

ASENZ WORKSHOP
November 2008

PAY & PERSONNEL LEGISLATION
'Not so Scary, Really!'

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Disclaimer: Always seek professional advice

- **Employment Relations Act 2000**
- **Employment Relations Amendment Act (No 2) 2004**
- **Employment Relations (Flexible Working Arrangements) Amendment Act 2007**
- **Wages Protection Act**
- **Minimum Wage Act 1983**
- **Criminal Records (Clean Slate) Act 2004**
- **Holiday Act 2003 and Amendment Act 2004**
- **Human Rights Act 1972**
- **Privacy Act 1993**
- **Working in Good Faith**
- **Grievances, Disputes**
- **Health and Safety in Employment Act 1992**
- **Injury Prevention, Rehabilitation and Compensation Act 2001**
- **KiwiSaver Act 2007**

(Employment Relations Act 2000) - Minimum Entitlement: All Employees Holidays Act 2003 and Holidays Amendment Act 2004

- 4 weeks paid holiday after 12 months with the same employer
- 8% holiday pay where less than 12 months employment
- 11 days paid statutory holidays where holidays fall on days usually worked
- 5 days sick leave for personal sickness, injury, or the sickness or injury of a dependent
- 3 days bereavement leave

Minimum Wage Act 1983

- Minimum rates of wages
- Deductions
- 40 hours, 5 day week
- Minimum Wage Exemption

Wages Protection Act 1972

- Protects wages, imposes limitations on deductions

Equal Pay Act 1972

- Equal pay for same/substantially similar work

Human Rights Act 1972

- Prohibits discrimination in employment

Privacy Act 1993

- Legislates for the collection of and access to personal information

Criminal Records (Clean Slate) Act 2004

- Individuals can have criminal record concealed

Parental Leave & Employment Protection Act 1987

- Protects the employment of male and female employees who qualify for, and can take up to 52 weeks unpaid leave under the Act.

Health and Safety in Employment Act 1992

- Prescribed employer/employee obligations regarding health and safety

Injury Prevention, Rehabilitation & Compensation Act 2001

- Defines and prescribes payment for work accidents

Electoral Act 1993

- *162. ‘Employees to have time off to vote..... who have not had reasonable opportunity to vote before commencing work’*

Fair Trading Act 1986

- *“12..... No person shall in relation to employment that is, or is to be, or may be offered by that person or any other person, engage in conduct that is misleading or deceptive, or is likely to mislead or deceive, as to the availability, nature, terms or conditions, or any other matter relating to that employment”*

KiwiSaver Act 2006 (Amendments July 2007)

- Provides that any eligible person may join a KiwiSaver scheme at anytime – whether in employment or otherwise

Employment Relations Act 2000 (Section 6) - Meaning of Employee

(1) in this Act, unless the context otherwise requires, employee –

(a) means any person of any age employed by an employer to do any work for hire or reward under a contract of service; and

(b) includes – a homemaker; and a person intending to work; but

(c) excludes a volunteer who; does not expect to be rewarded for work to be performed as a volunteer; receives no reward for work performed as a volunteer

Person intending to work, means a person who has been offered and accepted work; and intended work has a corresponding meaning:

Accordingly, once a job has been accepted, that person becomes, by definition, a person intending to work. If, for any reason, that job offer is withdrawn, the person who intended to work has access to the personal grievance procedure.

Example: The applicant had been told his application was successful. However, during the ensuing period the interim director of the centre where the applicant would have worked discovered that he had been previously convicted of assault, the assault having occurred in an institutional setting similar to that of the applicant's proposed employment. The director withdrew the offer of employment.

The appeal was successful and the applicant awarded \$6000 compensation for humiliation, loss of dignity and 3 months wages.

Reference Checks:

It pays to check references prior to making an offer of employment.

Be **very** careful what questions you ask (Privacy Act) and that the Applicant has authorised to seek disclosure of personal information.

