



Complying with employment legislation

Commentary by Tony McKone, Director McKone Consultancy Ltd. 20 September 2013

A couple of recent articles have highlighted the need for employers to have a clear understanding of the impact working extra hours has on employees. The Labour Inspectorate of the Ministry of Business Innovation and Employment (MBIE) recently warned Christchurch construction firms to ensure that they were complying with employment law. There had been cases of firms getting their people to work long hours and not making the appropriate payments for that time. This meant that workers were potentially not getting their minimum entitlements, which is a clear breach of their employment agreement and the legislation.

If you have a need to get your people to work extra hours, as their employer you need to be aware of your obligations. These are covered both in law and most likely in your employment agreements. Being ignorant of those obligations is not a defence for getting it wrong.

If you are asking your people to work longer hours, you need to be aware of any overtime rates that are in their employment agreement. You must pay those overtime rates. You also need to be aware that the cost of that overtime will also impact on the annual leave of the employee. This is because annual leave is paid at the greater of average weekly earnings or ordinary weekly earnings. Ordinary weekly earnings are what your employees would normally expect to be paid for a week's work. However, when someone works extra hours, their average weekly earnings (the average weekly pay they have received over the preceding 12 month period) will be higher.

The only exception to this rule is when an employee returns from parental leave. The employee continues to accrue annual leave while on parental leave, because they are still an employee. When the employee returns to work from parental leave, for the next 12 months, their annual leave is calculated at the average weekly earnings for the 12 months' prior to taking that leave.

The other comment that was made by MBIE was employers making the mistake of employing people and not providing them with an employment agreement. This is an absolute obligation on the employer which comes from the Employment Relations Act 2000.

There are financial penalties for not complying with employment laws of up to \$10,000 for individuals and \$20,000 for companies.

McKone Consultancy Ltd can provide assistance with your terms and conditions of employment, including preparation of individual or collective employment agreements. We can audit your current individual terms and conditions to ensure they comply with legislation and help you ensure your managers / supervisors understand the terms and conditions. Contact us today for assistance.