

Employment Law Update

Possible Changes for Casual and Temporary Employees

July 2008

The Government has announced an intention to strengthen employment protections for temporary and casual workers.

The proposals are in response to research conducted by the Department of Labour in 2007 which showed that casual employees:

- » lack knowledge about employment rights and obligations;
- » endure disruptions to their family life as a result of their employment, making planning and budgeting difficult; and
- » have restricted access to leave entitlements, training and development and career progression.

The proposed changes include:

- » The development of a Code of Employment Practice;
- » A campaign to raise workers' awareness of their statutory rights; and
- » Amendments to the Employment Relations Act 2000, specifically:
 - Inserting provisions empowering Labour Inspectors to make determinations as to the status of an employee's employment (ie whether fixed term or permanent);

- Codifying the test in *Barnes v Whangarei Returned Services Association (Inc)* [1997] 1 ERNZ 626 which held that an apparently casual employment position may actually be permanent, depending on the employee's pattern of work (with specific consideration of the regularity of work and the level of dependence/autonomy held by the employee);
- Inserting provisions for employees who belong to a union and work in a 'triangular' employment relationship (where the employer has contracted the employee's work to a third party - the secondary employer). Such employees would be entitled to equivalent (or better) working terms and conditions as those which apply to unionised employees working directly for the secondary employer.

While a specific timeline has not been announced, the Cabinet policy committee has instructed that an Employment Relations Amendment Bill (giving effect to the changes discussed above) should be included in this year's legislative timetable.

We will advise of further developments in this area, including opportunities to make submissions on the expected Amendment Bill.

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