

Questions and Answers on Employment Law Changes

Ticking the boxes on trial periods

If a trial period is not covered in an offer letter accepted by the employee, but is covered in the follow-up employment agreement, will it be enforceable?

The standing of an offer couched in broad terms and its acceptance can vary according to the circumstances. But a hotel employee was successful in establishing that the trial period omitted from his offer letter was unenforceable and that he was able to bring a personal grievance. This was because he became an employee upon accepting the emailed offer of employment and not when he executed the full agreement subsequently.

From 6 May onwards only a small-to-medium-sized employer — *defined as one with fewer than 20 employees at the beginning of the day when the employment agreement is made* — will be able to enter into an agreement with a trial period. Trial periods entered into before that date with larger employers will remain enforceable (so long as all the statutory boxes are ticked).

A trial provision is a written provision in an employment agreement which states, or is to the effect, that (s 67A(2)):

- (a) for a specified period (not exceeding 90 days), starting at the beginning of the employee's employment, the employee is to serve a trial period; and
- (b) during that period the [small-to-medium-sized] employer may dismiss the employee; and
- (c) if the [small-to-medium-sized] employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.

See the 2019 *New Zealand Employment Law Guide*, 6.8 for more information on probation and trial periods.

Mandatory rest and meal breaks make a comeback

An employer owns a shop with one sales assistant. What is the position with regard to the sales assistant's morning and afternoon tea breaks and lunch break?

From 6 May 2019, New Zealand returns to the situation it had before 2015, namely prescribed minimum time periods for rest and meal breaks. For example, for employees working an eight-hour day, the Act will require that they be able to take a 30-minute meal break and two 10-minute rest breaks. They may agree when these are to be taken, but if they can't reach agreement, the meal period would be in the middle of the work period and the rest periods at halfway points between the beginning of the day and the meal break, and the meal break and the end of the day. Only people involved in the protection of national security or the provision of an essential public service (eg emergency services, electricity supply, air traffic control) are exempt from the provisions. An employment agreement excluding, restricting or reducing these entitlements has no effect to the extent it does so.

The new entitlements under s 69ZD are shown in this chart.

Rest and meal break entitlements	
Length of work period	Employee's minimum entitlement
Between 2 hours and 4 hours	A 10-minute paid rest break.
Between 4 hours and 6 hours	A 10-minute paid rest break and a 30-minute meal break.
Between 6 hours and 8 hours	Two 10-minute paid rest breaks and a 30-minute meal break.
More than 8 hours	In the first 8 hours, two 10-minute paid rest breaks and a 30-minute meal break. After the first 8 hours: – if work continues between 2 and 4 hours, a 10-minute paid rest break – if work continues more than 4 hours and up to 6 hours, a 10-minute paid rest break and a 30-minute meal break – if work continues more than 6 and up to 8 hours, two 10-minute paid rest breaks and a 30-minute meal break.

If the employer and the employee do not agree as to the timing of the breaks, rest breaks are to be taken as shown in this chart, so far as is reasonable and practicable.

Rest and meal break entitlements	
Length of work period	Timing of breaks
Between 2 hours and 4 hours	Rest break in middle of work period.
Between 4 hours and 6 hours	Rest break after one-third of work period and meal break after two-thirds of work period.
Between 6 hours and 8 hours	Meal break in middle of work period, with rest breaks halfway between start of work and meal break, and halfway between meal break and end of work.
More than 8 hours	In the first 8 hours, a meal break in middle of work period, with rest breaks halfway between start of work and meal break, and halfway between meal break and end of work. 10-minute paid rest breaks and a 30-minute meal break. After first 8 hours, breaks taken as set out above for work periods of 2-4 hours, 4-6 hours and 6-8 hours.

See the 2019 *New Zealand Employment Law Guide*, 8.2. for more information on Rest Breaks and Meal Breaks

Preparatory meetings may also be “work”

A hardware store is open from 9am to 5.30pm daily. It expects its staff to be present for a meeting at 8.45 am to brief them about daily specials, how to operate new products and so on. They are paid only for 8 hours daily (with an unpaid 30 minute lunch). Should they be paid for the extra quarter of an hour?

A Labour Inspector asked this question of the Employment Court with regard to sales staff at Smiths City. The Labour Inspector argued that the staff were working during the time. The Employment Court agreed, concluding that the meetings were an integral part of their work. There was an expectation they would attend and the pressure placed on them to do so was direct and forceful. Though most of the staff did not play active roles in the meetings, they were required to listen and absorb work-related information. The benefits of the meetings were enjoyed entirely by the employer because it had a cost-free opportunity to prepare its staff for the working day.

Labour Inspector v Smiths City Group Ltd, 2019 New Zealand Employment Law Guide, 4.2 & 5.6.3.

New protections for employees experiencing domestic violence

An employee has been in a violent personal relationship. After spending some time in a women’s refuge, she is attempting to find accommodation away from her former dwelling and to settle her children into new schools. What sort of assistance from her employer is she entitled to?

With effect **from 1 April 2019**, an employee in this situation is entitled to request a short-term (two months or less) variation to their working arrangements to help them to deal with the effects of domestic violence. This might relate to hours of work, or days of work, or place of work (eg the ability to work from home), or more than one of those things. An employee who has been in employment with the employer for six months can also take up to 10 days’ paid domestic violence leave. Furthermore, an employer cannot discriminate against an employee because that person is a victim of domestic violence.

Definition of domestic violence

The Employment Relations Act (s 69ABA) adopts the definition of domestic violence in the Domestic Violence Act 1995 (s 3). It means violence against a person by any other person with whom the first person is, or has been, in a domestic relationship. This includes a spouse or partner, a family member, a person who ordinarily shares a house with the first person, and a person with whom the first person has a close personal relationship.

Violence includes physical, sexual, or psychological abuse. A child who sees or hears violence being inflicted on a person with whom the child has a domestic relationship may be psychologically abused.

A person affected by domestic violence is (Employment Relations Act, s 69AAA):

- (a) a person against whom any other person inflicts, or has inflicted, domestic violence:
- (b) a person with whom there ordinarily or periodically resides a child against whom any other person inflicts, or has inflicted, domestic violence.

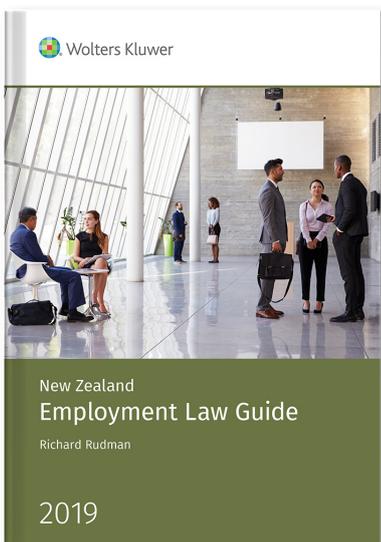
See the 2019 *New Zealand Employment Law Guide*, 8.3, 10.8 & 16.4.9 for more information.

Union access: consent still required for certain business

A union representative is keen to visit a non-unionised workplace in order to recruit new members. Does the recent loosening of the consent rules mean that the representative does not need to seek permission from the employer in advance?

In the final iteration of the recent amendments to the Employment Relations Act, a residue of the former tight rules about employer consent was retained. Consent now does not need to be sought if there is a collective agreement in force covering the work of employees in the workplace, or the union or the employer has initiated bargaining for a collective agreement covering the work of employees in the workplace. But it does have to be sought if entry is for any other reason. An employer cannot, however, withhold consent unreasonably.

See the 2019 *New Zealand Employment Law Guide*, 7.3.8 for more information on union access to the workplace.



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