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## Goldstein Ryder News



### New Rest Break Law

On 6 May 2019 there were a number of changes to the Employment Relations Act.

One of those related to **when** rest and meal breaks could be taken. Prior to 6 May 2019 the employer could determine when the rest and meal breaks could be taken. The length of the rest and meal breaks has been the same for many years now and has not changed. Those breaks are shown in the table attached which was created by MBIE as a guide.

The recent changes to the law relate to the timing of those breaks. If an employer and an employee have agreed on the times when the breaks are to be taken then that agreement meets the parties' legal obligations. However, if the employer and the employee cannot agree when the rest and/or meal breaks are to be taken then the new law stipulates when those breaks must be taken. In this situation the table attached shows how the breaks should be timed.

*As one might expect this prescriptive application of rest and meal breaks may not suit businesses who have employees working the same hours as it would mean that all employees would be on breaks at the same time. There may be a need to change the hours of work and/or a need to have the breaks staggered so that some employees continue with their work while others are on their breaks.*



#### Exemption

The new law does allow for some employers to be exempt from this legislation. This would apply to employers in essential services. There are a number of other criteria that need to be met before the employer is exempt. An exempt employer is able to agree with its employee that any rest and meal breaks could be taken in a different manner than set out above e.g. paying an employee while on a meal break because the employee must continue to be on duty despite their break or taking the breaks at the end of the shift.

However, in circumstances where the employer is exempt and the employer and the employee do not agree on how the rest and meal breaks are to be taken then the employer must provide the employee with "compensatory measures" to compensate the employee for not providing the required breaks. A compensatory measure can be time off, alternative work time, money or a mixture of these.

The new legislation requires the employer to carefully consider its rest and meal break obligations and to make every effort to meet those obligations with the agreement of its staff.

Should you have any concerns about this change to the law please contact us.

## Tasks During Break Times

Tasks during employees' break times have recently been considered by the Employment Court. In *Ovation New Zealand Limited v The New Zealand Meat Workers and Related Trades Union Incorporated*, employees won the right for "donning and doffing" of work gear to be excluded from their break times. This was on the basis that these hygiene related tasks are considered "work" under section 6 of the Minimum Wage Act 1983. It was considered part of the mandatory health and safety regime and therefore part of their work. The time it takes to "don and "doff" the workers' gear is additional to their allocated rest break.

## Domestic Violence Leave

From 1 April 2019, victims affected by domestic violence will have the right to request a short-term variation of their working arrangements. This can be up to two months. This could include variation to days and hours of work, place of work, and duties. Requests can only be refused by an employer on certain grounds.

If an employer receives a request in writing, they must respond to it within ten working days. If the employer wishes to request proof of the issue (such as a medical certificate, court order or police report), they must ask for this within three working days of receiving the request.

An employee cannot be discriminated against or treated differently in their employment on the basis of domestic violence.

An employee who has been working for an employer for more than six months will also be entitled to ten paid days leave to deal with effects of domestic violence on themselves or a child.

If you are in doubt about how to respond to an employee's request please feel free to contact us.

## Collective Bargaining Update

There has been developments in this area with the Authority stepping in to collective bargaining where it traditionally has not.

In a landmark case the ERA 'drew a line' in the sand between First Union and Mitre 10 after years of bargaining and protracted litigation. The ERA ordered that a 'living wage' be paid to certain experienced staff union members. The Authority did this on the basis of a comparison with Bunnings workers rather than Mitre 10 stores in other regions. The ERA also had regard to what the union would have achieved if the collective agreement was concluded earlier.

Please contact us if you would like to discuss the implications of this case on your business.

**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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