MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
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Addressing zero-hour contracts

The Employment Standards Legislation Bill includes a package of measures to prevent unfair employment practices in the New Zealand labour market, such as "zero-hour contracts".

The changes aim to retain flexibility where it is desired by both, employers and employees, but also increase certainty by ensuring that both parties are aware at the beginning of the working relationship of the mutual commitment that they have made.

The changes mean that where the employer and employee agree to hours of work, they will be required to state those hours of work in the employment agreement.

The changes also prohibit the following practices:

- employers requiring employees to be available to work for more than the agreed hours without having a genuine reasons based on reasonable grounds
- employers requiring employees to be available to work for more than the agreed hours without paying reasonable compensation for the number of hours the employee is required to be available
- employers cancelling a shift without the provision for reasonable notice or reasonable compensation
- employers putting unreasonable restrictions on secondary employment of employees
- employers making unreasonable deductions from employees' wages.

When hours are agreed, these must be stated in the employment agreement

Where the employer and employee agree to set hours of work, they will be required to state those hours in the employment agreement. This includes agreement on any or all of the following:

- the number of guaranteed hours of work,
- the start and finish times,
- the days of the week the employee will work
- any flexibility in the above.

What if there are no agreed hours?

The employer and the employee do not have to agree on hours, times or days, but when they do, anything that is agreed must be recorded in the agreement. This will ensure employers and employees are clear in their commitments to each other.

In cases where no hours were agreed to, the employer must provide an indication of the arrangements relating to the employee's working times. This is consistent with the current law.

Employees will be able to apply to the Employment Relations Authority for a penalty against their employer, if they agreed on hours, but have failed to record these in the employment agreement.

Preventing employers requiring employees to be available without a genuine reason based on reasonable grounds and providing reasonable compensation

The changes will prohibit employers from requiring employees to be available above the agreed hours of work stated in their employment agreement unless employees are reasonably compensated for that availability as agreed in the employment agreement. Employers will not be obliged to offer work that is above the agreed number of hours. Employees will be free to decline extra work unless they agreed to an availability provision and they are provided reasonable compensation for that availability.

What about availability provisions?

Availability requirements and compensation rates will need to be agreed and stated in the employment agreement. An employer can not include an availability provision in the employment agreement, unless there are some guaranteed hours in the agreement.

The employment agreement should also indicate the amount of availability the employer requests.

Employers will also need to have a genuine reason based on reasonable grounds to require employees to be available above the agreed hours. Employers also need to have a genuine reason based on reasonable grounds for the number of hours of availability.

When considering whether there is a genuine reason based on reasonable grounds, employers must consider:

- Whether it is practicable for them to meet their business demands without using an availability provision
- How much availability they're requiring and the proportion of the availability to the number of agreed hours of work

What is considered reasonable compensation for availability?

When establishing what compensation an employer offers to an employee in exchange for their availability, employers must consider:

- The number of hours they are requiring an employee to be available
- The proportion of the availability to the number of guaranteed hours
- Any specific restrictions the availability provision requires (e.g. must not drink while on call)
- The employee's regular pay rates
- If the employee is paid by salary, the amount of the salary

Cancelling a shift only with reasonable notice or reasonable compensation

Reasonable notice and reasonable compensation for cancelling a shift will need to be specified in the employment agreement. When a shift is cancelled, the employer will need to give either reasonable notice or reasonable compensation before the commencement of the shift. If the employment agreement does not specify these, then the employee must be paid the full amount they would have earned, had they worked the shift.

What is a reasonable notice period?

When considering whether the notice period is reasonable, employers must consider:

- The particular nature of business
- The ability of the employer to control or foresee cancellations
- The nature of the employee's work and the likely effects of a cancellation on employees

- The nature of the employee's employment arrangements including whether they have guaranteed hours and if so, the number of guaranteed hours

What is considered reasonable compensation for shift cancellation?

When considering whether the compensation is reasonable, parties must consider:

- the length of the notice period stated in the employment agreement
- the remuneration the employee would have received for working the shift
- likely costs incurred by the employee in preparation for the work

Prohibiting unreasonable restrictions on secondary employment

Employers will be prevented from restricting secondary employment for employees, unless they have a genuine reason based on reasonable grounds to do so. Those grounds won't be prescribed but will be related to:

- the risk of loss to the employer of knowledge, property (including intellectual property) or competitive reputation.
- Preventing a real and unmanageable conflict of interest

Employers must not restrict employees to a greater extent than is necessary. They should consider whether particular cases warrant restrictions instead of putting blanket restrictions on secondary employment.

Prohibiting unreasonable deductions from employees' wages

The current law already requires employee consent to deductions from wages. The new legislation will mean the employer must consult with the employee on each specific deduction, even where the employee has given general consent to lawful deductions in their employment agreement. This obligation does not extend to lawful deductions for things like Kiwisaver or student loan repayments etc.

The changes will also mean that even where there is consent, a deduction must not be unreasonable. For example a deduction to cover losses caused by a third party through breakages or theft may be unreasonable, particularly if the employee had no control over the third party conduct.