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## Goldstein Ryder News



### Amendments to Employment Relations Act

In December 2018 the Government passed amendments to the Employment Relations Act. A number of those amendments have already come into force. These included a change to a union representative's access to the worksite and the restoration of reinstatement as the primary for a personal grievance

On 6 May 2019 a number of changes to the current employment legislation will come into force. From that day changes will apply to the following areas:

- Union delegates are to have reasonable paid time to represent employees;
- The duty of good faith requires collective agreements to be concluded;
- Wage rates and salary are to be included in collective agreements;
- Employers' obligations in relation to new and prospective employees who are not union members;
- Trial periods;
- Continuity of an employee's work affected by restructuring;
- Rest and meal breaks; and
- Discrimination in relation to union membership and involvement in union activities.

All of the above changes are significant in the employment landscape. However, given the limited space in this Newsletter, set out below are comments on the changes which will most significantly affect our readers. If you would like to discuss any of the other legislative changes please do not hesitate to contact us.

#### Trial Period

The legislative change has introduced the concept of a small to medium sized employer. A small to medium sized employer is an employer employing "fewer than 20 employees".

From 6 May 2019 **only** small to medium sized employers will be able to use the trial period provision that is currently available to all employers. Just to be clear, from 6 May 2019, only employers who employ fewer than 20 employees, [no more than 19 employees] can continue to use the current trial period provision. When calculating the number of employees the employer must include all employees, including part time, casual and even those on parental leave.



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As the change to the Trial Period provision will not commence until 6 May 2019, all employers will, until that date be able to continue to use the current Trial Period provision. That means, that if an employee commences employment on 5 May 2019 and their employment agreement has a 90 day trial period in it then the trial period is valid and will continue to its expiry date as currently.

The effect of this legislative change will be that employers who employ 20 or more employees will need to remove the trial period provision from their employment agreements.

Is there some other way for an employer to employ staff so that they can assess suitability? Prior to the implementation of the Trial Period provisions the Employment Relations Act contained a clause relating to “Probationary arrangements”. That provision has not been affected by the current changes to the legislation. As a result the parties can have a clause in the employment agreement that provides for a probationary arrangement. Should you be interested in finding out more about this arrangement please contact us.

### Rest and Meal Breaks

In the previous legislation timing and duration of the rest and meal breaks was left to the parties to agree on but if no agreement was reached then the employer had the power to determine when the breaks would take place.

The changes to the legislation mean that from 6 May 2019 employees shall be entitled to clearly defined rest and meal breaks. The length and duration of the breaks depend on how long the employee works.

The parties can still agree as to when the rest breaks are to be taken but if there is no agreement the legislation stipulates that the “employer must, so far as is reasonable and practical, allow the employee to take the breaks at times stipulated by the law.”

**If you need assistance with termination of employment please call us on 03 343 4419. You can also contact us for advice about:**

- Employment agreements;
- Trial periods;
- Collective bargaining;
- Disciplinary investigations;
- Restructuring and redundancy;
- Dismissal claims
- Workplace policies
- And more...

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