Sample phone reference check list –

- *Name of Applicant*
- *Position applied for*
- *How long employed with that employer*
- *Position (s) held and key duties*
- *Reason for termination*
- *Would you re-employ, if not, why?*
- *Team player – relationship with co-workers*
- *General attitude*
- *Standard of work*
- *Time keeping*
- *Frequency and reasons for absence*

CRIMINAL RECORDS (CLEAN SLATE) ACT 2004

S 3 Overview

The Act provides that an individual who has been convicted of a criminal offence has the right, (if eligible) to have criminal record concealed and to state no criminal conviction(s) in response to any question on the matter.

S 7 Who is eligible?

Has not been sentenced to a custodial sentence (includes corrective training and home detention)

Has not been committed to a mental hospital in place of a sentence of imprisonment

Has not been convicted of a specified offence

Has no fines or reparation payments outstanding

Has not been indefinitely suspended from driving

Has not been convicted in the previous 7 years

The Clean Slate Scheme and Employment

The Act enables any job applicant who is an eligible individual to state that they have no criminal convictions. Where any applicant authorized check of criminal records is undertaken, no information on offences that have been 'clean slated' will be provided.

Employment Status

General:

There is no common statutory definition of terms such as full-time, part-time or casual employment. Accordingly, where such terms are used in employment agreements, it is important to incorporate a definition of what is meant by such terms within the context of the particular employment agreement.

Permanent:

Usually implies ongoing employment for the agreed hours, be they full-time or part-time, as opposed to fixed term or temporary employment

Full-time:

Generally denotes employment for the full ordinary hours of the agreement

Part-time:

Usually denotes regular hours and days of employment for less than the full-time hours

Casual - The term casual employment seems to have attracted two relatively common but entirely different definitions as follows:

1 One-off engagement for a specified reason

This type of employment is defined as fixed-term or temporary employment under section 66 of the Employment Relations Act 2000

Example: you are employed to pack this export order – your employment comes to an end when this order is packed

2 No fixed hours

With this style of employment there are no 'fixed' hours; hours are as agreed when work is available. In most cases, employment is continuous, in that the employment is not terminated at the end of a specific period of work.

Casual / No fixed Hours:

The Holidays Act 2003 essentially provides that if it is not clear whether a day would or would not be a working day for the employee, regard may be had to the factors listed in section 12(3) of the Act which provides as follows:

The employee's employment agreement

The employee's work patterns

Any other relevant factors, including

whether the employee works for the employer only when work is available

the employee's roster or similar system

the reasonable expectations of the employer and the employee that the employee would have worked on the day concerned

Part-Time Employment:

Part-time employees are covered by all employment related statutes

- Usually denotes regular hours and days of employment for less than the full time hours on a permanent basis
- Service related entitlements such as holidays, sick and bereavement leave apply
- Where employment is to be covered by a collective agreement, it is vital to ensure the agreement makes provisions that are compatible with part-time hours, and payment of wages on a pro-rata basis

Example:

For the purpose of this agreement, part-time employment is defined as being employment entered into for less than 40 hours per week. All rates of wages, allowances or other monetary considerations expressed in this agreement, be calculated and paid on an hourly basis for the hours so worked.

Temporary Employment - Example

Parental Leave & Employment Protection Act 1987:

'When a temporary employee is employed to replace an employee on parental leave, the employer shall, before employing the temporary employee, inform the temporary employee in writing –

(a) that the temporary employee is being employed on a temporary basis in the place of an employee who is on parental leave: and

(b) that the employee may return to work, in accordance with section 45 of the Act, before the date on which the employee is required to return at the end of the parental leave. '

Seasonal

Generally denotes employment for a specific period related to seasons. Principles outlined in fixed term employment apply.

Example:

Care should be taken to avoid confusion; distinction should be made between -

- employment for a particular purpose (while we require you to pick apples)
as opposed to
- seasonal employment (when there are apples to be picked)

Individual Agreements

Before entering into an individual agreement

Section 63A (2) essentially requires that the employer must

- Provide the employee with a copy of the intended agreement
- Advise the employee to seek independent advice about the agreement
- Allow the employee reasonable opportunity to seek that advice
- Consider and respond to any issues raised by the employee

Note: the term employee refers to prospective employee

Minimum content of Individual Agreement

Terms and conditions of employment where no collective agreement applies S 65 (Must not contain anything contrary to law or inconsistent with the Act)

- Must be in writing
- Names of employer and employee
- Description of work to be performed by the employee
- Indication of where the work is to be performed
- Indication of times to work
- Wage or salary payable to the employee
- Plain language explanation of resolution of employment relationship problems and
- May contain such terms and conditions as the employer and employee agree to

Probationary arrangements: S 67

The Act makes specific provision in respect of trial or probationary period of employment, which are essentially a period within which the performance, ability and suitability of the employee to that employment are assessed.

