

Employment News – March 2008

2008 is going to be a year of change for employers. Not only is there a real prospect of an economic downturn, there are a number of new legislative issues facing employers. For a start, from 1 April 2008 employers will have to start making compulsory contributions to their employees' KiwiSaver schemes. How will this affect your workplace? And what about employees who haven't joined KiwiSaver (but could in the future), will they expect a bigger pay rise instead? We look at these and other questions in the article below "KiwiSaver, the next Challenge". We will also be running a practical and informative seminar on 19 March 2008.

Hot on the heels of the KiwiSaver legislation, July will see the introduction of the new right for employees to request a flexible working arrangement. We will have to see whether this will lead to an influx of applications from employees, or whether it will be business as usual. Either way, with expertise in advising employers in the UK on similar legislation, we will be able to provide you with advice and support along the way. Look out for seminars on this topic later this year.

In this issue we look at some of the key dates to remember, and focus in particular on KiwiSaver. If there are any other employment issues you would like us to feature in our newsletters, please contact me.
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In this issue:

- Key dates to remember. Important legislation you need to know.
- Employer contributions to KiwiSaver. Compulsory contributions are just around the corner. Do you have the latest information?
- Recent case update. An employee is ordered to pay hefty costs for pursuing a claim amounting to "attempted extortion".
- Upcoming Seminars. Update your skills in employment issues.

Key dates to remember

1 April 2008 KiwiSaver

- All employers will be required to match the contribution of their employees to KiwiSaver schemes, starting at 1% of their gross salary or wages. The level of employer contributions will be phased in over four years and will increase by 1% a year until it reaches 4% on 20/11/12.
- Employers will be reimbursed for the cost of making contributions for their employees by a new tax credit which will be capped at \$20 per week per employee.

1 April 2008 Minimum Wage Changes

- The minimum wage for all employees aged 16 and over rises to \$12 an hour.
- The training wage rises to \$9.60 an hour.
- Abolition of youth rates, except for new entrants.

1 July 2008

- Flexible Working Arrangements legislation comes into force. Employees who have been employed for six months or more and who care for any person will be entitled to formally request a change in their working arrangements from their employer.
- We have developed a Flexible Working Arrangements Policy, together with a Flexible Working Arrangement Application Form for use by employers. Please contact us for details.

KiwiSaver Compulsory Employer Contributions – the next challenge

The requirement for employers to make compulsory contributions to KiwiSaver, starting from 1 April 2008, raises a whole raft of questions for employers - just as they were starting to get to grips with KiwiSaver. Here we answer some of them.

1. Will we still be required to make contributions to KiwiSaver schemes if we already make employer contributions to an existing non-KiwiSaver superannuation scheme?

Maybe. If your existing, non-KiwiSaver scheme provides for you to make employer contributions, these will count towards your compulsory KiwiSaver employer contribution requirements in specific circumstances.

2. Is "salary sacrifice" still an attractive option with the introduction of compulsory employer contributions to KiwiSaver?

Yes, but for a limited time. The idea of salary sacrifice is for an employee to agree to a reduction in salary in exchange for contributions to superannuation funds. The employee's earnings subject to PAYE are reduced, so they pay less tax, but the total value of their remuneration remains the same.

Employers also win, as there is the benefit of a Specified Superannuation Contribution Withholding Tax ("SSCWT") exemption for amounts they contribute to KiwiSaver. However, as the exemption from SSCWT for employer contributions is capped at 4% of the employee's gross salary/wages and compulsory employer contributions will increase to reach 4% in 2011, salary sacrifice will only remain a valid mechanism to obtain tax benefits from the SSCWT exemption until then.

Employees can also continue to sacrifice a percentage of their gross salary until 1 April 2011 so that their salary sacrifice, together with the employer's compulsory contribution and their own 4% contribution, amounts to a total KiwiSaver contribution of 8%.

3. Can employers continue to contribute to an employee's minimum KiwiSaver contribution?

Yes and No. The KiwiSaver Act originally enabled an employer's contribution to count towards the employee's minimum 4% contribution (e.g. an employee contributes 2% and the employer contributes 2%). With the introduction of compulsory employer contributions, employees will now be required to contribute the whole 4% employee contribution to KiwiSaver.

Transitional mechanisms will apply for employees who have chosen (before 1 April 2008) to have an employer contribution count towards their minimum rate in the period up to 31 March 2008 so that the employee's own contribution is increased to 4% over time.

4. How do employers deal fairly with employees who choose not to join KiwiSaver or who decide to take a contributions holiday?

A "total remuneration" or "total cost to the company" approach is a way of ensuring parity. Under total remuneration, an employee still receives the same total package irrespective of whether they participate in KiwiSaver, or take a contributions holiday.

The "total remuneration" approach must be agreed with your employees and reflected in the terms of your employment agreements with them.

Total remuneration clauses need to be carefully drafted, to ensure that employees do not inadvertently receive a pay rise, where, for example, an employee initially opts out of KiwiSaver (and therefore is paid a higher salary), but later elects to join. We recommend that you seek advice on the introduction and drafting of any total remuneration clauses.

We will shortly be running practical, hands on sessions on KiwiSaver covering these and other questions.

Recent case update

The following case provides a useful precedent for employers forced to defend vexatious personal grievances. It also acts as a deterrent to employees tempted to jump on the personal grievance "gravy train" and hoping to cash in on a settlement.

The Employment Relations Authority in *Cooper v Barry & Linda Jones* (WA 01/08; D Asher) recently ordered an employee to pay a contribution of \$7,000 to an employer's legal costs after pursuing a claim for constructive dismissal against her former employer that had no chance of success and that the Authority suggested amounted to "attempted extortion". Ms Cooper had claimed she was constructively dismissed because her employer had taken steps to deal with allegations of serious misconduct involving dishonesty. Ms Cooper tried to settle the matter for \$3,000 before the hearing but that offer was rejected by her employer. Her employer suggested that if she dropped her claim at that stage, then each party would bear its own legal costs. Ms Cooper nevertheless pursued the matter to the Employment Relations Authority and then withdrew her claim at the hearing itself.

Upcoming seminars

- Kiwisaver, the next challenge (employer contributions) 19 March - REGISTER NOW
- Flexible Working Arrangements, the new legal requirements and how to incorporate them into your workplace - June
- Holidays Act
- Parental Leave

For more information on the seminars above please contact Skye Melville, s.melville@DuncanCotterill.com