

**Directors:**

**Jeff Goldstein**



Email: [jeff@emplawyers.co.nz](mailto:jeff@emplawyers.co.nz)

**Linda Ryder**



Email: [linda@emplawyers.co.nz](mailto:linda@emplawyers.co.nz)

**Solicitor:**

**Danielle Mills-Godinet**



Email: [danielle@emplawyers.co.nz](mailto:danielle@emplawyers.co.nz)

**Law Clerk:**

**Deborah Hendry**



Email: [deborah@emplawyers.co.nz](mailto:deborah@emplawyers.co.nz)

**Website:**

[www.emplawyers.co.nz](http://www.emplawyers.co.nz)

**Phone:**

03 343 4419

**Location:**

Level 1, 4 Leslie Hills Drive  
Riccarton

Volume 6, Issue 2

May 2017

## Goldstein Ryder's growing team

Goldstein Ryder was started in April 2011 by our directors Jeff Goldstein and Linda Ryder with a small support team. We have gradually grown, mainly through client referrals, and in 2016 we increased the team, bringing on another Case Manager. In 2017 we are pleased to bring on board a new Solicitor, Danielle Mills-Godinet, and a Law Clerk, Deborah Hendry. Deborah will be admitted to the Bar later this year.

We would like to take this opportunity to thank you, our clients, for your support and referrals over the years.



## Availability Provisions

On 1 April 2016 the Employment Standards Legislation Bill came into force, amending a number of pieces of employment legislation. The changes that were introduced immediately applied to all new employees employed after 1 April 2016 but only applied to existing staff from 1 April 2017. This enabled a one year transition period for existing employees. One of the major changes to the law is the introduction of availability provisions.

Availability provisions have been added to the Employment Relations Act by the addition of Sections 67D, E and F. Under this new law, if an employer wants to be able to insist that an employee is available to accept work that is offered to them, over and above the employee's guaranteed hours of work, the employer must pay the employee reasonable compensation for making themselves available.

If an employer wishes to have an availability provision in their employment agreements, there are certain criteria that must be met:

1. the employer must have genuine reasons based on reasonable grounds for having an availability clause;
2. the employment agreement must specify agreed hours of work, and that includes guaranteed hours of work among those agreed hours;
3. the employer must state the number of additional hours the employee must be available for;
4. the employer must have genuine reasons based on reasonable grounds for having that number of hours specified in the clause;
5. the employer must pay reasonable compensation to the employee for making themselves available to perform the additional work.

Case Managers:  
Rachelle Crequer



Email: [rachelle@emplawyers.co.nz](mailto:rachelle@emplawyers.co.nz)

Christine Youngman



Email: [Christine@emplawyers.co.nz](mailto:Christine@emplawyers.co.nz)

Client Relationship Manager  
Sarah Thomas



Email: [sarah@emplawyers.co.nz](mailto:sarah@emplawyers.co.nz)

Website:  
[www.emplawyers.co.nz](http://www.emplawyers.co.nz)

Phone:  
03 343 4419

Location:  
Level 1, 4 Leslie Hills Drive  
Riccarton

Volume 6, Issue 2

May 2017

## Availability Provisions Continued...

Genuine reasons based on reasonable grounds may include factors like the impracticability of securing alternative employees to perform the work.

Parties are not required to agree on hours of work in general, but if there is such an agreement, it must be recorded in the Employment Agreement. Agreed hours of work must be stated if there is an availability provision.

The Act sets out a number of relevant matters to take into account when calculating the amount of compensation to pay.

If the above criteria are not met, then the availability provision will be unenforceable, and the employee will be able to refuse to perform any work over and above their guaranteed hours.

“Zero hour” contracts are now illegal because of the introduction of availability provisions. Zero hour contracts are contracts that require an employee to be available to accept any work that is offered to them. However the employer is not under an obligation to provide any work to the employee.

This law will apply to all employers who require their employees to be available to attend work outside the guaranteed hours of work. For example, it will apply to employers who offer overtime and/or who have employee’s “on-call” or “on stand-by”. Some examples may be pre-schools who require teachers to attend staff meetings outside the guaranteed teaching hours; or medical staff, who may be offered guaranteed hours but a medical emergency occurs and the employee is required to be available to complete the shift or task that they are attending to. If this is the case then the availability provision would apply in respect of those additional hours.

**NOTE:** An availability provision is only applicable when the employer wants to be able to insist that the employee is available to accept the additional work that is offered. It is possible to avoid the need for an availability provision by allowing for the employee to decide whether or not they accept any additional work.

### Practical Approach

Step One: Review your existing Employment Agreements, in particular the hours of work clause. If you have agreed hours of work with an employee, ensure the Agreement records the agreed hours of work.



## Availability Provisions Continued...

Step Two: Review your existing IEA/CEA in relation to clauses about availability, i.e. salary or overtime clauses.

Step Three: Determine whether your business may require employees to be available to accept work above the guaranteed hours of work. If yes, decide if you want to be able to insist that employees work additional hours.

If you believe your business can operate on the basis that employees will have the choice of whether to accept work or not, then no availability clause is needed.

If you have genuine reasons based on reasonable grounds for needing to have the ability to insist that employees are available to work, then you will need to draft an availability provision. You will need to specify the number of additional hours that employees are required to be available. This will require some analysis of the business' needs. Then you will need to calculate the amount of reasonable compensation to offer, taking into account the factors listed in the Act.

Step Four: Once drafted, you will need to present the proposed availability provision to affected employees and negotiate with them over the proposed terms, as this is a variation to the terms and conditions of employment.

Step Five: Once agreement is reached then either a new IEA or a variation document will need to be issued. Both parties will need to sign the new document to record acceptance of the new terms.

### **Please contact us if you:**

- **have any questions about availability provisions; and/or**
- **would like us to review your Employment Agreements; and/or**
- **would like to purchase our updated employment agreement.**



**Website:**  
[www.emplawyers.co.nz](http://www.emplawyers.co.nz)

**Phone:**  
03 343 4419

**Location:**  
Level 1, 4 Leslie Hills Drive, Riccarton

**Email:**  
[sarah@emplawyers.co.nz](mailto:sarah@emplawyers.co.nz)