S 67 (1) Where the parties to an employment agreement agree that the employee will serve a period of probation or trial after the commencement of the employment.

(a) The fact of the probationary or trial period must be specified in writing in the employment agreement; and

(b) Neither the fact that the probationary or trial period is specified, nor what is specified in respect of it, affects the application of the law relating to unjustifiable dismissal to a situation where the employee is dismissed in reliance on that agreement during or at the end of the probationary or trial period

Failure to comply with section (1)(a) does not affect the validity of the employment agreement. However, if the employer does not comply with subsection (1)(a), the employer may not rely on any term agreed under subsection(1) that the employee serve a period of probationary or trial if the employee elects, at any time, to treat that term as ineffective

Employers are under an implied duty to monitor performance of new employees, and, where necessary, to train the employee to the required standards. Where the employee fails to meet the required standards, the company warning procedure should be followed. As with any dismissal, the employer must have reasonable cause for bringing the employment to an end, and the principles of procedural fairness must be observed.

Minimum Wage Act 1983

This Act applies to all employees and employers and makes provisions for:

- Minimum wages**
- Fixed hours of employment**
- Deductions from wages for default, illness or injury**
- Minimum Wage Exemption**

Minimum wage rate – Reviewed December each year and changes (if any) usually come into effect in March the following year.

Contractual Minimum Wage:

Once the hours of work are fixed, those hours, multiplied by the agreed hourly wage, become the contractual minimum wage for that employee and is protected by the Wages Protection Act 1983.

Meal and Rest Intervals

With the repeal of the Factories Act in 1981 there is no statutory entitlement to meal or rest intervals. However, there is specific provision for such intervals in specific statutes, such as the Traffic Regulations in respect of drivers of designated classes of vehicles.

The inclusion of provisions for meal and rest interval in employment agreements is relatively common, especially so in agreement derived from awards.

Tea Breaks - *Example: The employer shall allow each employee a paid rest interval of xx minutes in the morning and xx minutes in the afternoon. This provision shall apply only on days where the employee is required to work 3 or more hours before 12 noon and/or 3 or more hours after 12 noon.*

Provision of tea/coffee:

There is no requirement to provide tea, coffee etc but was a common feature in awards and now has become the norm.

TIME ACT 1974

The Time Act provides for the definition of what is meant by New Zealand standard time, and provision for daylight time or daylight saving as it is more commonly known.

“2. New Zealand standard time – *For the purpose of this Act and any other Act, the expression ‘New Zealand standard time’ means the time 12 hours in advance of Coordinated Universal Time”.*

Impact on Hours and Wages - Section 5

Provides for the effect of daylight saving and essentially provides for
Clocks go Forward S 5(1) and Clocks go Back S 5(2).

Wages Protection Act 1983

The Wages Protection Act 1983 applies to ALL employees, whether full-time, part-time or casual, whether paid hourly, weekly or monthly. This Act also prescribes when, where, how and to whom the wages are payable and the circumstances under which deductions may be made.

It ensures that the periodic pay of a worker comes to them regularly on due date undiminished so that the worker can securely undertake daily financial commitments.

Section 2 of the Act defines

***Wages** means any salary or wages; includes time and piece wages, overtime, bonuses or other special payment agreed to be paid to a worker for the performance of service or work; and also includes any part of any wage.*

Wages Payable in Money Only:

***S 7**– Subject to sections 8 and 10 of this Act, an employer shall pay the wages of every worker in money only.*

Section 9 provides for agreement as to how wages are paid to the worker. It is advisable to write into the employment agreement how wages/salary will be paid. Everything must be in writing.

