



FEBRUARY 2014

USEFUL SNIPPETS

'CASUAL' EMPLOYMENT AGREEMENTS

Casual employees are those who genuinely only work on an intermittent or irregular basis. If an employee starts working on a casual basis but over time takes on regular work, they may be deemed to be a part time employee – regardless of the fact their employment agreement states they are employed on a casual basis.

A recent decision of the Employment Relations Authority in the case of *Kate Fisher v Carrie O'Brien* demonstrates the danger of failing to formalise an ongoing employment arrangement, particularly where the employee is employed on a casual basis. Ms Fisher was initially employed by Ms O'Brien on a casual arrangement but no employment agreement was entered into by the parties. Ms Fisher was eventually dismissed.

The Employment Relations Authority found that Ms Fisher had commenced on a casual basis, with no fixed hours and with flexibility to turn down work. However, the ERA considered the real nature of the employment situation had changed over time. Ms Fisher's hours had increased and become more regular and thus she had become a part time employee with the associated right not to be dismissed without justification.

This decision illustrates that it is important for employers to:

- Document all intentions accordingly
- Review from time to time whether the documented arrangement actually still reflects the reality of the situation.



MINIMUM WAGES FOR FARM EMPLOYEES

A recent case ruling has followed an investigation by the Ministry of Business, Innovation and Employment of the dairy sector which focused on farm employers maintaining accurate time and wage records for their employees.



The case ruling however presents a wake-up call for all farm employers. Seasonal 'averaging' in the agricultural sector is a breach of the Minimum Wage Act. The main issue is that during busy periods of the farming year when hours worked tend to be longer (compensated by shorter working hours during the off season) the average wage, when calculated in relation to hours worked, does not always meet the minimum wage rate levels. To avoid being prosecuted, farmer employers must ensure that accurate time and wage records are kept for all employees and employees should be receiving at least the minimum wage for hours worked and not averaging across the season.

STUDENT LOAN REPAYMENTS DUE FOR OVERSEAS-BASED BORROWERS

Student Loan borrowers based overseas and not taking a repayment holiday are required to make two repayments each year towards their student loan. These are generally due on 30 September and 31 March and paying on time means the borrower will avoid late payment interest.

The repayment obligation of an overseas borrower is generally based on the balance as at 31 March plus the annual administration fee. Interest accrues on the loan while the borrower is overseas, the current interest rate being 5.9% calculated daily and added onto the loan.

CONTENTS

'Casual' Employment Agreements	1
Minimum Wages for Farm Employees	1
Student Loan Repayments for Overseas Borrowers	1
Hola / Stick to the Rules for Bad Debt Claims	2
Volume Does Not Equal Profit	3
Fringe Benefit Tax	3
New Financial Reporting for Incorporated Societies	3
Information Deficit	3
Marineland to Become a Skatepark	3
Memorable Quote	3
Counting Calories	4

HOLA !

Peru is set to become New Zealand's latest export market for beef, offal products and lamb.

In a month for great trade news, the significance of this approval by Peru's SENASA to allow access to the Peruvian market, is that New Zealand has trade access into a country the World Bank believes has a good business climate with a GDP growth rate of 6.3 percent, a population of almost 30 million people and a growing middle class. Another significant factor is that Peru is one of the countries negotiating for the Trans Pacific Partnership.



STICK TO THE RULES FOR BAD DEBT CLAIMS

If you want to claim a bad debt, there are a number of rules:

- It must be written off by the last day of the financial year.
- You must have made reasonable efforts to collect the money. A typical reasonable effort might be several follow-up calls and written threats to take action if a debt is not repaid.
- You must have reasonable grounds for considering you may not be paid. A typical situation would be a failed business or a business which has ceased trading.

The process to 'write off' depends on how sophisticated your record keeping is. If you have formal debtors' ledgers, the process will be easy to get the amount off the debtors ledger – just be sure to record the date you did this.



Some clients just send out their invoices and keep copies – these form the debtors' ledger. The best action in this case is to move your copy invoice into a 'bad debt written off' folder, date it and sign it.

Comment:

It is perfectly permissible to continue to pursue bad debts after they are written off. If you are fortunate and obtain some recompense, treat it as taxable income.

VOLUME DOES NOT EQUAL PROFIT

An old joke tells of a couple of stallholders buying cabbages and selling them for the same price they paid for them. "We are not making any money," says Eric. "Well," replies Fred. "We'd better get a bigger truck so we can sell more!"

Good business is not about volume of sales so much as profitability. Being busy is also not necessarily being profitable. If your business prepares two-monthly GST returns, use the figures to monitor your profitability.

Some adjustments will need to be made, particularly if your returns are on a payments basis.

FRINGE BENEFIT TAX

Many businesses provide employees with benefits or 'perks'. These may range from a privately used vehicle to meals and entertainment. Providing benefits can be a great way to recognise and reward your employees' contribution to your business. However some perks are subject to Fringe Benefit Tax (FBT).

This is tax paid on benefits that employees receive and enjoy as a result of their employment. This includes benefits given to shareholder-employees.

