer cannot dismiss or treat prejudicially an employee to whom an attachment order requiring deductions from wages for debt repayment has been made. The maximum fine for dismissing an employee, or treating the employee prejudicially in the six months following the issue of an attachment order, is $1,000. If the dismissal was for some other reason, the employer is required to prove that that was the case.

Note: Deductions in respect to child support, fines imposed under the Summary Proceedings Act 1957, and student loan scheme repayments, take priority over deductions for debt. Child support deductions have first priority.

Social Security Act 1964

Employers have an obligation under this Act to supply, on written request, the Chief Executive responsible for the administration of the Social Security Act, with the names, addresses and tax file numbers of employees and former employees, where there is reason to suspect that an employee, or employees, have been involved in benefit fraud. The same information may be requested in respect to a particular class of employees. However, no more than one notice may be issued in any 12-month period.

An employer must also make deductions from an employee's wages or salary, where following the detection of benefit fraud and employee failure to pay, the Chief Executive issues a deduction notice to the employer. If the employee requests so, the employer must provide a written statement of any amount deducted and the reason for the deduction. There is a penalty for late deductions.

Student Loan Scheme Act 1992

It is the employee's responsibility to notify the employer of the requirement to deduct student loan repayments from their wages where they are earning above a prescribed sum (the repayment threshold – which may change from time to time).

The employer must make student loan deductions at the standard deduction rate every time the employer makes a wages payment if the employee has given notice that a deduction is required. Student loan deductions are not to be treated as part of, but are additional to PAYE deductions. However, the Income Tax Act's PAYE rules apply to them. Employers must provide, in the manner required by the Commissioner, information needed to establish the amount of any repayment deduction.

Employees may apply to the Commissioner of Inland Revenue for a special repayment deduction rate certificate varying the standard rate. The special deduction rate certificate takes into account the greater of either the employee's estimated repayment obligation for the income year, or some other amount required by the employee.

Jury Service

If one of your employees is summoned, you must allow them time away from work to attend jury service. If you believe that your employee cannot be released for that time, you should write in support of their application to be excused or deferred. A deferral postpones the jury service to another time within the following 12 months, while being excused means the employee has no further obligation to attend that summons at all.

Failure to attend the court without reasonable excuse when summoned is an offence under the Act which may carry a fine.

Unless you have agreed in your employment agreement to pay the employees' wages or salary during this time, you are not required to pay the employee for the time they are absent from work on jury service. However, it is not uncommon for employment agreements to provide that the employer will pay the employee's normal pay for the first 5 days of jury service, provided that the employee returns to work immediately on any day that their presence is not required to serve on a jury and, provided that the employee gives the employer the fees paid by the court. If you are not obliged to pay an employee while on jury service, consideration should be given to the likely length of the absence before it is paid.

Part 4: Ending Employment

Final pay at termination

The final pay of an employee is payable when the employment relationship comes to an end. This means that if the employee terminates on notice, then the final pay is payable on the day agreed between the employer and employee for payment of salary or wages. Best practice however is for final pay to be available to the employee at the completion of their final day of work.

Payment in lieu of notice

An employment agreement may provide for an employer to pay an employee in lieu of any required notice period. This means that the employee is not required to work out the notice period but is paid normal pay for that period. The employer would be liable to pay the employee for any public holidays occurring in that period of notice. Payment in lieu of notice is not redundancy compensation and should not be treated as such. Please see the section below on redundancy.

Employers should be aware that the way notice periods are paid could affect the date at which the employment relationship ends. This is relevant when considering the timeframe in which personal grievances can be raised, and also the period in which any restraint of trade clause is enforceable. Case law suggests that if an employee is paid out in full when they actually finish working, then the employment relationship is deemed to have ended on that date. However, if the employee is paid on normal pay days through the notice period, then the relationship ceases at the end of the notice period.

Death

If an employee dies, the employee's final pay becomes payable. If you normally pay the employee's wages or salary into a bank account bearing the employee's name, then you may pay the final pay into that account. If the account has been frozen, then you should retain the employee's final pay until you are formally advised of the identity of the authorised representative of the employee's estate. When you have been advised of the identity of this person or agency, you can then pay the employee's final pay to this person or agency. If you pay an employee's final pay to any person who is not the authorised representative of the employee's estate, you may be required to pay that final pay again.

Annual Leave payments

Less than 12 months employment

An employee will be entitled to 8% of their gross earnings less any payment made to them for annual leave taken in advance if they have worked less than 12 months at the time their employment ends.

