

Legislative changes coming to a workplace near you

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16 April 2019

Three weeks from now the final set of changes to the Employment Relations Act will take effect. The following is a reminder of the changes to date and to come, together with a brief reminder about domestic violence leave and an update on the proposed changes to the Privacy Act.

In three weeks

Farewell to trial periods for employers with 20 or more employees.

On 6 May 2019, 90-day trials will be restricted to employers with fewer than 20 employees. A number of employers are reverting to probationary periods as a result.

Be mindful of the difference between 90-day trial and probationary periods. Under a probationary period, an employer is not immune to a personal grievance for unjustified dismissal. While probationary periods drop the threshold for a justified dismissal in theory, their primary benefit practically is that they help to set and manage expectations. To be effective they need to be actively managed.

Note that trial periods in agreements signed before 6 May 2019 are valid and enforceable past that date.

30-day rule reinstatement

From 6 May, the '30-day rule' will apply again. This means that for the first 30 days, new employees must be employed under terms based on those from the collective agreement that would bind them if they were a Union member. The employer and employee may agree terms additional to the collective, on the condition they are "no less favourable".

Rest and meal breaks

Prescriptive rest and meal breaks will be restored and added to from 6 May 2019. Breaks depend on the hours worked - for example, an eight-hour work day requires that there be at least two 10-minute rest breaks and one 30-minute meal break.

Employers should note:

- They must pay for rest breaks but do not have to pay for meal breaks
- They can agree with their employees when the breaks will be taken. If they cannot agree, the law will require the breaks to default to the middle of the work period, so long as it is reasonable and practicable to do so
- Exceptions apply in specified circumstances, namely essential and national security services, and industries where breaks are provided by other legislation (eg transport).

We recommend that to avoid the default timings, applying an agreed approach is advisable where possible. The agreement made between employer and employee need not be in an employment agreement.

Unions – Collective bargaining

The changes add to unions' powers and access rights to workplaces, place an obligation on parties to conclude bargaining, and require employers to provide unions with more information. The legislative changes relating to unions are as follows:

- The duty to conclude bargaining will be restored for single-employer collective bargaining, unless there are genuine reasons based on reasonable grounds not to. This ensures that parties genuinely attempt to reach an agreement
- Employers will need to pass on information about the role and function of unions to prospective employees. Unions will bear this cost
- Employers will need to allow for reasonable paid time for union delegates to undertake their union activities, such as representing employees in collective bargaining. Employees must notify their employer in advance. An employer will be able to deny the request if it will unreasonably disrupt the business or the performance of the employee's duties.

Note that employers will need to provide new employees with an approved 'active choice form' within the first ten days of employment and are obliged to provide unions with certain information upon request.

Domestic Violence Leave

From 1 April 2019, under an amendment to the Holidays Act 2003, employees affected by domestic violence are entitled to up to 10 days' paid leave each year.

Note the following:

- Employees can take this leave as and when required
- The definitions are broad and may capture an employee who is living with a child affected by domestic violence, not only parents. They also cover historic domestic violence that occurred prior to employment commencing
- Employees will be entitled to request short-term variations to their working arrangements, including changes to hours of work, location, and duties
- An employer can require proof that the employee (or their child) is affected by domestic violence. What constitutes proof is undefined.

Despite employers who have already introduced these benefits reporting they have not been widely used, the legislative change represents a shift in thinking and an acknowledgment that domestic violence profoundly affects employees' wellbeing and ability to fulfil their roles.

A law change will not instantly ensure ease when discussing these types of issues. The onus will sit with the employer to ensure this leave is accessible and their employees feel comfortable to request when required. This leave needs to be treated as if it were sick or bereavement leave. It will not likely be booked in advance. Employers will need to consider their flexibility and the potential they may be without staff members for up to two weeks at a time. For further insight, visit [MBIE's guidance on the law change](#).

Privacy law reform

The Privacy Act changes are ongoing, the Select Committee having reported back. The changes involve greater powers for the Privacy Commissioner, mandatory reporting of privacy breaches, compliance notices, new offences, and increased fines. A further update will follow when the likely changes become clearer.

So what now?

Employers should check offer letters and processes to ensure they are consistent with the law changes set out above. More generally, staff members should be notified of any changes that may affect them, for instance the introduction of domestic violence leave. We are happy to assist you during this process.

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