



FEBRUARY 2018

SNIPPETS

MINIMUM WAGE INCREASE FROM 1 APRIL 2018

On 1 April 2018 the adult minimum wage will increase by 75 cents to \$16.50 per hour for employees on permanent or fixed term contracts. However, if you employ an adult worker over the age of 18 years on a casual contract, the minimum rate, including holiday pay, will rise to \$17.82 per hour.

The Government has also signalled that within the first 12 months of its term starting-out rates will be abolished and they will also consider changes to the training wage. In the meantime these rates will continue to be at 80% of the hourly minimum wage at \$13.20 per hour.

PAY PARITY - UNCHARTED TERRITORY

New Zealand is trailblazing uncharted territory following the Government's indication that laws will be introduced to ensure women are paid fairly. The Employers and Manufacturers Association and BusinessNZ, along with the New Zealand Council of Trade Unions, are part of the Government's joint working group convened to address pay levels of women working in women dominated jobs.

The current long standing law requires that when a man and woman do the same job they get paid the same. However, according to EMA chief Executive Kim Campbell, it gets more difficult where you have major industries dominated by women working in occupations such as nursing and teaching. "How do you compare those kinds of occupations and come up with a pay that is equivalent?" Campbell said. "Nobody in the world has been able to do that."



SENTENCING (LIVESTOCK RUSTLING) AMENDMENT BILL

Livestock rustling is now at a level that is creating serious risk to farmers and their businesses but also threatens people's safety in the more isolated parts of rural New Zealand as often rustlers are equipped with quite sophisticated tools to assist them, including firearms. Rustling is estimated to cost the farming community over \$120 million per year.

The Sentencing (Livestock Rustling) Amendment Bill has recently been drawn from the ballot to go before Parliament and is currently at its first reading. This bill provides a definition of livestock and is designed to deter people from engaging in livestock rustling by legally identifying it as an aggravating factor to be taken into account at sentencing.

TIP JAR SQUABBLE!

If a proposed ruling from the US Department of Labour takes effect, restaurants in that country could soon require waiters, bartenders and delivery drivers to split tips with their co-workers, or even managers. The move would reverse a rule enacted during the Obama Administration which declared tips are the property of the workers who collected them! The new rule would apply only to businesses that pay their 'tipped' employees above the federal minimum hourly wage of US\$7.25 (NZ\$10.50 per hour) and is deemed to give income compensation through a 'tip pool' to workers who usually do not get the extra cash such as cooks.

Restaurant industry groups commend the step, believing the lower-paid 'back of the house' workers contribute to the overall customer experience but employee advocates fear it opens the door for businesses to absorb their employees' tips.

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FOOD SELLERS – DEADLINE FOR REGISTERING FOR THE NEW FOOD ACT IS 31 MARCH 2018



If you sell food and have not as yet registered for the new Food Act, it would be timely to check if you must do so.

A law change last year means food safety rules are now tailored to an individual business, using a sliding scale so businesses with complex food safety risks, e.g. some

food manufacturers, have stricter controls than lower-risk businesses, e.g. a corner dairy that reheats meat pies for sale. The focus is intended to be on the processes of food production, not on the premises where the food is made, so both a food truck and a restaurant must show how they keep food safe. Among the group that needs to register by 31 March 2018 are:

- cafes and clubs with an alcohol licence
- bakeries
- caterers
- rest homes
- dairies
- convenience stores
- food manufacturers, such the makers of fresh pasta and chilled or frozen meals and desserts.

The Food Act does allow for some activities without registration. Those who do not need to register include people who make food to:

- be served on a marae, e.g. at a tangi
- be sold at a fundraising event, e.g. at a club, school or marae – unless the fundraisers are held more than 20 times annually
- donate to charities or community organisations.

CALLAGHAN INNOVATION

Innovation is often considered by economists as core to a country's economic prosperity. At the turn of the 20th century, refrigerated exports put New Zealand ahead of many of our European peers and ranked us first against all others in GDP per capita.

Whilst the world economy has changed a lot in the last 100 years, the New Zealand Government rightly remains actively focused on stimulating increased innovation in an effort to increase economic growth and population wealth by bringing new exportable technologies into production.

The main mechanism for government to support innovation in recent times has been through the formation of Callaghan Innovation. Callaghan is a Crown entity, established in 2013 with the dedicated purpose of increasing innovation in NZ businesses. The entity takes its name from Sir Paul Callaghan, a notable Kiwi physicist who advocated increased focus on innovation funding and initiatives to increase prosperity. The Callaghan strategy includes multiple options to deliver innovation services and resources to qualifying businesses, ranging from the provision of access to

experts, to business collaborations and the offer of research and development grants.

In 2016, 229 businesses accessed the programmes, with a further 1,068 enterprises working on grant applications. Companies from a broad spectrum of industries have benefitted from help and funding, including businesses as diverse as Methven, Rocket Lab and Archgola, (a supplier of awnings and shade solutions).

There are three main grants available for research and development:

- Project Grants available to eligible businesses breaking into new ground with grants of up to 40% R&D project costs
- Growth Grants which can benefit businesses who are already spending upwards of \$300,000 on R&D
- Grants to support businesses who wish to hire undergraduate and postgraduate students in order to attain specialist technical knowledge to aid in their production process.

Outside of the grants programme, Callaghan's database of national and international contacts within industries is extensive and the organisation is willing foster to collaborations, training with and access to industry specialists.