No Deductions Except in Accordance with Act:

S4 *Subject to sections 5(1) and 6(2) of this Act, an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.*

Deduction for Overpayment of Wages:

Section 4 requires that the entire wage be paid without deduction, any deduction required in relation to the overpayment of wages must either be:

- a) Provided for in the agreement; or
- b) With the worker's written consent (section 5); or
- c) In accordance with section 6 (strike, lockout etc)

Payment Where Employee Dies:

On the death of an employee, outstanding wages are payable to the deceased's estate. If an employer is approached by a relative requesting receipt of final pay owing to the deceased, the employer must not release this payment without first obtaining written authorisation for the assignment of those wages from the deceased's solicitor, or executor of the estate. The person receiving payment should sign a receipt of those wages.

Time and Frequency of Payment:

Section 4 of the Act provides ‘.....an employer shall, when any wages become payable to a worker, pay the entire amount of those wages to that worker without deduction.’ The time and frequency for payment is as agreed in the employment agreement.

Public Holiday on Pay Day – The day for payment is to be advanced to ensure the wage is paid by the due date.

Payment for Holiday Pay – Section 27 of the Holidays Act 2003 essentially provides that payment is made either, before the holiday is taken, or in the pay periods that relate to that period of holiday is taken, subject to the employee’s agreement.

Payment of Wages Prior to Annual Holidays – There is often entitlement to a part wage prior to commencing a period of annual holiday. The employee is entitled to receive this payment in advance of the due date. Where the day for payment falls during the period of holiday, payment should be made in advance.

Payment on Termination of Employment – Wages are payable by the employer to the employee at the time of termination of the employment. However, the agreement may make the provision to defer the payment where the agreement is instantly terminated due to the worker’s own misconduct, or the worker leaves without prior notice.

Compliance with Other Acts –

It is permissible to make deductions authorised under other statutes.

This would include automatic deductions required under:

1. Income Tax Act for PAYE and Child Support
2. Minimum Wages Act 1983 for time lost due to default, illness, or accident
3. Employment Relations Act 2000 and the 2004 Amendment
4. District Courts Amendment Act for deduction from adjudged debtors.

Wage and Time Records

Section 130 of the Employment Relations Act 2000 requires that employers keep a wage and time record for each employee. This record must be kept for 6 years, being the time limitation for arrears of wages claims, and 7 years for income tax purposes.

130 (1) Every employer must at all times keep a record (called the wages and time record) showing, in the case of each employee employed by that employer.

- *The name of the employee*
- *Employee's age if under 20 years of age*
- *Employee's postal address*

- *Kind of work the employee is usually employed*
- *Where necessary for the purpose of calculating the employee's pay, the hours between which the employee is employed on each day, and the days of the employee's employment during each pay period*
- *Wages paid to the employee each pay period and the method of calculation*
- *In the case of an employee under a collective agreement, the title and expiry date of the agreement and the employee's classification under it*
- *Details of any employment relations education leave taken*

The record may be inspected by :

1. Labour Department Inspector
2. Income Tax Inspector
3. Employee or Person acting as authorised representative for the Worker

Pay Slips –

There is no statutory provision in respect of 'pay slips', however if the alternative is a copy of the time and wages record, the continuance of the pay slip system has a lot to commend it.

Annual Holidays:

All employees are entitled to four weeks paid annual holiday. The Holiday Act provides that on the completion of each year of employment, employees become entitled to **4 weeks** annual holiday **NOT** 20 days.

A week is a period of 7 consecutive days, with annual holidays being allowed on days that would otherwise have been working days for the employee.

Public Holidays:

Holidays Act – **Section 43 to 55** essentially provides that -

- The employer is required to grant (permit or concede) 11 whole holidays to the worker each year
- These holidays attract payment only when the holiday falls on what would otherwise have been an ordinary work day
- That is not to say that 11 holidays must be granted/permitted every year. Payment arises only where the holiday falls on what would otherwise have been an ordinary work day

Sick / Bereavement Leave:

Section 63 of the Act essentially provides that on the completion of 6 months current continuous employment with the same employer, all employees become entitled to 5 days sick leave and 3 days bereavement leave.

