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EMPLOYMENT LAW 101 – everything you need to know but were afraid to ask!

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Farmers featured in more headlines following *Whyte v Feeney* [2013] NZERA Wellington 106, a case involving salaries and seasonal working hours. Breaches of the Minimum Wage Act 1983 (MW Act), inadvertent or otherwise, are keeping lawyers and Labour Inspectors busy. So too are seemingly minor mistakes made by employers misunderstanding the basic legal requirements for employment relationships. Employers - take notice. Proactively managing your obligations beats blindly hoping for the best and risking an employee complaining to an Inspector and possibly penalties.

The Fundamentals – good faith

Employers and employees must deal with each other in good faith. In addition, an employer must be fair and reasonable in its decision making as set out in the Employment Relations Act 2000 (Act). These concepts are vital to an employer's understanding of its obligations and rights and highlight that when dealing with each other parties must exhibit good faith behaviour.

Good faith requires that you don't do anything directly or indirectly that will or is likely to, mislead or deceive either an employee or a union. Both employee and employer must be active and constructive in establishing and maintaining a productive employment relationship in which they are at least responsive and communicative.

Additionally, an employer must provide an employee with access to information and an opportunity to comment on that information, where a proposed decision will, or is likely to, negatively impact the ongoing employment of that employee. That opportunity to comment must be given before any decision is made.

Exceptions to the requirement to disclose that information include where an employer is protecting the privacy of certain individuals or the commercial position of the company.

Blatant failures to uphold good faith obligations may attract penal consequences. You can be fined for a "*deliberate, serious and sustained*" failure to act in good faith under section 4A of the Act.

As an employer, you might find yourself in a situation where you need to justify your actions or a decision to dismiss. Such a situation could arise if your employee pursued a personal grievance for unjustifiable disadvantage or unjustified dismissal. A mediator, the Employment Relations Authority or the Employment Court would all consider whether your actions or decision to dismiss were how a fair and reasonable employer could have acted in all of the circumstances (the "test of justification").

The test in its current form (set out below) came into force on 1 April 2011 (previously the word could read would). It confirmed that the decision maker must assess whether any dismissal of and/or actions directed towards an employee were how a hypothetical, fair and reasonable employer could have acted in all the circumstances at the time (an objective standard). Following the change, there may be less emphasis put on minor procedural flaws where the employer still treated the employee fairly. Being a small employer with few resources is also relevant. The minimum standards of procedural fairness still apply and employers should comply with any applicable employment agreement and policies.

The Test of Justification is outlined by Section 103A of the Act:

(1) For the purposes of section 103(a) and (b), the question of whether a dismissal or an action was justifiable must be determined, on an objective basis, by applying the test under subsection (2).

(2) The test is **whether the employer's actions, and how the employer acted, were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred**.

In applying the test in subsection (2), the Authority or the court must consider—

(a) whether, having regard to the resources available to the employer, the employer **sufficiently investigated** the allegations against the employee before dismissing or taking action against the employee; and

(b) whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and

(c) whether the employer gave the employee a **reasonable opportunity to respond** to the employer's concerns before dismissing or taking action against the employee; and

(d) whether the employer **genuinely considered** the employee's explanation (if any) in relation to the allegations against the employee before dismissing or taking action against the employee.

(4) In addition to the factors described in subsection (3), the Authority or the court may consider **any other factors** it thinks appropriate.

(5) The Authority or the court must not determine a dismissal or an action to be unjustifiable under this section solely because of defects in the process followed by the employer if the defects were —

(a) minor; and

(b) did not result in the employee being treated unfairly (author's emphasis).

Types of Employees

Knowing what type of employment relationship suits your workplace and staff forms a crucial consideration when first engaging staff. It fundamentally affects the terms and conditions of employment including holiday and leave entitlements. It also affects what rights an employee may have to bring a personal grievance for any dismissal or disadvantage.

In the case of *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225, the Employment Court noted that the rights of an employee (including whether they can claim to have a personal grievance against their employer) are wholly dependent on having the status of employee for the purposes of the Act.

In considering whether someone is an "*employee*," the Court will examine not just what the employment agreement says but "*the real nature of the relationship*," (Section 6, Act) and all relevant matters, including any matters that indicate the intention of the parties. This means that just because the written agreement labels the relationship as casual or fixed term, the Authority or Court may view it differently if in reality the employee works on a permanent basis.

