

QUEEN · CITY · LAW

BARRISTERS & SOLICITORS

**EMPLOYMENT RELATIONS ACT
COMPLIANCE CHECKLIST**

FOR

INDIVIDUAL EMPLOYEE WORKPLACES

QUEEN CITY LAW

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EMPLOYMENT RELATIONS ACT COMPLIANCE CHECKLIST

FOR

INDIVIDUAL EMPLOYEE WORKPLACES

(ie workplaces where there are no relevant collective agreements)

A. Individual Employment Agreements

– for new employees hired on or after 1 April 2011

1. *Interview / Negotiation of Terms of Employment*

- Avoid discrimination, preference or pressure placed on anyone because of union or non-union status
- Ensure that the employee is (or will be) entitled to work in New Zealand
- Avoid unfair bargaining where you know or ought to know that:
 - the employee can't properly understand the intended employment agreement due to limited capacity caused by age, sickness, mental, educational or communicational disability, emotional distress or any other cause
 - the employee reasonably relies on the skill, care or advice provided by you or your representative
 - the employee was induced to enter into the employment agreement by oppressive means, undue influence or duress

2. *Offer of Employment*

- Avoid unfair bargaining by making sure that:
 - the employee is given (before he/she accepts the job) a copy of the intended employment agreement
 - the employee is told (before he/she accepts the job) that he/she is entitled to seek independent advice about the intended employment agreement
 - the employee is given (before he/she accepts the

- variation
- disciplinary / dismissal process
- **employee acknowledgement including receipt and understanding of intended employment agreement / advice that entitled to get independent advice / reasonable opportunity to get independent advice**

3. ***Trial Periods***

- Employers can request a 90 day trial period for all new employees
- Must be agreed in writing and negotiated in good faith **before** the employee commences work
- The employee cannot raise a personal grievance for unjustified dismissal if notified of dismissal within the 90 day period – however they can raise a personal grievance on other grounds such as discrimination, harassment etc

4. ***Probationary Periods***

- Must be in writing and contained in the intended employment agreement
- Must include duration of probationary period
- Must not breach the law in relation to unjustified dismissal

5. ***Fixed Term***

- Must be agreed with the employee
- Must, before the employee agrees to same:
 - advise the employee how the employment will end ie:
 - at the close of a specified date or period
 - on the occurrence of a specified event
 - at the conclusion of a specified project
 - advise the employee of the reasons for the fixed

term

- The reasons for the fixed term must:
 - be genuine reasons based on reasonable grounds
 - not be for the purposes of deciding on the employee's suitability for permanent employment (ie not for trial periods)
 - not be for the purposes of limiting or excluding the employee's rights under the Employment Relations Act
- The above should be recorded in writing and included in the intended employment agreement

6. **Employment**

- Make sure that you have signed copies of the following documents on file:
 - individual employment agreement
 - employee acknowledgement
 - employee disclaimer (where applicable)
 - evidence of entitlement to work

B. **General Obligations**

1. **Good Faith**

- Must deal with all employees in good faith in employment matters, for example:
 - consultation with employees about their collective interests
 - consultation about changes or proposed changes to your business which might impact on the employees, eg contracting out work or selling all or part of your business
 - making employees redundant
 - union access to the workplace (employer must respond to a Union Representative's request to enter

the business within two working days, and cannot unreasonably withhold right of entry)

- Must not do anything, either directly or indirectly, which will, or is likely to, mislead or deceive the employees
- Good faith obligations will likely extend to:
 - negotiation of new terms and conditions
 - salary / performance reviews
 - disciplinary matters

2. **Induction**

- Having a good induction process is critical, but it is also important to have ongoing staff training.
- During induction you should:
 - Provide a full health and safety briefing which covers:
 - Hazards in the workplace
 - How to be safe from hazards
 - Workplace evacuation
 - An introduction to the Health and Safety representative of your workplace
 - Provide any safety equipment required for the job and ensure the employee knows how to use it
 - Inform the employee of reporting requirements regarding safety issues and emergency contacts
 - Outline the training that the employee can expect to receive
 - Outline all relevant policies (i.e. internet usage, sexual harassment etc).
- You should keep records and notes of all workplace training as well as records of external training for individual employees.