There is no provision to pro-rata these entitlements. Therefore a part-time employee working 1 day a week and a full-time employee working 5 days a week have the same entitlement to 5 days sick leave per year.

Minimum Entitlement – S 63 & S 65

An employee becomes entitled to 5 days paid sick leave on the completion of 6 months current continuous employment, and a further 5 days leave on the completion of each subsequent year. However, an employer may provide for more than 5 days.

Sick Leave in Advance of entitlement – S 63(3)

The parties may agree that leave be taken in advance of the employee's qualifying date for entitlement, and that amount of leave taken be deducted from the employee's subsequent entitlement.

Use of Sick Leave – S 65 An employee may take sick leave if sick or suffers a non-work injury, or the employee's spouse, or a person who depends on the employee for care, is sick or injured

Accumulation of Unused Sick Leave – S 66 Any sick leave that has not been taken by the end of the period to which the leave relates, may be carried over for the use in subsequent years. The maximum carry over under the Act is 15 days plus the current entitlement of 5 days, making a total of 20 days.

Proof of Sickness or Injury – S 68 Where the period of sickness or injury spans 3 days or more (includes non-work days) an employer may require an employee to produce proof, which may include a certificate from a Medical Practitioner, that the employee is unable to work because of personal sickness, non-work injury or the sickness or injury of the employee's spouse, or person who depends on the employee for care.

Example: when an employee reports sick on a Friday the employee should be informed that a medical certificate will be required if that sickness results in the employee being unable to attend work on the following Monday.

Reasonable grounds to believe sick leave not genuine –S 68 (1A)

Where the employer has reasonable grounds to suspect leave is not genuine, the employer may require proof sooner than the 3 days. Then the employer must:

- inform the employee of suspicion that the leave being taken is not genuine and that proof is required; and
- pay the employee's reasonable expenses in obtaining that proof

Example: reporting sick on a day for which leave has been declined, or the day of an event, or a suspicious pattern of absence

Sickness or injury during annual holiday – S 36

When an employee or a person dependent on the care of the employee becomes sick or injured during annual leave, then the parties **may agree** that this period be taken as sick leave, and the period of holiday is either extended, or the corresponding period be reinstated as holiday for future use. The employee must request immediately to take sick leave in accordance with **section 64 (a)** and produce a medical certificate.

BEREAVEMENT LEAVE

Use and Duration of Bereavement Leave – S 69 & S 70

On completion of 6 months current continuous service an employee is entitled to **3 days** paid bereavement leave on the death of spouse, parent, child, brother, sister, grandparent, grandchild, or spouse's parent.

An employee is entitled to **1 day** paid bereavement leave on the death of another person if the employer accepts that the employee **has suffered a bereavement** – (Close relationship, Significant responsibility for arrangements relating to death and/or Cultural responsibilities in relation to death)

If the employee suffers more than one bereavement at the same time, the employee is entitled to leave in respect of each bereavement.

Bereavement during period of annual holiday S 37

When an employee suffers bereavement whilst on holiday, the employer **must allow** the employee to take bereavement leave.

Utilising annual leave for extended bereavement S 39

If an employee has exhausted paid bereavement leave entitlement they **may request** an extended period of leave be allowed as annual holiday to which the employee is entitled.

HUMAN RIGHTS ACT

Discrimination in Employment Matters: “22. *Employment –*

(1) where an applicant for employment or an employee is qualified for work of any description, it shall be unlawful for an employer, or any person acting for an employer, or any person acting or purporting to act on behalf of an employer –

*(a) To **refuse** to employ the applicant on work of that description which is available or*

*(b) To offer or afford the applicant or the employee **less favourable terms** of employment, conditions of work or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description; or*

*(c) To **terminate** the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of any other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subject to such detriment; or*

*(d) To **retire** the employee, or to require/cause the employee to retire or resign,*

Advertising Employment Position:

“67. Advertisements –

- (1) It shall be unlawful for any person to publish or display, or to cause to be published or displayed, any advertisement or notice which indicates, or could reasonably be understood as indicating, an intention to commit a breach of any of the provisions of this Part of this Act.*
- (2) For the purpose of subsection (1) of this section, the use of a job description with a gender connotation (such as ‘postman’, or ‘stewardess’) shall be taken to indicate an intention to discriminate, unless the advertisement contains an indication to the contrary”.*