Three types of employment relationships exist in New Zealand: Permanent, Fixed Term and Casual. These types are mutually exclusive - "*Permanent casuals*" do not exist.

Permanent employees are employed for an indefinite period on a full time or part time basis. Permanent employees remain employed until they either resign or are dismissed including by way of redundancy. They usually enjoy regular, predictable work patterns but may have limited or no guaranteed days or hours of work. In addition, these employees must be paid their annual holiday pay when they take annual holidays and must be paid sick and bereavement leave after 6 months continuous employment.

Fixed term employees must agree in writing to temporary employment that ends upon the expiry of a fixed term (defined by a date, period, event or project). These employees must be employed on a fixed term agreement based for "*genuine reasons based on reasonable grounds*" (Section 66, Act). Fixed term agreements cannot be designed to limit the rights of the employee or to establish whether the employee is suitable for permanent employment. The written employment agreement must state how the employment will end and why. An employer must notify the employee of how and when the fixed term expires in accordance with the agreement. If the employer allows it to roll over, the employee may claim they have become a permanent employee.

It is most unlikely that the existence of the dairy season is a genuine reason based on reasonable grounds for employment to be fixed term.

A fixed term employee may also work part time, full time or variable hours, and be paid on the basis of wages or a salary. Employers may pay fixed term employees for their annual holiday pay when they take annual holidays or, if they are employed on a fixed term of less than 12 months, with their wages or salary (but the agreement must outline the holiday pay arrangements and show the 8% payment separately from the base remuneration).

Section 66 of the Act defines the scope of fixed term employment arrangements. Parties may agree that an employee's employment will end at the close of a specified date or period, on the occurrence of a specified event or at the conclusion of a specified project. Prior to any fixed term employment, the employer must:

- Have genuine reasons based on reasonable grounds for specifying that the employment of the employee is to end in that way;
- Advise the employee of when or how their employment will end and the reasons why; and
- The parties must record the agreement to the fixed term arrangement in writing.

An employer cannot seek an employee's agreement for a fixed term agreement to exclude or limit the rights of the employee under the Act or the Holidays Act 2003 (Holidays Act) or to establish the suitability of the employee for permanent employment. It does not affect the validity of the employment relationship if an employer fails to put any agreement to the fixed term arrangements in writing or fails to have genuine reasons based on reasonable grounds for a fixed term relationship. But an employer cannot rely on the expiry of an invalid fixed term agreement to dismiss the employee if the employee chooses to claim that they are actually a permanent employee and where the above criteria are not met.

Casual employees are typically engaged for short periods of time for specific purposes. No regular work pattern or expectation of ongoing employment exists. Employment depends solely on the availability of work. An employer would not guarantee any work from one week to the next – they are required solely on an "*as and when needed*" basis. No obligation exists on the employer to offer employment or for the employee to accept any offers made. Casual employees are only engaged for the specific term of each period of employment.

Casual employees may be paid holiday pay on a pay as you go basis too. Section 28 of the Holidays Act allows this arrangement where an employee "*works for the employer on a basis that is so intermittent or irregular that it is impracticable to provide the employee with 4 weeks' annual holidays*." The written employment agreement must record the arrangement and the holiday pay component must be identified separately and paid at the rate of at least 8% of the gross wages.

If however casual employment (and fixed term employment) extends beyond a twelve month period then regardless of the fact that 8% holiday pay has been paid as part of the employees wages, holiday pay will need to be paid again when the employee actually takes their holiday entitlement of 4 weeks. Essentially an employer who allows this to happen will have to pay twice.

Individual Employment Agreements

Section 65 of the Act sets out the minimum requirements for an individual employment agreement (and where the contemplated work duties are not covered by any collective agreement). An agreement must be in writing and may contain any terms and conditions the parties think fit provided those terms and conditions are not illegal or inconsistent with the Act.

Employers must retain a copy of the signed, written employment agreement or current terms and conditions for each employee, or a copy of the intended agreement where it was supplied to the employee but it has not been signed or agreed to (Section 64, Act).

At a minimum, an IEA must contain:

- The names of the employee and employer concerned;
- A description of the work to be performed by the employee;
- An indication of where the employee is to perform the work;
- An indication of the arrangements relating to the times the employer expects the employee to work;
- The wages or salary payable; and
- A plain language explanation of the services available for the resolution of employment relationship problems, including reference to the period of 90 days in s 114 of the Act during which the employee must raise any personal grievance.
- An employee protection provision – sale transfer and contracting out of the business (Section 65, Act).

