

client newsletter

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Risk and Reward

Evaluating employment changes

A new report by the Ministry of Business, Innovation and Employment looks at outcomes of key changes to employment law made in 2011 to see if they are working as intended.

What the changes were meant to do

The broad aims of the changes were to:

- reduce compliance costs for businesses
- reduce employment relationship problems
- improve the balance of fairness
- provide more clarity and guidance to employers and employees

The changes and how they're measuring up

Trial periods were opened up so that all employers have the option to use trial periods of up to 90 days.

To stimulate business confidence to hire new staff and encourage more job opportunities for disadvantaged job seekers.

Trial periods are now being used by both small and large firms across a range of industries, positions, and skill levels. Employers reported trial periods have reduced the potential cost of dismissals without adding additional costs. Of employers who used trial periods with new hires, 27% had dismissed at least one employee during or at the end of the trial period. It seems while trial periods have not changed the nature of employer/employee relationships, employers see them as a way to help manage risk when trialling new staff. Interviews with employers who had dismissed staff indicated they followed correct procedures and were more comfortable there would be no comebacks.

Changes to the Holidays Act meant employees can apply to cash in up to one week's annual holidays and also to transfer public holidays to another working day. Employers were provided with an additional method to calculate payments for types of leave and holidays - Average Daily Pay. It's also easier for employers to ask for proof of sickness or injury.

To make it easier for businesses and employees to understand and apply the Act in a wider range of employment arrangements, increasing choice and flexibility.

While the Holidays Act changes have increased flexibility and choices for some employers and employees, it seems overall the changes have neither increased ease of use nor decreased costs. There is still a lack of understanding of how the law works. Some employers find the Holidays Act provisions difficult to apply in some arrangements, such as for people with variable work hours or shifts. Compliance costs for businesses in calculating entitlements and payments haven't really changed.

Union access to workplaces is now conditional on employer consent and employers are able to communicate directly with employees during collective bargaining.

To enable businesses and employees to understand and apply their obligations more easily and help resolve employment relationship problems faster.

While there was no increase in the number of problems reported, changes to union access and communications during collective bargaining seem to have had comparatively little impact overall among employers and unions though they seem likely to have worsened matters in sites where employer-union relations are already poor.

Evaluating employment changes (cont'd)

Changes to mediation processes provided additional options for parties, specifically early assistance from mediators. The so-called test of justification was changed to give greater recognition to the fact that there may be a range of possible responses that a fair and reasonable employer may make in the circumstances before it. Conduct must be viewed against what a fair and reasonable employer 'could' have done rather than 'would' have done.

To help resolve workplace disputes faster and improve the balance of fairness.

Parties in disputes have more choices as mediators are now able to make formal recommendations. The use of informal recommendations by mediators has increased. There has been little change in the time taken to resolve cases.

Key commentators said that fairness was already relatively well balanced between employers and employees and this balance has not shifted much. The amendment preventing mediation settlements from being agreed for less than minimum entitlements was sometimes seen as not helping the balance of fairness where the employer did not have funds to pay the employee's full entitlement and agreement could not always be achieved. The amended test of justification hasn't yet produced practical outcomes, although codifying the considerations in applying the test may have increased the transparency to the disputants.

Although it's still too early to assess the changes' full impact, the findings were seen by the Ministry as generally positive, though it did acknowledge little change or mixed results in some areas.

Tax Talk

Making payments to IRD – what's changed

IRD are changing some of your options to make payments to them as of 1 October 2014.

Paying at Westpac

If you're used to paying your tax through Westpac, you won't be able to pay by cheque any more or drop off returns and forms. You will still be able to pay through Westpac by:

- cash and eftpos payments
- online banking
- credit/debit cards
- international money transfers



Posting cheques and returns - get the timing right

You can post cheque payments and returns direct to IRD. From 1 October all cheques must reach IRD on or before the due date to avoid interest and late payment penalties. Until now, it's been enough that the postmark shows you posted the cheque on or before the due date but not anymore.

Online payments

IRD is encouraging taxpayers to make their payments online. You can file returns and make payments online, up to and including the due date. If you haven't done this before but want to start, we can walk you through it.

Parental leave

On 1 July, the rates for paid parental leave increased. If you're self-employed or an employee and eligible for paid parental leave, you may receive up to a maximum of \$504.10 a week before tax. If you're self-employed and make a loss or earn less than the minimum wage, for at least 10 hours work a week, the payment is \$142.50 each week before tax (equivalent to 10 hours each week at the current minimum wage rate).

If you'd like a fact sheet on your obligations as an employer or on paid parental leave for self-employed people, please contact us.

Interest rates rise - employee loans

Do you provide low interest loans to employees? If so your FBT returns need to reflect the new interest rate of 6.13% for return periods from 1 July onwards. This is the FBT prescribed interest rate used to determine the fringe benefit value of low-interest loans to employees.





Minimum Wage heads up

After the government increased the minimum wage rates earlier this year, it made a further amendment to the Minimum Wage Order, issuing a new fortnightly rate. The fortnightly rate is \$1,140 for adult employees and \$912 for starting-out workers and trainees. If you're an employer already fully compliant with minimum wage requirements and your employees' hours don't vary from week to week, stop reading here. For you, nothing has changed.

Some farmers have had difficulties with minimum wage compliance as farming hours vary considerably over busy periods such as lambing and calving through to quieter periods. Traditionally many have agreed with their employees to average wages out over quiet and busy periods so employees have some certainty about their income. Two recent cases, followed up by a Position Statement from MBIE, have made it clear that such averaging breaches the Minimum Wage Act unless an employee receives at least the minimum wage relevant to his or her basis of payment: hourly, daily, weekly and, now, fortnightly. The fortnightly rate applies to anyone paid on that basis or on the basis of a longer period, so it applies to those on annual salaries.