Applications for Employment:

- “23. Particulars of applicants for employment – It shall be unlawful for any person to use or circulate any form of application for employment or make any inquiries of or about any applicant for employment which indicates, or could reasonably be understood as indicating, an intention to commit a breach of section 22 of this Act”.*

Prohibited Grounds of Discrimination:

21 (a) Sex, which includes pregnancy and child birth

(b) Marital status

(c) Religious Belief

(d) Ethical belief “23.(3) with exemptions Section 25 – 28

(e) colour

(f) race

(g) ethnic or national origins, nationality or citizenship with exemptions

(h) disability which means –

- **physical disability or impairment**
- **physical illness**
- **psychiatric illness**
- **intellectual or psychological disability or impairment**
- **any other loss or abnormality of psychological, physiological or anatomical structure or function**
- **reliance on a guide dog, wheelchair or other remedial means**
- **the presence in the body of organisms capable of causing illness**
- **with exemptions including Section 29(1) (a) (b)**

(i) Age – refer Sections 22 to 41 and 70 of this Act (commences from 16 years)

(j) Political opinion,

(k) Employment status,

(l) Family status,

(m) Sexual orientation

PRIVACY ACT 1993

The Privacy Act is concerned with the protection of individual Privacy, applies to every person (whether NZ Citizen or not) and organisation in NZ in respect of information about an identifiable living individual, held in any capacity other than for the purposes of their personal, family or household affairs.

PRINCIPLE 1 – Purpose of Collection of Personal Information

It is permissible to collect personal information for employment related purposes. This is the type of information which is usually the basis of personnel records, EEO programmes, documentation associated with staff selection and wage records.

PRINCIPLE 2 – Source of Personal Information – Partial extract

(1) Where an agency collects personal information, the agency shall collect that information directly from the individual concerned.

PRINCIPLE 3 – Collection of Information From Subject - PARTIAL

“(1)Where an agency collects personal information directly from the individual concerned, the agency shall take such steps (if any) as are, in the circumstances, reasonable to ensure that the individual is aware of –

- (a) The fact that the information is being collected; and*
- (b) The purpose for which the information is being collected; and*
- (c) The intended recipient of such information”*

PRINCIPLE 6 – Access to Personal Information

- (1) Where an agency holds personal information in such a way that it can readily be retrieved, the individual concerned shall be entitled -*
- (a) To obtain from the agency confirmation of whether or not the agency holds such personal information; and*
 - (b) To have access to that information*
- (2) Where, in accordance with subclause (1)(b) of this principle, an individual is given access to personal information, the individual shall be advised that, under principle 7, the individual may request the correction of that information.*

This right of access would be likely starting point for an unsuccessful job applicant who believes they were discriminated against in the employment process.

PRINCIPLE 8 –

Accuracy of Personal Information to be Checked Before Use

“An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regards to the purpose for which the information is proposed to be used, the information is accurate, up to date, relevant and not misleading”.

PRINCIPLE 10 – Limits on Use of Personal Information –

..... An agency that holds personal information that was obtained in connection with one purpose shall not use the information for any other purpose unless the agency believes, on reasonable grounds

PRINCIPLE 11 – Limits on Disclosure of Personal Information -

“An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds “

Key Non-Compliance Provisions

(a) That the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or

..... (d) That the disclosure is authorised by the individual concerned;

WORKING IN GOOD FAITH

‘If sensible people deal with one another in good faith, then most differences should be able to be resolved amicably’

Employment Relations Service

Employment Relations Act www.dol.govt.nz

Good Faith in employment relationships www.dol.govt.nz/goodfaith

Code of Good Faith www.dol.govt.nz/good_faith/code

Problem Solving www.dol.govt.nz/problem/first_steps

Personal Grievance www.dol.govt.nz/problems/pg

taking things further www.dol.govt.nz/problem/further

Mediation www.dol.govt.nz/problem/mediation

All employment agreements must contain a procedure for resolution of employment relationship problems.