3. **Employment Relationship Problems**

- Employment relationship problems include personal grievances, disputes and any other problem arising out of an employment relationship (except fixing new terms and conditions)
- Procedures include:
 - acknowledgement of notification of the problem and good faith discussions with the employee; then (if not

- solved)
- refer to the Department of Labour, Employment Relations Service (likely for mediation); then
- refer to the Employment Relations Authority for an investigation and decision; then
- any appeals to the Employment Court
- You will still need to protect your interests by being careful about how you manage your input during the above procedures
- The 90 day time limit for a personal grievance still exists. But you must make sure you don't provide a reason for extending the time limit by:
 - causing such trauma to the employee that they are unable to properly consider raising the personal grievance
 - not giving the employee a "plain language explanation" of the services available to help resolve employment relationship problems (including the 90 day time limit to raise any personal grievance with you)
 - not giving written reasons for any dismissal within 14 days of a request for same

4. ***Wages and Records***

- Employers must keep wages and time records for each employee for six years. Employees and their representatives have the right to see these records. The records must include:
 - the employee's name
 - the employee's age, if they are under 20 years
 - the employee's postal address
 - the type of work the employee does
 - the type of employment agreement, individual or collective
 - the title, expiry date and employee classification in any applicable collective agreement
 - the hours worked each day, including start time, finish time and any non-paid breaks taken, and days of employment in each pay period
 - the wages paid each pay day and the method of calculation (e.g, the hourly rate of pay, or how piece rate payments are calculated)
 - details of any employment relations education leave taken

- details of salary deductions, such as PAYE and agreed superannuation contributions.
- Holiday and leave records must also be kept for each employee for six years.

The records must include:



- the employee's name
- the date employment commenced
- the days on which an employee works, if the information is relevant to entitlement or payment under the Holidays Act 2003
- the date the employee last became entitled to annual holidays
- the employee's current entitlement to annual holidays
- the employee's current entitlement to sick leave
- the dates any annual holiday, sick or bereavement leave was taken
- the amount of payment for any annual holidays, sick leave and bereavement leave taken
- the portion of any annual holidays that have been paid out in each entitlement year
- the date and amount of payment, in each entitlement year, for any annual holidays paid out
- the dates of and payment for any public holiday worked
- the number of hours worked on any public holiday
- the day or part of any public holiday agreed to be transferred, and the calendar day or period of 24 hours to which it has been transferred
- the date on which the employee became entitled to any alternative holiday for any public holiday worked
- the dates and payment of any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to payment
- the cash value of board and lodgings provided
- the date of termination
- the amount of pay for holidays on termination
- any agreements to transfer holidays
- any requests to cash up annual holidays
- the anniversaries when the employee becomes entitled to conditions under either minimum legal entitlements or additional provisions in the employment agreement.

C. KiwiSaver

- Employers have an obligation to allow employees to join KiwiSaver via the workplace. Any new employees who meet the eligibility criteria for KiwiSaver must be automatically enrolled. Employers are required to:
 - complete an IRD form called KS1 for each new employee (and any existing employees who wish to opt in) and send this to IRD to register the employee
 - provide the employee with the IRD Employee Guide KS3
 - if you have an employer-chosen KiwiSaver scheme you must advise new employees in writing that you have



chosen a scheme that they will be allocated to unless they choose their own KiwiSaver scheme. You must also give them your scheme's investment statement

- deduct KiwiSaver contributions and make compulsory employer contributions at the correct rate and forward these to IRD by the due date along with your PAYE payments
- The employee should provide you with the KS2 deduction form to let you know whether they want 2%, 4% or 8% of their pay deducted. You should keep this form in the employee's file for your records. If they do not complete the form, you must make deductions at the rate of 2%.

D. Documentation

- Queen City Law can provide the following documents for new and existing employees:
 - Individual Employment Agreement
 - Employee Acknowledgement
 - Employee Disclaimer
 - Employment Relationship Problem Clause
 - Flow Chart (providing information about resolving employment relationship problems)
 - 90 Day Trial Period Clause
 - Probationary Period Clause
 - Fixed Term Contract

NB: The information in this checklist is of a general nature, and is not intended as a substitute for professional advice. It should be used as a guide only. If you have any specific concerns you should contact Marcus N Beveridge, Principal, for specific advice.