

Legal update - Enforcement of Minimum Employment Rights – MBIE needs you

Peter Chemis, Hamish Kynaston, Sherridan Cook, Susan Rowe, Alastair Sherriff, Andrea Pazin

1 July 2014

Recent concerns about the exploitation of migrant and seasonal workers have been the catalyst for a discussion document issued late last month by the Ministry of Business, Innovation and Employment (MBIE) entitled "*Playing by the Rules – Strengthening Enforcement of Employment Standards*". MBIE seeks submissions from key stakeholders (including employers and employees) about how it can better enforce employees' rights to minimum employment entitlements. Amongst the reasons cited for the review are the anti-competitive effects of non-compliance with minimum entitlements, and the negative impact this has on New Zealand's international reputation.

MBIE proposes a number of changes to employment legislation to ensure employers are incentivised to comply with minimum employment entitlements and to ensure the Labour Inspectorate has the necessary powers to investigate and enforce breaches of employee rights. Amongst other suggestions, the discussion document proposes:

- Changes to the sanctions for non-compliant employers, including 'naming and shaming' deliberately non-compliant employers, putting in place higher monetary penalties and criminal sanctions that are more in line with penalties under immigration legislation
- Taking steps to prevent 'phoenixing' (ie where directors wind up a company and start a new one to avoid enforcement measures)
- Increasing the amount of information that Labour Inspectors can require from employers (eg financial records, bank statements and PAYE records, not just wages and time and holidays and leave records) and promoting greater information sharing between government agencies, such as the IRD, WorkSafe and Immigration New Zealand
- Extending Labour Inspectors' powers to make binding determinations as to employment status (ie contractor or employee), or clear cases of non-payment of wages or holiday pay
- Removing the requirement for parties to attend mediation in cases of alleged breaches of minimum employment rights, on the basis that it is a matter of fact whether a breach has occurred, and mediation can unnecessarily delay employees receiving their entitlements.

The discussion document contains a submission form that can be filled out and sent in to MBIE. We would also be happy to assist you in preparing a submission. **Submissions are due by 5pm on 23 July 2014.**

Auckland

PwC Tower
188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659