Once your agreement contains all the core terms and conditions of the employment agreement we recommend that you consider whether additional clauses are appropriate and/or necessary. For example, how will you deal with accommodation and disciplinary issues? What happens if an employee leaves you in the lurch – can you deduct anything from their final pay? Trialling someone? You'll need a clause in there about that too. Consider what is appropriate for your business and relations, then tailor it accordingly.

Employers accommodating employees should include a Service Tenancy Agreement. Section 2 of the Residential Tenancies Act 1986 defines a service tenancy as:

> … a tenancy granted pursuant to a term of, or otherwise as an incident of, a contract of service between the landlord as employer and the tenant as employee, whether or not a separate tenancy agreement is concluded in writing between the parties, and whether or not any rent is payable for the tenancy.

Essentially employers are landlords under the Residential Tenancies Act 1986 and are required to provide a written agreement to their employee-tenants. A service tenancy agreement may be drafted separately to the employment agreement but is fundamentally linked to it. It provides parties to a tenancy with certainty regarding their accommodation arrangement too. A service tenancy can be terminated with less notice than an ordinary tenancy.

Disciplining and Dismissing

An employer may initiate a disciplinary process when an employee commits an act of misconduct. Several reasons exist for starting such a process. These range from serious allegations that potentially warrant summary dismissal (such as stealing) to more minor offences that perhaps require only warnings (such as being a bit late). As always there are two aspects to consider: Substantive and Procedural fairness.

Substantive fairness is essentially asking whether your employee has behaved badly enough to warrant the disciplinary action you want to take. For example, being consistently late might be warrant a warning whereas stealing or animal cruelty attracts more serious sanctions. In assessing whether an employee's conduct could be classed as misconduct of a serious or less serious nature, the employer must have reasonable grounds based on clear evidence and/or findings from a reasonable investigation for their decision.

Procedural fairness is:

- At the early stages of wayward ways, tell the employee that what they are doing is inappropriate and tell them what you expect. Let them know that a formal disciplinary process may become necessary and where applicable, that their job would be at risk if they carried on.
- Investigate fully and fairly into any allegations of misconduct. Communicate the outcome of this investigation along with any evidence supporting the allegations and all relevant information you are relying on.
- Outline the allegations in writing, request that the employee attend a meeting to explain him or herself, and advise of a right to bring a representative.
- The employee must also be given a real opportunity in meetings and through other avenues as appropriate, to offer explanations to the decision maker regarding the allegations and to comment on any proposed decision prior to any decision being made, especially where dismissal is concerned.

- If you take disciplinary action or dismiss, give clear and convincing reasons (also give them a final chance to comment on any proposed decision to dismiss before that decision is made).

Restructuring and Redundancy

Similar to disciplining and dismissing, a redundancy requires an employer to show they have a substantive reason for making an employee redundant, and follow a fair process. This at least requires an employer to consult with staff over any proposal to make their role redundant, and have a genuine business reason for the redundancy.

Legislation doesn't define redundancy. The landmark case of *GN Hale and Sons Ltd v Wellington Etc Caretakers Etc IUOW* [ERNZ Sel Cas 846] adopted the following definition as according with common usage, and accurately outlines the redundancy situation:

> (R)edundancy is defined, as far as now relevant, as termination "attributable, wholly or mainly, to the fact that the position filled by the worker is, or will become, superfluous to the needs of the employer" (848).

As with all actions of terminating employment the test is what is open to a fair and reasonable employer to do in all the circumstances. In *GN Hale*, the Court took this one step further and stated:

> A reasonable employer cannot be expected to surrender the right to organize his own business. Fairness however may well require the employer to consult with the union and any worker whose dismissal is contemplated before taking a final decision on how a planned cost saving is to be implemented.

For a dismissal on the grounds of redundancy to be justifiable the employer must consult with affected employees about the proposed change. We recommend undertaking consultation even where the employment agreement or situation does not expressly or obviously require it.

Consultation cannot merely be a meaningless and mindless process that the employer begrudgingly does. An employer must genuinely make an effort and actually inform employees about a proposal, gain feedback, and generally keep them in the loop and so they actually feel involved in the process. Consultation forms a vital part of the good faith obligation of an employer. What is procedurally fair to the employee will depend on the

particular case. Employers will need to consider what steps a fair process would require in each situation.

