



HOW TO HIRE MY FIRST EMPLOYEE IN NEW ZEALAND

MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Employers are required to register with the New Zealand Inland Revenue Department (IRD) and deduct pay as you earn (PAYE) tax for wages, salaries and taxable allowances paid to employees who are subject to New Zealand tax. Consequently, non-resident employers with employees working in New Zealand must register and deduct PAYE unless the employee is exempt from New Zealand tax in accordance with domestic law.

Employer registration can be completed online on the IRD website. PAYE must be paid to IRD monthly on the 20th of the following month.

An employment agreement should be signed by both parties prior to employment commencing. The employee must provide their employer with their IRD number. They must also tell their employer if they are in Kiwisaver. (see below for more details on the scheme.)

DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

A visa or work permit is required for a person to work in New Zealand unless they are a New Zealand citizen or holder of a New Zealand resident or permanent resident visa or an Australian citizen or Australian permanent resident or exempt from the requirement to hold a permit to be in New Zealand. Key employees of a business that wants to relocate its operations to New Zealand may be eligible for a work visa and, later, for residence under the Employees of Relocating Businesses Category. Employers in New Zealand who wish to recruit from overseas must provide evidence that there are no suitable New Zealand applicants for the job.

The Employment Relations Act (together with the Human Rights Act 1993) prohibits discrimination against employees on the grounds of sex, marital status, religious or ethical belief, colour, race, ethnic or national origin, disability, age, political opinion, employment status, family status, sexual orientation, and participation or involvement in the activities of a union as a union official or as a member. Where foreign language proficiency is required it is quite acceptable to advertise a job position where this is necessary.

In New Zealand the relationship between employer and employee should be documented by an employment agreement. Employment agreements may be individual (personal to the individual employee and employer) or collective (covering a group of employees and entered into between one or more unions and employers). Employers can specify in the employment agreement a "trial period" of up to 90 days and certain technical requirements must be complied with for the "trial period" to be effective. If an employee is dismissed during this trial period, he or she cannot bring a personal grievance or other legal proceedings in respect of the dismissal. However, employees on trial periods are still protected against discrimination, sexual and racial harassment, duress, or unjustified action by an employer.

The present adult minimum wage rate (before tax) for employees aged 16 or over is \$14.75 per hour (\$590 for a 40-hour week). There are some exceptions to this for young people in their first job or training. By law, employers must pay at least the minimum wage - even if an employee is paid by commission or by piece rate. The minimum wage applies to all workers aged 16 years or older, including home workers, casuals, and temporary and part-time workers.

There are no compulsory superannuation savings schemes in New Zealand, although the voluntary KiwiSaver superannuation regime requires a compulsory contribution from employers of 3% of the employee's gross salary or wage where the employee is a registered member of a KiwiSaver scheme. Upon starting with a new



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employer automatic enrollment in Kiwisaver will occur for an employee over the age of 18. They will then need to opt out if they do not wish to continue. Employer contributions are generally subject to employer superannuation contribution tax (ESCT) at the employee's marginal tax rate. These deductions must be paid to the IRD along with PAYE deductions.

There are 11 statutory public holidays in New Zealand. Under the Holidays Act 2003, employees are entitled to a minimum of four weeks annual leave after the first year of employment. Payment for annual leave is at the employee's average weekly earnings over the 12-month period before the leave is taken. Also after six months' service the employee is entitled to bereavement leave of three days on the death of an immediate family member and of one day in all other circumstances where the employer accepts that the employee has suffered bereavement.

For most employees, there is a minimum provision of five days paid sick leave after the first six months of continuous employment. An additional five days paid sick leave accrues from that point on, after each subsequent 12 month period. Employment agreements can provide for more generous sick leave provisions.

There is no statutory right to any redundancy payment under New Zealand law. Entitlement to any redundancy payment depends on the relevant employment agreement. It is common to expressly exclude any right to redundancy pay in employment agreements, although notice of termination for redundancy must be given.

Maternity leave of up to 16 weeks is available for employees with six months' continuous service. Paid parental leave (funded by the Government) provides payment for the 16 weeks leave (increasing to 18 weeks from 1 April 2016) upon the birth of a child or adoption of a child under the age of six.

Most non cash employee benefits such as an employer provided motor vehicle, low interest loans, and discounted goods and services are all taxable under the Fringe Benefits Tax system. FBT is based on the taxable value to the employee and tax is paid by the employer at either 49.25% or 43% of the value of the benefit.

CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

It is relatively commonplace in NZ for parties to contract on a principal/contractor basis as opposed to an employer/employee basis. There are advantages for both parties in this respect, the principal relieved of numerous obligations an employer would otherwise have, and a contractor entitled to more freedom and the ability to claim various expenses for tax purposes that they would not have been able to do as an employee.

However, the IRD is constantly reviewing such relationships, their focus being a substance over form perspective, trying to identify situations where the relationship is in reality an employment one, even though the parties have attempted to label it as being something else.

If the IRD do establish an employment relationship, then the principal now employer may be exposed to penalties in respect of any PAYE not previously deducted from the contractor now employee payments. Therefore, due care should be exercised in this area.