Workplace protocols redefined

LEGAL MATTERS

ALAN KNOWSLEY

RAINEY COLLINS LAWYERS

Changes to the Employment Relations Act came into force this month. The main changes are to:

- Flexible working arrangements.
- Rest and meal breaks.
- Vulnerable employees transferring to a new employer.
- Provision of information during restructures and discipline.
- Collective bargaining.
- Timeframes for Employment Relations Authority decisions.

Flexible working arrangements

All employees can now request flexible working arrangements (previously restricted to caregivers).

Requests can be made from the first day of employment (previously not until employed six months).

Employees can make unlimited requests (previously one per year).

Employers must answer the request within one month (previously three months).

The employer's response must be in writing and include reasons for any refusal.

Refusals must be for good reason, such as inability to reorganise the work or hire other staff.

Rest and meal breaks

These can now be taken in a more flexible way, rather than at prescribed times for prescribed lengths.

Breaks can now be dealt with in employment agreements, but if agreement cannot be reached the employer can specify when breaks are to be taken.

Some employers will be exempt from giving breaks if it is not practical to allow breaks, or they agree to compensation instead.

If breaks are not given, employers must give compensation instead, such as pay or time off.

Rest breaks have to be paid, but not meal breaks.

Pilots and drivers must still have breaks under separate legislation covering their industries.

It is unlawful to contract for no breaks and no compensation and any employment agreement that did that would not be enforced.

Vulnerable employees transferring to new employer

A five working day timeframe is now set for employees to elect to transfer to a new employer in a restructuring, sale or loss of contract situation when the employee is in a vulnerable occupation, such as catering or cleaning.

The previous employer must give the new employer information about each employee who elects to transfer to the new employer.

Holiday and sick leave entitlements are apportioned if the parties cannot agree on who should pay what.

The old employer pays all holiday pay and the new employer takes on all sick leave liabilities.

New employers are protected from the previous employer granting increased benefits, such as higher pay and holidays, to transferring employees just before the transfer.

Under the previous law this could be done and could significantly increase the new employer's costs and make the contracts just won uneconomic.

Small and medium-sized employers will have exemptions from having to take on employees when they win a new contract. This applies to employers with 19 or less employees.

Employers cannot split up their business into small lots and the 19-worker limit applies to all associated persons/entities and includes sub-contractors.

Provision of information during restructures and discipline

Employers proposing a restructure or undertaking a discipline process must give the affected employees information about themselves.

Employers do not have to give confidential information about another employee if that would involve an unreasonable disclosure of their information.

Employers are not required to disclose confidential information protected by law.

Employees are entitled to know who is accusing them of misconduct, unless there are good reasons to keep the information confidential, such as safety concerns for other employees.

Collective bargaining

Parties do not now have to reach agreement on a collective contract.

Employers do not have to agree to multi-employer bargaining.

Employers no longer have to put non-union members on the collective agreement for the first 30 days of their employment.

Pay can be reduced proportionally for partial strikes.

Advanced written notice of strikes and lockouts is required.

Employment Relations Authority decisions

At the end of each hearing the ERA must (if practicable) give an oral decision and provide it in writing within one month, or give an oral indication of the decision with a written decision within three months.

The ERA can reserve its decision if there are good reasons why it cannot give an oral decision or indication. A reserved decision must be given within three months.

In exceptional circumstances, the chief of the authority can give an extension of time.

Column courtesy of Rainey Collins Lawyers, phone 0800 733484. Email aknowsley@raineycollins.co.nz if you have a legal inquiry you would like discussed in this column.