

re:source

law news for human resources and general managers

“Change is the only thing you can expect” – Jaymi Wiley

In this issue

Employment law changes announced

July 2010

As most of you will be aware, at the National party's annual conference on Sunday, 18 July 2010, Prime Minister John Key announced sweeping changes to employment law. Described by Mr Key as “moderate” the reported changes are in 4 key areas – the extension of the 90 day trial provision, union access, personal grievances and holidays.

The reported changes include the following:

Trial Provision

- The 90 day trial provision for new employees will be extended to cover all employers (not just those with 19 or fewer workers). Employees are not able to bring a personal grievance if dismissed during this trial period.

Personal Grievances

- The Employment Relations Authority will have the ability to filter out “vexatious or frivolous” claims and behaviour that delays the Authority will be penalised. How this will be done is not specified.
- The Employment Relations Authority will give priority to mediated cases.
- Employer's dismissal and disciplinary processes will not be “the subject of pedantic scrutiny” – this heralds a change to section 103A of the Employment Relations Act 2000, the section that defines when a dismissal or disciplinary action is justified.

Dismissal will be justified if it is what a reasonable employer “could” do in all the circumstances rather than the current test of what a reasonable employer “would” do.

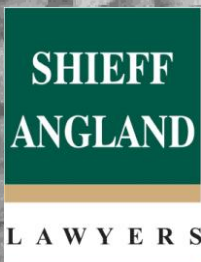
- The Authority's processes will be changed to include a right to cross-examine witnesses.

Union Access

- Union access to work place rules will change so that any access will require the consent of the employer, which cannot be unreasonably withheld. Currently consent is not required.

Holidays

- Employees will be able to (at their request) trade one of their 4 weeks annual leave for cash.
- A new calculation for entitlements of “average daily pay” will be implemented for employees who work regular hours.
- There will be the ability to agree to transfer the observance of public holidays to another working day.
- Maximum penalties will double for employers who do not comply with the Holidays Act.
- Employers will be able to seek proof of sickness or injury after 1 day of sick leave (instead of 3).



John Key has said that the purpose of the changes is to grow the business sector and in particular to give prospective employees a shot at work by giving employers the confidence to hire. Not surprisingly, the Unions in particular have reacted strongly against the changes.

Next Steps

Draft amendment Bills making the changes can be expected shortly and will go through select committee processes prior to being enacted. They will be given priority however. Kate Wilkinson, Minister of Labour, indicated last week that the Government intends to have the proposed changes passed into law by the end of 2010.

Shelley Eden is a Senior Associate in Shieff England's commercial litigation team with particular expertise in employment law. Contact her on +64 9 336 0844 or shelley.eden@shieffangland.co.nz

This paper gives a general overview of the topics covered and is not intended to be relied upon as legal advice.