This means that, for employees on an annual salary, the longest period over which an employer can average an employee's wages is a fortnight. If, during a busy fortnight, employees have worked more than a total of 80 hours, you'll need to pay them at least \$14.25 (at current rates) per hour for each hour over 80. Since farmers often use fortnightly rosters, this represents an improvement over the necessity to limit the averaging to the period of one week (the maximum averaging period permitted before the law change).

Talk to us if you think this affects your business.

'Success one day does not give you a free lunch every day thereafter.' **Richard Branson, Business Stripped Bare**

Latest changes to GST

A raft of amendments to GST came through in June, clarifying grey areas and closing loopholes from some of the major changes of the last few years. In broad brush, these include:

- a new wash-up rule in the GST apportionment rules applies when use of an asset changes to 100% taxable or 100% non-taxable use when usage has previously been split between private and commercial use. Depending on the change, there may be output tax to pay back
- residential units in retirement villages or rest homes where occupants live independently now come under GST-exempt supplies
- the backdating effect of the tax residency rules has been removed for GST purposes
- the definition of 'hire purchase agreement' now includes any contract with an option to purchase
- where an employee is engaged by a third party to be a director or board member, and required to remit fees from the third party to their employer, there is a new flow-through rule which means the employer will be treated as supplying services to the third party
- non-profit bodies can claim all GST input deductions other than those relating to the making of exempt supplies

Please contact us if you'd like to run through whether the changes affect you.



Timely Reminder

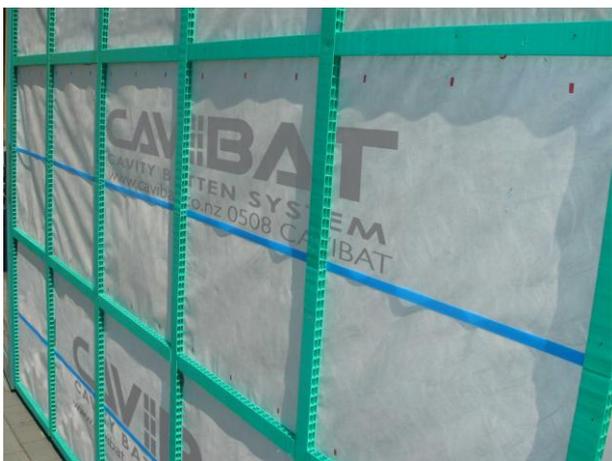
29 September: Provisional tax due (as the 28th is a Sunday) for December, April and August balance date taxpayers.

Business Perspective

Cavibat

It's been a road littered with hurdles for Graeme Webster of Cavity Batten Systems, but one that has been worth it. Over an informal chat with a buddy who works in the building and development industry as a developer, Graeme's attention was drawn to the fact that leaky buildings were cropping up everywhere. But at that time neither the building code, nor anyone else for that matter, had a solution. With a knack for listening to and fixing problems, the cogs in Graeme's brain began turning and he set out to tackle what appeared to be a growing problem.

Because of his engineering background, Graeme didn't see the solution as rocket science, but rather a logical one. There needed to be a way to allow the two walls of a building to breathe. Welcome to the world, Cavibat – a plastic cavity batten system.



The idea however wasn't the tricky part. The next step was to sell it to the market and navigate through all the obstacles along the way. Graeme arranged a meeting to sit down with the big players in the industry and prove how Cavibat could work for them. The importance of the product was quickly made apparent but red tape ensued. In order to use Cavibat, the industry needed a box ticked: the product needed to be appraised.

As luck would have it, the government responded to the leaky home situation and announced that all cladding now had to be on a cavity system. Although this announcement was timely for Graeme, the appraisal time was not. After the promised three-month timeframe came and went, it was almost two years before his product was approved.

It was now time for supply to meet demand. Graeme visited trade shows in

Asia, with the aim of sourcing the best materials for the job and it took ten months to find the right producer. Samples were sent to be tested and appraised and were accepted as being suitable for the job. This was enough for Graeme and he set about ordering stock and establishing a factory and warehouse in Mount Maunganui.

The challenges didn't end there though. Bigger companies soon infiltrated the market. Ensuring the product was recognised for industry specifications proved arduous and Graeme felt as if much of his time was taken treading water waiting for building specifications to be updated.

A positive attitude helped Graeme to overcome each hurdle as it arose. 'You just have to pick your way through these sorts of things and take them on as they occur. Some are foreseen and some are unforeseen.'

Protecting the product has been the best management decision for Cavibat. The first and most important step was to put a patent on his product, but he also sought the best advice. 'Paying for good advice from professionals to protect your assets and intellectual property is key. My accountant has been instrumental in advising the setup of the legal identity of the business. He attended meetings with my lawyer to ensure the legal setup works well with the accounting. This has guaranteed that intellectual property is protected from creditors in future relationships as well as maintaining previous tax losses within the business structure.'



Although the company is currently experiencing great success and now ventilating roof cavities as well as walls, and exporting into Australia, Graeme is always looking to the next venture. Plans are in motion for developing new product that will cater to the same clients within the same industry - complementing the Cavibat design and brand, maximising it to full potential.

Disclaimer

This publication has been carefully prepared, but it has been written in general terms only. The publication should not be relied upon to provide specific information without also obtaining appropriate professional advice after detailed examination of your particular situation.



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