‘Problems’ includes:

- a personal grievance; or
- a dispute; or
- other problem relating to or arising out of the employment relationship

‘Dispute’:

Means a dispute about the interpretation, application or operation of an employment agreement. Any such dispute should be raised by the employee with the employer to resolve promptly.

‘Personal Grievance’;

Means any grievance the employee may have against the employee’s employer, or former employer, because of a claim that the employee has been –

1. unjustifiably dismissed
2. disadvantaged in employment by an unjustifiable action of the employer
3. Discriminated against, or sexually or racially harassed
4. Subject to duress by reason of membership or non-membership of a union

Health and Safety in Employment Act 1992

(known as the HSE Act)

The object of the HSE Act is to promote the prevention of harm to all people at work and others in, or in the vicinity of places of work

The Act applies to all NZ workplaces and places duties on employers, the self-employed, employees, and others who are in a position to manage or control hazards.

Employment Agreements need to have a clause that clearly states the responsibility of **both** parties to adhere to the Act.

The Department of Labour administers and enforces the HSE Act in most workplaces.

90 day limit for raising a personal grievance;

The employee must raise the grievance with his/her employer within 90 days of the action complained of. This may be in the form of a verbal or written statement to the employer from either the employee or their representative who is any person chosen by the employee to act on their behalf in respect of the alleged personal grievance, including a union representative, mediator, solicitor, relative or friend.

Resolution Procedure

1. Employment relationship problems are best resolved between the parties at the time the problem is identified.
2. **Where the problem is not resolved**, or where a direct approach to the employer seems inappropriate, then the employee should contact the Mediation Service of the Department of Labour for assistance. Ideally, the problem will be settled or decided upon through mediation, and any signed settlement or decision is binding on the parties.
3. **Employment Relations authority for a determination**
Determination of the Authority may be challenged by any party, and the case heard in full before the Employment Court. The Authority may order the removal of the matter to the Employment Court.
4. **Employment Court hearings** are full hearings of the entire matter.

Injury Prevention, Rehabilitation and Compensation Act 2001

Definition of Accident: **25 Accident**

(1) Accident means any of the following kinds of occurrences:

(a) a specific event, or a series of events that -

(i) involves the application of force (including gravity) or resistance external to the human body, or involves the sudden movement of the body to avoid such force or resistance external to the human body:

(ii) is not a gradual process

(b) The inhalation or oral ingestion of any solid, liquid, gas or foreign object on a specific occasion

(c) A burn, exposure to radiation or rays of any kind on a specific occasion

(d) The absorption of any chemical through the skin within a definite period of time not exceeding one month

(e) Any exposure to the elements or to extremes of temperature or environment, within a defined period of time not exceeding one month

Pre-employment questionnaire:

To assist employers determine liability, or otherwise, in respect of claims for gradual process, disease or infection, or other work-related personal injury, there is merit in making the time to develop a pre-employment health and gradual process questionnaire.

Pre-existing condition:

Has the applicant received treatment for gradual process, disease or infection?
or

Has the employee been absent from work by reason of gradual process, disease or infection?

Previous treatment:

Has the employee received treatment for gradual process, disease or infection?
or

Has the employee been absent from work by reason of gradual process, disease or infection?

Questions must be meaningful and relevant to the tasks and environment relative to the position. To this end the questionnaire would need to include information which identifies task and environment factors which have the potential to cause a gradual process claim.

28 Work-related personal injury:

- (1) A work-related personal injury is a personal injury that a person suffers –(a) while s/he is at any place for the purposes of his/her employment,
(b) while s/he having a break from work for a meal, rest or refreshment at place of employment; or
(c) while s/he is travelling to/from place of employment at the start or finish of day's work, **if** the transport is –
(i) provided by the employer
(ii) provided for the purposes of transporting employees
(iii) driven by the employer, or by another employee at the direction of the employer, ...

29 Motor vehicle injury:

- (1) (a) a personal injury suffered because of the movement of a motor vehicle; or
(b) a personal injury suffered because of a stationary motor vehicle being struck by another motor vehicle or some other means of conveyance.