More than 12 months employment

If an employee has worked over 12 months and they have an entitlement to annual leave owing to them at the time their employment ends, the employer must pay the employee for that entitlement at the greater of their average weekly earnings and ordinary weekly pay. Annual leave entitlement is only what an employee receives on their anniversary date (e.g. four weeks) and not what they have "accumulated" or "accrued" through an employer's payroll system throughout the year.

Employees who have worked more than 12 months are also entitled to 8% of their gross earnings since their last anniversary date (their "accrued leave"), less any payment made to them for annual leave taken in advance.

Did you know: When calculating 8% of gross earnings for final holiday pay, those gross earnings will include any payment for entitled annual leave in the final pay.

Public Holidays

If an employee has any outstanding entitlement to annual leave at termination and a public holiday falls within that period of leave, then the employer must pay the employee for that public holiday on top of the annual leave payment. Payment of 8% of gross earnings does not attract extra payment for public holidays.

Redundancy

Compensation for redundancy is payable where the employment is ending because the position has been made redundant, and the employer has agreed in the employment agreement or otherwise to pay compensation. Often an employment agreement will express the amount payable as a number of weeks' pay for the first year of service, and a number of weeks pay for every subsequent year of service. Redundancy compensation is not considered to be gross earnings for the purpose of annual leave payment, so there is no need to pay 8% on top of redundancy compensation for annual leave. Refer to the earlier section under PAYE for information about the taxation of redundancy compensation.

Back pay

If the employee is owed any back pay it should be paid at termination. Back pay is treated as a lump sum payment for tax purposes. The tax rate applicable to the payment, where the combined total of the payment and the grossed up annual value of the employee's income for the previous four weeks, is:

- $14,000 or less – is 11.89% or 11.89 cents in the dollar;
- Between $14,001 and $48,000 – is 18.89% or 18.89 cents in the dollar;
- Between $48,001 and $70,000 – is 31.39% or 31.39 cents in the dollar

Labour Inspectors

Labour Inspectors can enforce an employee's entitlement to payment under the Minimum Wage Act 1983 or the Holidays Act 2003. They can also ensure that employers have wage records and systems, agreements and policies which meet the minimum required by law. An employee can ask an Inspector to investigate a pay issue. The Inspector can issue a demand notice to an employer if certain requirements are met: the Inspector must believe on reasonable grounds that an employee has not received any payment under the Acts, and; the Inspector has given the employer not less than 7 days to comment on the complaint or the Inspector's grounds for belief, and; the Inspector, after considering any comments made by the employer, is satisfied that the employee is entitled to the payment claimed, and; the Inspector is satisfied that the employer is not willing to make the payment to the employee in a reasonable manner or within a reasonable time.

A demand notice cannot be served between 17 December and 8 January of the following year, and cannot relate to money claimed which was payable more than 6 years earlier. An employer has 28 days to lodge an objection to a demand notice with the Employment Relations Authority. If no objection is lodged, the employer has a legal requirement to comply with the notice, and it is prima facie evidence in a Court or Authority that the money is owed. The notice is then enforceable in the Authority by a compliance order. A Labour Inspector can also commence an action against an employer in the name of the employee for the recovery of arrears of wages or holiday pay, or money owed under the Minimum Wage Act 1983 or the Holidays Act 2003. If the Inspector brings such an action he or she cannot issue a demand notice in respect of the same matter. A Labour Inspector may withdraw a demand notice, but that does not prevent them issuing another one later in respect of the same matter.

Full and Final Settlements

These can include both in and out of Court settlements. Payments are often made to individuals as part of a negotiated exit or to settle employment relationship problems such as personal grievances. For a settlement to be truly full and final, and therefore prevent a former employee from bringing a further claim at a later date, they need to be signed by a person authorised by the Chief Executive of the Ministry. This includes mediators employed by the Ministry's Mediation Service.

The settlement agreement should cover the amount payable, when and how it should be paid, how the payment is made up, and the tax implications for the payment. Settlements may be made up of reimbursement for lost wages or salary, and/or compensation for humiliation, loss of dignity, injury to feelings, or loss of any benefit. Reimbursement payments are taxable as a lump sum as with back pay (above), whereas compensation is non-taxable. However, for tax purposes the parties would need to show that genuine injury or loss of a kind described above has occurred. Therefore payments of compensation should not be made if there has not been a written personal grievance. The Inland Revenue Department may question the validity of the payment.

Published: August 2017