

Don't Get Caught in the Crossfire!

When payroll and employment law clash!

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Minimum wage pitfalls

→ What about salaried workers?

- ◆ Reasonable additional hours

- “The employee acknowledges that the proper performance of their duties may require them to work reasonable additional hours from time to time and that the salary paid reflects any additional hours.”



What can HR & Payroll do?

Have clear wording in your agreements

- What does the clause say?
- What are the guaranteed hours?
- What about overtime?

Spotting red flags? Say something!

- Can you tell they have been doing more hours?
- Is this employee close to the minimum wage?

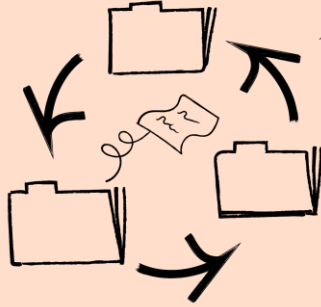
Audit your salaried workers

- When the minimum wage goes up, make sure you check your salaried workers too!



Employee

Contract of services



Contractor

Contract for services



Contractor vs Employee

Four key tests:

- Intention
- Control vs independence
- Integration
- Economic reality

Introducing the 'Gateway Test' for contractors

Changes will be made through the Employment Relations Act Amendment Bill being introduced in 2025.

Criteria the contractor would need to meet:

- A written agreement with a worker, specifying that they are an independent contractor;
- The business does not restrict the worker from working for another business (including competitors);
- The business does not require the worker to be available to work on specific times of the day or days, or for a minimum number of hours; OR the worker can subcontract the work; and
- The business does not terminate the contract if the worker does not accept an additional task or engagement.





Good faith

“

Good faith means dealing with each other honestly, openly, and without misleading each other. It requires parties to raise issues in a fair and timely manner, treat the other party with respect, and give the other party information which may be referred to in any future discussions.

”

Deductions

Lawful deductions have two criteria:

- Consent
- Consultation



Overpayments (one-off) process

- Speak to the employee – don't be afraid to put it in writing!
- Try to reach an agreement on how and when the money will be paid back
- Employee not agreeing? Employment Relations Authority is the answer

Unworked notice period process

- Have you suffered an 'actual loss'?
- Explain to the employee the loss, the clause in their agreement and the proposed deduction
- The employee must provide their consent

Changing pay day & pay periods

The law doesn't say how often an employee should be paid or what day they should be paid on, but this is included in most employment agreements.

Employment law considerations

Changing pay day

- Notify your employees ASAP
- Explain the issue and set expectations around when they will be paid
- Consider all options
- Leave room for feedback

Changing pay period

- Notify employees early and allocate enough time for consultation
- Set out the business' reasons
- Ask employees for their feedback
- Be open to the feedback



Did you know about the Worker Protection changes ?

Immigration Act changes

- Requiring employers to provide employment-related documentation within 10 working days' of it being requested by an immigration officer.
- It's now an offence to fail to comply with a requirement to supply documents within 10 working days.

Employment Relations Act changes

- Employers have to comply with requests from the Labour Inspectorate within 10 working days' including the provision of employment-related documents.
- A Labour Inspector can issue an infringement notice of \$1,000 per offence or seek a penalty at the Employment Relations Authority for each breach of up to \$10,000 for an individual or \$20,000 against a company or corporate body.



Thank you

Questions? Reach out to us: employmenthero.com/nz

Connect with me!



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