Comment:

Although the application process may seem quite daunting with an array of qualifying criteria to be met, Callaghan Innovation provides assistance with this. They also recommend that potential innovators contact them directly to discuss their ideas as a business may qualify for many of the options available.

Website: www.callaghaninnovation.govt.nz/grants

ENDURING POWERS OF ATTORNEY (EPOA)

An Enduring Power of Attorney is exactly what it says it is – it is enduring. Unlike a will, an EPOA does not automatically get revoked or replaced if a new EPOA to a different person is made at a later date. It is quite common, for example, for a husband and wife to give each other an EPOA and then forget about it. If later on, they were to divorce or legally separate, the EPOA will still remain in force at law, despite these events occurring, until it is revoked.



The right to revoke an EPOA at any time is one of the key rights that come with an EPOA and the person who has given the power can revoke it at any time while they are mentally capable. The revocation must be in writing and delivered to the person appointed as attorney under the EPOA (there is a specific form for this notice).

However, with an aging population, there is a rise in situations where the holder of an Enduring Power of Attorney (EPOA) is having to use this instrument to remove an incapacitated person in order to take actions on that person's behalf.

A recent case has highlighted difficulties that can arise where a mentally incapacitated person is a trustee of a Trust. The High Court case involved the trustees of a family trust where a husband and wife and their solicitor were the trustees. The wife developed dementia and her husband used an EPOA, one his wife had prepared before the onset of her condition, to retire her as a trustee. The remaining two trustees then sought an order for the trust's property to vest in them both.

The High Court decided that an EPOA does not give the attorney the power to act for the donor in relation to the donor's obligations, rights and powers as a trustee and correctly pointed out that the applicants should have sought an order from the Court. The Court then ruled that Mrs G must validly retire as a trustee.

Comment:

What will be of concern to many trustees, particularly given the popularity of family trusts, is the cost and inconvenience of having to make such an application.

It is hoped that a quick, simple and inexpensive procedure is found for dealing with such applications since dementia is becoming increasingly common.

EMPLOYMENT LAW: THE ONLY CONSTANT IS CHANGE.....

The Minister of Workplace Relations and Safety's newly released Employment Relations Amendment Bill, currently having its first reading, proposes the following changes to the Employment Relations Act 2000:

- Restoration of statutory rest and meal breaks: these will be subject to very limited exceptions for workers in essential services who cannot be covered during time out.
- Restriction of 90 day trial periods to small and medium enterprises – employers with less than 20 employees will be able to continue to use 90 day trial periods.
- Reinstatement will be restored as the primary remedy for an unjustified dismissal.
- Further protections for employees in the 'vulnerable industries' as identified in the Act - this change repeals the small to medium enterprises' exemption from coverage.
- A requirement to include pay rates in Collective Agreements – this may include pay ranges or methods of pay calculation.
- A requirement for employers to pass on information about unions in workplace to prospective employees along with a form for the employee to indicate whether they want to be a member.
- Restoration of union access without prior employer consent – but still subject to reasonable times and having regard to business continuity, health and safety.
- Restoration of the Collective Agreement 30 day rule.

Comment:

So what might all this mean for your business?

- **If you have a Collective Agreement, it is back to the 30 day rule where new employees must be employed on the terms and conditions of the Collective Agreement for this period.**
- **Depending on your current practice, there may be a few changes required to the way you allow a union to access the workplace and the way you bargain. If a union wants to bargain for a multi-employer Collective Agreement, you are not going to be able to opt out.**
- **If you have more than 20 employees, you are going to need to delete any trial period provision from your employment agreements and possibly insert a probationary period clause instead.**

We recommend you 'hold fire' for now as much depends on when the new legislation will take effect.

PUTTING THE HEAT ON CAR INSURANCE

A consumer watchdog has called for New Zealand regulators to take a closer look at insurance products sold via car dealers. Consumer New Zealand believes people who buy vehicles can be offered insurance and warranty products which may provide little value. They believe, in effect, the purchaser is paying for cover for which there is already an entitlement under the law. Other products, such as payment protection insurance, often come with restrictive terms and conditions, which limit the consumer's ability to make a claim.

The call follows an Australian Securities Commission review of the sale of add-on insurance products through car dealers and included tyre and rim insurance, warranties, payment protection insurance and guaranteed asset protection. Since then five Aussie insurers have been forced to pay back more than A\$120 million (NZ\$131m) to consumers. Greig Epps, industry relationship manager at the NZ Motor Trade Association, said those sorts of policies were sold here via car dealers but the regulatory environment here may mean the problems found to exist in Australia are not evident in this country or may be more difficult to manifest here on a wide scale.



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MARRIED 50 YEARS!

On my 50th wedding anniversary, I took a careful look at my wife and said,
“Fifty years ago we had a cheap house, a heap of junk for a car, slept on a sofa bed
and watched a 10-inch black and white TV,
but I got to sleep every night with a hot 23 year old woman!

Now..... I have a \$750,000 home, a \$65,000 car, a nice king size bed and a large
screen TV but I’m sleeping with a 73 year old woman.

It seems to me that you’re not holding up your side of things.”

My wife, being a reasonable woman, told me to go out and find a hot 23 year old girl.

However, she would make sure that I would once again be living in a cheap house,
driving a heap of junk, sleeping on a sofa bed and watching a portable black and white TV!
She really knows how to solve an old guy’s problems!