In situations where redundancies are essentially inevitable – for example, the business is insolvent or there is a major restructuring – it is likely that the requirements of procedural fairness will be fairly limited. In those cases, it will probably concern the selection process for the redundant employees, the notice they are given, and the payment of any compensation. But in other cases, particularly where there are only a few employees made redundant, the requirements of procedural fairness may be more extensive. It may be necessary to consult with the employees, to consider possible alternatives to redundancy, and to provide employees with counseling. Additionally, if the employment agreement specifies procedures for making employees redundant, a failure to comply with them will very likely be seen by the courts as procedural unfairness.

Handling Health and Safety

Currently employers must comply with a raft of health and safety related legislation including the Health and Safety in Employment Act 1992, Accident Compensation Act 2001 and rules relating to hazardous substances and smokefree workplaces. To top this off we have Health and Safety Reform Bill to deal with.

Every employer must take all practicable steps to ensure the safety of employees while at work (Section 6, Health and Safety in Employment Act 1992). Individuals and companies become liable for failing to comply with their obligations. For example, Section 56 makes it an offense by bodies corporate:

> If a company fails to comply, any of its officers, directors, or agents who directed, authorised, assented to, acquiesced in, or participated in, the failure is a party to and guilty of the failure and is liable on conviction to the punishment provided for the offence, whether or not the company is prosecuted or convicted.

Liabilities for those involved in workplaces will continue and arguable increase if the Bill is passed in its current form. For example, the primary duty holder under the Bill would require

any person conducting a business or undertaking (defined in proposed section 13) to "*so far as is reasonably practicable*," to ensure the health and safety of workers.

Under any regime, it will always be essential to have a health and safety policy, to ensure that staff are trained in that policy and understand all the hazards in their workplace and how to work safely.

Seasons and Salaries

Swings and roundabouts operate in lots of workplaces but farms especially require flexibility and staff who willingly work longer hours when needed. Taking time off at a later point may seem like a sensible solution, but can't help an employer meet its obligations under the Minimum Wage Act (MW Act). Knowing your obligations when it comes to seasons and salaries helps prevent being surprised by wage claims and other liabilities.

Whyte v Feeney clarified an employer's obligations under the MW Act in the farming environment. In this case the employee worked on a dairy farm for about two years working variable and seasonal hours. During the dry season (about 12 weeks between May, June and July) he worked between 38 and 40 hours each week. Outside of the dry season he worked during most four week periods, 60 hours a week for three weeks then 40 hours for the fourth week. His employer paid him a salary of between $30,000 and $32,000. Comparable hourly rate? By my calculations the employee's hourly rate ranged between around $9.60 at worst and $16.19 at best.

The employee complained to the Ministry of Business, Innovation and Employment that his employer paid him less then the minimum wage. A Labour Inspector (Inspector) investigated this and also whether the employer had kept appropriate time, wage and leave records and what if any arrears were owed. The employer failed on all counts resulting in a shortfall of over $6,000. The Inspector sent a demand notice requiring payment which the employer objected to.

The Employment Relations Authority (Authority) considered the employer's objection and identified two issues: Whether the employer had paid at least the minimum wage every week (they hadn't), and whether the employer could use any salary payments made during the dry

season and that exceeded the minimum wage to meet any shortfall during other weeks (they couldn't). Salaries are special right? Wrong:

> … (P)ayment by way of salary cannot be used as a mechanism to avoid the rates set out in a Minimum Wage Order. An employer is not able to look towards salary provisions in an employment agreement and say it is able to average out salary payments made for weeks requiring less work against weeks where hours of work are of a duration that the payment is below minimum rates (31).

Due to the level of salary paid and the long hours worked (except during the dry season), the employer could not escape paying less than the minimum wage for most of the year. The Authority determined that the Inspector had correctly concluded that the employer had breached the MW Act and remained liable for the shortfall between what they had paid, and the minimum wage rate associated with each and every hour worked.

Put simply, an employer must ensure that for every hour, day and week worked, the employee is paid the minimum wage for each hour worked. This is the case regardless of the fact that if considered over a fortnightly pay period averaging might solve the issue.

Average Sleepover?

It is not the first time compliance with the MW Act has confronted the Courts. *Whyte v Feeney* applied the principles from a case that related to an employee, Mr Dickson, who worked for Idea Services Limited (ISL) as a Community Support Worker providing care and support to people with disabilities living in the community:

Idea Services Ltd v Dickson [2009] ERNZ 372. As well as working with service users during the day, Mr Dickson would stay the night performing what was known as a "*sleepover*." ISL paid Mr Dickson an hourly rate of $17.66 for time spent actively engaged with services users (typically after 6am and before 10pm each day). ISL paid an allowance of $34 for each sleepover (for around 8 hours overnight).