If, as an employer, you provide fringe benefits to your employees, generally you are required to pay FBT on the value of these benefits. The four main groups of fringe benefits are:

- **Motor Vehicles** – in general if you have a motor vehicle that is available for private use by an employee, FBT will apply. The key here is that the vehicle is 'available' for private use, whether or not the employee uses the vehicle (actual usage per kilometer also does not apply). Private use could even relate to an employee taking a vehicle home for the night.
- **Low interest loans** – If you offer a loan to an employee at less than market rates, FBT applies. The IRD sets a prescribed interest rate regularly so that everyone knows what the minimum interest rate should be.
- **Free or Discounted goods and services** – If you are offering goods and services to your employee for less than it costs your business, or than you would charge your customers, then this is a fringe benefit. Examples include free transport, reimbursement for education and employee discounts. Also included may be:
 - **Work clothing** – this can be exempt provided the clothing is distinctive work clothing: i.e. it forms part of uniform because of logos, pattern, colour scheme or style.
 - **Car Parking** – if you pay for car parking for your employee, then FBT applies. However, if you provide car parking on your own or permanently leased premises, you are not liable for FBT.



- **Entertainment, meals or gifts** – any entertainment benefits employees consume or enjoy when they choose, and are outside their employment duties, are subject to FBT – these would include corporate boxes, holiday accommodation, food and beverages. Some exceptions apply – e. g. when you provide staff with food and beverages after work every Friday. If employees can only enjoy this form of entertainment at a set time, rather than when they choose, then the cost is not subject to FBT.
- **Employer contributions to sick, accident or death benefit funds or to insurance** – subsidised health care, sick, accident or death benefit funds, life, pension, personal accident or sickness policies and superannuation schemes may all qualify as fringe benefits so the tax applies.

Comment:

Always file your FBT return and pay on time to avoid IRD interest and penalties. Include all benefits including any discounts offered by one of your suppliers to your staff

NEW FINANCIAL REPORTING REQUIREMENTS PROPOSED FOR INCORPORATED SOCIETIES

The financial reporting requirements for Incorporated Societies under current New Zealand law is only loosely specified, which is no surprise given the Incorporated Societies Act was enacted in 1908. Under current legislation, Incorporated Societies have no obligation to prepare annual financial statements in accordance with generally accepted accounting practice. The Law Commission recently reviewed the 1908 Act and the Commission's report was tabled in Parliament in August of last year. Amongst other matters, the Report recommends that all Societies prepare annual financial statements and file copies with the Registrar.

The review included no recommendations regarding mandatory financial statement audit requirements. A Society must continue to determine its own audit requirements within its constitution.

INFORMATION DEFICIT

"It requires a 'league table' of investment returns minus fees to be able to judge if my provider is good or bad. That data is hard or impossible to find" – this is a frequently heard remark from members interested in the return on their Kiwisaver funds.

Performance – the return on your investment – is important when choosing a Kiwisaver provider but once in the scheme you need regular information to be assured your provider's scheme remains the right one for you.



A recent survey conducted by Consumer does not make comfortable reading for the Kiwisaver industry.

Only 66 percent of members who took part in the survey rated their Kiwisaver provider's service as "good" or "very good". Some members had little interest in their Kiwisaver scheme: one in seven did not know how often they got a statement from their provider. Moreover, one in four did not realise they could find out their balance – by phone or online – whenever they wished.

Within the survey, 72% of members had actively chosen their scheme provider, with 14% staying with their start-up default provider.

The top five providers of consistent and quality information proved to be specialist investment companies – Gareth Morgan Kiwisaver, Milford Funds, Superlife, Craigs Investment Partners and Fisher Funds. Medical Assurance Society, a company providing financial services and insurance for health professionals, joined this group.

The worst were the 'default' providers – AMP, OnePath, Mercer and Tower, whose members felt they were getting little information easily accessible, or that information lacked sufficient detail with irregular updates.

Comment:

The Commission for Financial Literacy and Retirement Income has developed a free online Kiwisaver comparison service (also known as the Kiwisaver Fund finder). It enables members to compare providers' fees and returns and to search for schemes which offer the types of investment you prefer – an ethical funds perhaps, or one that adjusts risk as you get older.

You can access this information at www.sorted.org.nz

MARINELAND TO BECOME A SKATE PARK

Remember a visit to the dolphins? The Napier City Council has approved the redevelopment of Marineland into a skate park, with the neighbouring car park to be transformed into a reef garden and amphitheatre. The skate park design uses the existing Marineland grandstand and dolphin pool cavity for the skate bowl to be completed by August 2015.

MEMORABLE QUOTE

The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing – Jean Baptiste Colbert

NEWSLETTERS VIA THE WEBSITE

Thank you for viewing our newsletter online. If you are not already a subscriber and would like to receive our bi-monthly newsletter via email please [click here](#)

COUNTING CALORIES!!

Calories can be burned by the hundreds, and therefore weight lost, by engaging in strenuous activities that do not require physical exercise!

Hitting the nail on the head	50
Beating around the bush	75
Bending over backwards	75
Jumping to conclusions	100
Climbing the walls	150
Swallowing your pride	200
Passing the buck	25
Pushing your luck	250
Jumping on the bandwagon	300
Dragging your heels	100
Making mountains out of molehills	500
Wading through the paperwork	300
Running around in circles	450
Eating crow	500
Opening a can of worms	550
Picking up the pieces (especially after the above)	600
Putting your foot in your mouth	800

