



# Minimum employment rights and obligations

This brochure provides an overview of the minimum rights and obligations that apply by law to employers and employees.

Employees can't be asked to agree to less than the minimum rights. An employee is anyone who has agreed to be employed, under a contract of service, to work for some form of payment. This can include wages, salary, commission and piece rates.

## ■ Employment agreements

Every employee must have a written employment agreement. It can be either an individual agreement or a collective agreement (one involving a union).

There are things that must be included in employment agreements by law. More information is available on the Department's website, which also has a free online employment agreement builder ([www.dol.govt.nz/agreementbuilder](http://www.dol.govt.nz/agreementbuilder)).

Minimum employment rights must be met regardless of whether or not they are included in an employment agreement or if the agreement states something less than a minimum entitlement.





## ■ Right to work in New Zealand

Employers must ensure that the person they are employing has the legal right to work in New Zealand. The Department's VisaView tool allows employers to confirm information about employees' work entitlement.

See [www.immigration.govt.nz/visaview](http://www.immigration.govt.nz/visaview)

## ■ Minimum pay

The adult minimum wage must be paid to employees aged 16 years and over, who are not new entrants or trainees:

- › New entrants are 16 and 17 year olds who have been employed for less than 200 hours or three months; who are not supervising or training other workers; and who are not trainees.
- › Trainees are employees aged 16 or over who are required by their employment agreements to undertake at least 60 credits a year in a registered training programme.

Minimum pay rates must be paid to all employees whether full-time, part-time fixed-term, casual employees, working from home and people paid totally or partly by commission or piece rates.

There is no minimum wage for employees aged under 16 but all other employment rights and entitlements still apply.

Minimum pay rates are reviewed each year and the current amounts are available on the Department's website.

## ■ Paying wages

Legally wages must be paid in cash. To pay wages another way (e.g. direct credit, cheque) employers must get their employees written agreement.

Employees must give written consent before deductions can be made from their wages. Some deductions, like PAYE tax, student loan and child support, are required by law and do not need written consent.

## ■ Keeping records

Employers must keep an accurate record of an employee's time worked, payments, and holiday and leave entitlements. They must keep a signed copy of the employment agreement or current signed terms and conditions, and must provide a copy on request to the employee.

They should also keep copies of agreements to transfer public holidays or agreements to cash up annual holidays or copies of requests to transfer public holidays or request to cash up annual holidays that the employer did not agree to.

For details on what information must be recorded see the Department's website.



## ■ Break entitlements

Employees are entitled to:

- › one 10-minute paid rest break when they work between two and four hours
- › one 10-minute paid rest break and one unpaid 30-minute meal break when they work more than four and up to six hours
- › two 10-minute paid rest breaks and one unpaid 30-minute meal break when they work more than six and up to eight hours.

These requirements begin over again if an employee works more than eight hours.

Employers must provide appropriate breaks and facilities for employees with babies who wish to breastfeed or express breast milk, where this is reasonable and practicable. These are unpaid breaks unless the employer agrees otherwise.



## Holidays & Leave

### ■ Annual holidays

At the end of each year of employment with any one employer, an employee becomes entitled to four weeks' paid annual holidays.

Employees can ask (in writing) to cash-up, up to one week of their annual holidays each year. Employers can't pressure employees to cash up annual holidays and requests to cash up can't be included in employment agreements.

If an employee leaves before completing a full year of employment, annual holiday pay would be 8% of their gross earnings, less any holiday pay already received.

Genuinely casual employees (those who work intermittently) and fixed term employees can agree to receive holiday pay on a "pay as you go basis" if certain conditions are met. See the Department's website for more information.

Employers can require employees to take annual holidays during a closedown period (as can happen over Christmas/New Year), providing they give at least 14 days' notice. If an employer has a closedown period that includes public holidays, then the employee is entitled to paid public holidays if they would be otherwise working days for them.

### ■ Public holidays

Employees are entitled to 11 public holidays off work on pay, if they are days when the employee would normally work. Employers must pay employees their relevant daily pay or average daily pay (if applicable) for the public holiday.

If an employee works on a public holiday they must be paid at least time-and-a-half for the time worked. If the public holiday falls on a day they would normally work, the employee is also entitled to an alternative paid holiday.

Employers and employees can agree to transfer the observance of a public holiday

to another working day, to meet the needs of the business or individual employees. However, the number of public holidays the employee is entitled to can't be reduced. The day the public holiday is transferred to is treated as a public holiday for pay and leave purposes.

The Department's website has a list of public holidays and the Holidays & Leave Tool makes it easy to work out pay and leave entitlements. ([www.dol.govt.nz/holidaytool](http://www.dol.govt.nz/holidaytool))

### ■ Sick and bereavement leave

After six months an employee is entitled to five days sick leave on pay. They are entitled to five days sick leave for every 12 months after that. Sick leave can be taken if the employee is sick or injured or the employee's spouse or partner is sick or injured or if a person who depends on the employee for care is sick or injured.

Employers must pay employees their relevant daily pay or average daily pay (if applicable) for sick leave.

Employers can request proof of the illness, such as a medical certificate. If the employer asks for proof within the first three days of the sick leave, the employer is responsible for any costs the employee might incur to gain this proof. Employers can't insist employees visit a particular medical practitioner.

After six months employees are entitled to paid bereavement leave of:

- › three days on the death of a spouse/partner, parent, child, sibling, grandparent, grandchild, or spouse/partner's parent
- › one day if their employer accepts they've suffered a bereavement involving another person not included above.

The Holidays & Leave Tool can help calculate sick leave and bereavement leave entitlements.



