

MBIE – increasing focus on holiday pay – do your systems meet the standards?

And Pay Equity – what's next?

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Increasingly, we are seeing the Ministry of Business, Innovation and Employment's Labour Inspectorate undertaking random audits of businesses to check their holidays and leave records. There are regular articles in the news about this practice.

We have also had an increase in clients seeking advice regarding holidays and leave records and in particular the way holiday pay, public holiday pay and payment for alternative days off are calculated.

All clients involved in HR and payroll understand that the Holidays Act 2003 can be complex to interpret and apply. A key difficulty, however, is that a mistake made in one year by way of under-paying an employee for their holidays, is then carried over into following years. Resolving any calculation problem is time consuming and complex. It can involve going back over up to six years' of records, and tracking down former employees to pay them out the amounts owed.

Problems that we have seen include:

- 1 A failure to include all remuneration earned by an employee in the gross earnings calculation.
- 2 Miscalculation of the days or hours for which an employee is paid when they take leave.
- 3 Incomplete wage and time, and holiday records.

If you have anything other than standard employees (on salaries with few if any additional payments) we strongly recommend that you consider auditing your payroll function to ensure that holiday pay, public holiday pay and alternative days off, are being paid at the correct rates.

Pay equity on the rise

Most of you will have heard of the settlement by the Government with the E Tu union following the Kathleen Bartlett litigation. This has seen significant increases in the wage rates payable to caregivers in aged care and other similar industries, set to commence on 1 July 2017.

How this is going to be achieved, calculated, and viability of aged care businesses maintained, is currently being determined. On the horizon also, however, are changes to the Equal Pay Act 1972, which will make it easier for employees to make claims that they are being underpaid in their industry/organisation based on their gender.

A draft bill for submission has currently been circulated by the Government. The Act will, amongst other things:

- Prohibit employers from discriminating, on the basis of gender, in remuneration and other terms and conditions of employment;
- Enable employees to make claims

relating to gender discrimination in employment, and file these in the Employment Relations Authority if they can't otherwise be resolved;

- Distinguish between three types of claims (equal pay, unlawful discrimination on matters other than remuneration, and pay equity);
- Set out the processes for resolving the different types of claims;
- Oblige employers to keep certain records in respect of pay equity claims and not treat adversely an employee who makes a claim.

Employees in female-dominated industries other than aged care are very likely to make claims once the changes are enacted. If your industry might be affected, we recommend that you take advice as to the potential consequences for you.

If you would like more information regarding the above, or have any questions, please contact us.

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