Mr Dickson claimed he ought to be paid at least $12.50 per hour for each and every hour worked during a sleepover (the applicable minimum wage rate at the time). Mr Dickson had previously argued successfully that the MW Act applied to sleepovers because they were

work (*Idea Services Ltd v Dickson* [2009] ERNZ 116 (EmpC)). ISL tried to argue that by averaging out payments made each fortnight, Mr Dickson received at least the minimum wage – allowing it to "*set off the $17.66 per hour Mr Dickson received for his shift work against the $3.50 per hour or so he received for sleepovers*" (5).

The Court concluded that ISL agreed to pay Mr Dickson by the hour and therefore must pay at least $12.50 per hour of the sleepover. ISL could not lawfully use the higher hourly rate paid for hours worked outside sleepovers during a fortnightly pay period to discharge its obligations to pay the minimum wage during sleepovers. The Court acknowledged the outcome would be "… *undoubtedly of broad application and significance*" (103) and was upheld on appeal.

In *Idea Services Ltd v Dickson* [2011] NZCA 14 the Court of Appeal upheld the Employment Court's decision noting that other cases alleging averaging is a lawful practice would have to be addressed as and when they came before the Court (46). Parliament addressed the issue of sleepovers in the health and disability sector by passing the Sleepover Wages (Settlement) Act 2011.

More recently in *Law v Board of Trustees of Woodford House* [2014] NZEmpC 25 the plaintiffs, matrons or house mistresses at school hostels (supervisors) claimed they were entitled to be paid at least the minimum wage for sleepovers despite being paid a salary year round and working during school term times only (generally 40 weeks of the year). All were paid in equal weekly instalments and in some cases, an allowance of around $25 for performing a sleepover.

The supervisors successfully argued that the MW Act applied to employees who are paid salaries. The supervisors also successfully claimed that despite only working for around 40 weeks of the year, any payments received during the 12 or so weeks where little or no work was required of them, could not be used to satisfy their employer's minimum wage obligations during weeks they did work.

The Court seemed very keen to ensure the MW Act applied to all employees irrespective of their unique payment arrangements:

> It would be outrageous that an employee could be paid less than a MW Act equivalent, simply because his or her remuneration was expressed, at the employer's stipulation, as an annual salary. The Court should strive for an interpretation that would avoid such an egregious and cynical undermining of the philosophy of minimum code legislation (52).

Although the Court seems to have rejected the concept of averaging quite strongly, it has accepted that some situations required a practical averaging approach where the MW Act fails to provide for a sensible solution. For example, the Court allowed ISL to average the $34 allowance over the course of the sleepover but not the pay packet over the entire fortnightly pay period (69-70, *Idea Services Ltd v Dickson* [2009] ERNZ 372). Similarly the Authority has accepted that a bonus could be averaged over the six month period to which it related (48, *Labour Inspector v Clutha Licensing Trust* Employment Relations Authority, Christchurch, Member Doyle, 0/11/2010, CA217/10, File No 5274800). We would recommend exercising caution before averaging accommodation allowances and other payments in light of the significant status the Court clearly ascribes to the MW Act.

Minimum Wage Act and Order

The MW Act actually says very little about cash. It enables the Governor-General to set minimum rates of pay for all employees aged 16 and over (employees under the age of 16 are not entitled to the minimum wage). The Minister of Labour reviews rates annually and must make recommendations as to any changes. We generally see the rates increase on 1 April each year.

The Act does not state the rates – Minimum Wage Orders do. The Minimum Wage Order 2014 (Order) came into force on 1 April 2014 and applies minimum rates to:

- Adults (employees aged 16 or over):
- Employees "*starting out*" - someone between the ages of 16 and 19 who is not involved in supervising or training others and meets at least one of the following criteria:
    - Is 16 or 17 and has not worked continuously for their current employer for 6 months:
    - Is 18 or 19 and has:
        - Received a specified social security benefit (such as jobseeker support) for at least 6 months:
        - Not worked continuously for any employer for 6 months after receiving a benefit:

    - Is between 16 and 19 years of age and has been employed on the condition that they complete training or study to become qualified for the job they are doing (at least 40 credits per year of an industry training programme that leads to a qualification registered on the New Zealand Qualifications Authority Framework):
- "*Trainees*" - Employees who are at least 20 years old, not supervising or training others and employed on the condition that they complete training or study to become qualified for the job they are doing (but requires at least 60 credits per year).

