

Employment Law Update

20 July 2010

Proposed Changes to Employment Law

As many of you will be aware, on Sunday the Prime Minister announced some proposed amendments to the Employment Relations Act and the Holidays Act.

Amendment Bills have not yet been released, which means that full details of the proposed changes are not yet available. We set out below a summary of what is currently proposed.

Employment Relations Act

The following amendments to the Employment Relations Act are proposed:

- » Extending the ability to agree a 90 day trial period to all employers (previously limited to employers with less than 20 employees). Employees may not bring a personal grievance if they are dismissed during this trial period.
- » Amending the test for justified dismissal (section 103A) from what a reasonable employer "would" do to what a reasonable employer "could" do. This reverses one of the more controversial amendments made by the Labour Government in its last years in office.
- » Requiring employer consent before a union can access a workplace. Currently, a union is able to access a workplace for union business or purposes related to the employment of its members without the need to obtain consent, but must exercise this right in a reasonable way.
- » Changes to the law regarding communication during collective bargaining. These changes will have the aim of simplifying the law.
- » Removal of reinstatement as the "primary remedy" when an employee successfully establishes a personal grievance.

- » Tinkering with the powers of the Employment Relations Authority, including a move to a "more judicial mode of operation". It is not clear what is envisaged by this.
- » The development of a professional Code of Conduct for employment representatives.

Holidays Act

The following amendments to the Holidays Act are proposed:

- » Allowing an employer and an employee to agree to "cash in" the fourth week of annual leave.
- » Changes to relevant daily pay calculations for employees who work irregular hours. No changes are expected for employees who work regular hours.
- » Introducing the ability for an employer and employee to agree to transfer the observance of a public holiday.
- » Allowing employers to ask for a medical certificate after one day of sick leave - but with the employer being liable for the cost.

Next Steps

The Prime Minister indicated that amendment Bills incorporating these proposed changes will be issued "shortly". These amendment Bills will then proceed through the legislative process as normal, although they will be given priority. This means that we can expect a select committee process, which will provide an opportunity for the public to comment on the proposed changes.

Kate Wilkinson, the Minister of Labour, indicated late last week that the Government aimed to have the proposed changes passed into law by the new year.

We will provide a more comprehensive summary of the proposed changes once the amendment Bills have been released. In the meantime, please get in touch with a member of the team if you would like some more information.

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