## ■ Parental leave

Employees may be eligible for paid and unpaid parental leave if they meet certain criteria. The paid leave is funded by Government, not employers.

Employees may be entitled to parental leave if they have worked for the same employer for an average of at least 10 hours per week, and at least one hour in every week or 40 hours in every month, for either the six or 12 months before the expected due date of their baby or the date they assume care of a child they intend adopting.

Employees who meet the six-month employment eligibility criteria are entitled to 14 weeks' paid parental leave – some or all of which can be transferred to a spouse/partner if they also meet the six month criteria.

Employees who meet the 12-month eligibility criteria, are also entitled to up to 52 weeks' unpaid extended leave (less any parental leave taken). This can be shared with a spouse/partner if they also meet the 12-month eligibility criteria.

A spouse/partner with six months' service may be entitled to an additional one weeks' unpaid paternity/partner's leave, and a spouse/partner with 12 months' service may be entitled to two weeks' unpaid paternity/partner's leave. To be eligible, the spouse/partner must meet the minimum hours test above.

Up to 10 days' unpaid special leave for pregnancy-related reasons is available for a pregnant mother before parental leave begins.

For help understanding entitlement to parental leave, or what to do with an application from an employee, see the Department's website. The Parental Leave Calculator [www.dol.govt.nz/paidparental](http://www.dol.govt.nz/paidparental) can calculate entitlements.

## ■ Other leave rights

Employees may be entitled to other types of leave, for example if they've been injured in a work accident or are training in the armed forces.

## ■ Flexible working arrangements

Employees with caring responsibilities have a statutory right to request a change to their hours of work, days of work, or place of work. Employers must consider a request and can refuse it only on certain grounds. See [www.dol.govt.nz/worklife](http://www.dol.govt.nz/worklife) for more information.

## ■ Equal pay and equal rights

Employers can't discriminate in hiring or firing, paying, training or promoting an employee because of race, colour, national or ethnic origin, sex or sexual orientation, marital or family status, employment status, age, religious belief or political opinion, disability, or participation in certain union activities.

## ■ Fixed-term employees

Employers can offer fixed-term employment if:

- › there are genuine reasons - like seasonal work, project work, or where the employee is filling in for a permanent employee on leave
- › the employer tells the employee the reasons, how or when the employment will end, and the employee agrees to this in their employment agreement.

Like other employment agreements, fixed-term agreements must be in writing.

## ■ Trial periods

Employers can make an offer of employment that includes a trial period of up to 90 days. Trial periods are voluntary, and must be agreed in writing and negotiated in good faith as part of the employment agreement.

An employee who is dismissed before the end of a trial period can't raise a personal grievance on the grounds of unjustified dismissal. They can raise a personal grievance on other grounds, such as discrimination or harassment or unjustified action by the employer.

Employees on trial periods are entitled to all other minimum employment rights.



### ■ Unions

Employees have the right to decide whether to join a union and, if so, which union. It is illegal for an employer (or anyone else) to put unreasonable pressure on an employee to join or not join a union.

Once employees have joined a union, employers must, if asked, enter into bargaining for a collective agreement with that union.

Union members can attend two union meetings (no longer than two hours each) per calendar year on pay and during normal working hours. They can require employers to deduct union fees from their wages and pay these to the union. Some members may be entitled to paid leave to attend employment relations education courses.

Unions must gain an employer's consent to visit a workplace. The employer can't unreasonably withhold consent.

See the Department's website for more information on unions and collective bargaining, including strikes and lockouts.

### ■ Health and safety

Employers must provide a safe workplace, with proper training, supervision and equipment. This duty includes identifying, assessing and managing hazards, and investigating health and safety incidents. Employers are also required to report serious injuries at work to the Department of Labour.

Employees must take reasonable care to keep themselves safe, and to avoid causing harm to other people by the way they do their work. Employees may refuse work likely to cause them serious harm and have the right to participate in improving health and safety.

### ■ Change and restructuring

Employers must consult with employees about proposed decisions likely to have an adverse effect on the continuation of an employee's employment. They must provide information to affected employees and give them an opportunity to comment before making their decision. Employers do not have to disclose confidential information if they have a good reason to withhold it.

Special rules apply to employees doing certain catering, cleaning, caretaking, laundry and orderly work where their employer's business is sold or their work is contracted out or given to a new contractor.

### ■ Employment relationship problems

If an employment problem arises at work employers and employees should firstly check the facts. They should talk to each other to try to resolve the problem, possibly involving a support person or union/association representative in the discussion. They can get information about rights and obligations from the Department.

If the problem can't be resolved by talking, employees or employers can contact the Department of Labour, and a Mediator or Labour Inspector may be able to help sort things out. This service is free.

Problems that remain unresolved can be taken to the Employment Relations Authority or later to the Employment Court.

### ■ Penalties

There are financial penalties for not complying with employment laws, of up to \$10,000 for individuals and \$20,000 for companies. An employer may be fined or prosecuted for not complying with workplace health and safety laws.





## ⇒ More information

[www.dol.govt.nz](http://www.dol.govt.nz)

0800 20 90 20

Information, examples and answers to your questions about the topics covered here can be found on our website [www.dol.govt.nz](http://www.dol.govt.nz) or by calling us free on 0800 20 90 20.

## ⇒ About the Department of Labour

The Department of Labour provides information and investigates problems to do with employment and workplace health and safety. We can help employers and employees with:

- › employment conditions
- › minimum legal requirements
- › problem resolution
- › health and safety
- › ways to work better
- › labour market information.

### **Disclaimer**

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Department of Labour is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

ISBN 978-0-478-36080-6

March 2011