The Order expresses rates in a few different ways but we ultimately end up with the same result: the "*minimum rates of wages payable*" to a worker are described in an hourly, daily or weekly basis. For example, an adult worker paid by the hour or by piecework, is entitled to be paid $14.25 per hour; an adult worker paid by the day, $114 per day and $14.25 per hour for each hour worked in excess of 8 hours per day; in all other cases, at least $570 per week and $14.25 per hour for each hour exceeding 40 worked per week. Starting out workers and trainees are entitled to 80% of those rates being $11.40 per hour, $91.20 per day, $456 per week and $11.40 per hour for any time worked in excess of 8 hours per day or 40 hours per week respectively.

The section in the MW Act that gets the most air time is section 6:

> **6 Payment of minimum wages**
>
> Notwithstanding anything to the contrary in any enactment, award, collective agreement, determination, or contract of service, but subject to sections 7 to 9 of this Act, every worker who belongs to a class of workers in respect of whom a minimum rate of wages has been prescribed under this Act, shall be entitled to receive from his employer payment for his work at not less than that minimum rate.

Other important sections in the MW Act include:

- Section 7 that sets a default percentage for any deductions made to the minimum wage for any board or lodgings supplied to the employee by the employer (15% and 5% respectively). In *Johns v Rasseluberg* Employment Relations Authority, Auckland AA57/01 25 May 2001 (Member R A Monaghan) where a restaurant worker claimed payment for 5 weeks work that her employer said was accounted for by providing accommodation and meals. The Authority determined that due to no agreement being entered into regarding deductions for the accommodation and meals provided ("*board*" as opposed to solely

"*lodgings*" that did not include meals), the maximum that could be deducted for same under the Minimum Wage Act 1983 was 15%. Parties presumably may agree to more although we would suggest caution before doing so.

- Section 8A that requires employers to keep wage and time records that set out the employee's name, age (if under 20), contact and employment details, hours and days of work, wages paid and method of calculation. A Labour Inspector can request records covering the preceding 6 years. Wages and time records cover off similar obligations under section 130 of the Employment Relations Act 2000 (ERA).
- Section 10 that sees employers liable to a penalty for failing to pay the minimum wage. Any penalty would be recoverable by a Labour Inspector and imposed by the Authority under the ERA. An employer is liable to a penalty imposed by the Authority of up to $20,000 per breach ($10,000 in respect of individuals).
- Section 11 that enables an employee to recover wages or other money owed to them under the MW Act despite having accepted or agreed to work for less.

The ERA expressly gives employees or their representative a right to request and obtain immediate access to or a copy of records relating to them for the preceding 6 years. An employee may bring a claim for wages or other money they are entitled to under their employment agreement and not just the MW Act (Section 131, Act). Significantly for cases involving disputes over when an employee worked (and perhaps a human tendency to recall differently depending on your interests), if an employer fails to keep or produce records (and that prejudices an employee's ability to bring an accurate claim for wages), an employee's claims will be accepted as proven unless an employer can prove otherwise (Section 132, Act).

Getting it Right

Undoubtedly famers and their staff work harder than most. The challenges facing rural and often isolated workplaces when recruiting staff and getting advice can make employment law seem a remote and unimportant consideration. Working longer hours may seem like the only solution, especially when you get busy. Dismissing someone without process when you're angry is rather appealing at the time too. But before you do anything rash, consider the consequences if an employee decided to sue you or a Labour Inspector got involved. Think about what a fair and reasonable employer would do – and try to do that.

When it comes to minimum wage concerns, work out who you need, when and how much you can pay. Calculate what the minimum wage rates will be for every hour, day and week and cater for this in the employment agreement. Don't overstate or underestimate how many hours your employee will work. Make it a requirement that they complete and submit

accurate timesheets that you check and keep copies of. Hours can and must vary to suit the needs of the farming environment but keep tabs on it. Not just for the purposes of the MW Act but also because you should consider whether working so many hours is consistent with your health and safety obligations.

If you pay a salary but it doesn't cover the equivalent hourly rate for the hours worked in any given week, then top up the payment – don't wait for the employee to complain about it. You may be able to account for any allowances and bonuses but don't rely on these payments to discharge your obligations under the MW Act. And finally, keep accurate, reliable and easily accessible time, wage and leave records. If an Inspector calls, you'll be ready.

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