



Your minimum employment rights

A GUIDE FOR EMPLOYEES





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Your minimum employment rights

Two types of employment rights apply by law to all employees:

- the minimum pay and conditions you must receive
- the way you must be treated at work.

Some catering, cleaning, caretaking, laundry and orderly workers also have additional rights.

You cannot agree to less than the minimum rights, but you can agree to things that are better than the minimum.

Health and safety

There are also minimum employment rights and obligations relating to health and safety at work. In particular:

- Employers must provide a safe workplace, with proper training, supervision and equipment. This duty includes identifying, assessing and managing hazards, and investigating health and safety incidents.
- Employees must take reasonable care to keep themselves safe, and to avoid causing harm to other people by the way they do their work. Employees may refuse work likely to cause them serious harm. Also, employees have the right to participate in improving health and safety.

More information about health and safety rights and obligations is available on the Department of Labour's website: www.dol.govt.nz.

Employment Agreements

Every employee must have a written employment agreement. It can be either an individual agreement or a collective agreement.

There are some provisions that must be included in employment agreements by law, and there are also a number of minimum conditions that must be met regardless of whether they are included in agreements. Employment law also provides a framework for the process of negotiating additional entitlements.

Minimum pay

There are three minimum wage rates:

- the adult minimum wage,
- new entrant's minimum wage, and
- training minimum wage.

The adult minimum wage applies to employees aged 16 years and over, who are not new entrants or trainees. New entrants are 16 and 17 year olds who have been employed for less than 200 hours or three months; who are not supervising or training other workers; and who are not trainees. Trainees are employees aged 16 or over who are required by their employment agreements to undertake at least 60 credits a year in a registered training programme.

You must be paid at least the minimum wage if you are:

- a full-time employee
- a part-time or casual employee
- a home-worker, or
- paid totally or partly by commission or on a piece rate.

A small number of people hold an exemption from the minimum wage.

Minimum pay rates are reviewed each year. Information about the current minimum wage levels is available on the Department of Labour's website: www.ers.dol.govt.nz/pay/

Your employer generally needs to get your written consent to make deductions from your pay, or to pay your wages in a form other than cash. This consent can be included in your written employment agreement. Some deductions, for example PAYE personal tax, student loan and child support, are required by law and do not need your written consent. Your employer can't pay employees differently if the only difference is whether they are male or female.

Break Entitlements

As of 1 April 2009, there is a legal requirement under the Employment Relations Act to provide rest breaks and meal breaks during a work period. Employees are entitled to:

- one 10-minute paid rest break if their work period is 2 hours or more but not more than 4 hours
- one 10-minute paid rest break and one unpaid 30-minute meal break if their work period is more than 4 hours but not more than 6 hours, and
- two 10-minute paid rest breaks and one unpaid 30-minute meal break if their work period is more than 6 hours but not more than 8 hours.

These requirements begin over again if an employee's work period is more than 8 hours.

Employees and employers can agree to the timing of rest and meal breaks. If they cannot agree on the timing, the rest and meal breaks must be evenly spread throughout the work period where reasonable and practicable.

Employers and employees can agree to more and/or longer entitlements to rest and meal breaks.

The new rest and meal break minimums will not apply to employees who already get more or longer breaks under other laws, or are required to take breaks under other laws (for example, drivers covered by the by the rest break requirements in the Land Transport Rule: Work Time and Logbooks 2007).

Employers are also required to provide appropriate breaks and facilities for employees who wish to breastfeed or express breast milk while at work or during work time where this is reasonable and practicable under the circumstances. In determining what is reasonable and practicable, employers can take into account their operating environment and resources. These breaks are to be paid only if the employer and employee agree they will be. Employers and employees can agree to use a rest or meal break for the purposes of infant feeding.

More information about break entitlements is available on the Department of Labour's website www.dol.govt.nz.

Annual Holidays

At the end of each year of employment with any one employer, an employee becomes entitled to four weeks' paid annual holiday. If you leave the employer before completing a full year of employment, holiday pay owing to you would be 8% of your gross earnings, less any holiday pay you have already received.

If you have a job for a fixed-term of less than 12 months or a casual job where you work so irregularly that it isn't practical for your employer to give you four weeks' annual holiday, you can agree to holiday pay on a "pay as you go" basis. This means that your employment agreement has to say clearly that this is how you will be paid and the amount paid. Holiday pay must be at least 8% of your gross earnings and recorded separately on your pay slip.

More information about annual holidays is available on the Department of Labour's website: www.dol.govt.nz

Public holidays

There are 11 public holidays each year, and if they fall on days you would normally work you are entitled to be paid for that day, if you do not work on that day.

If you work on a public holiday, you:

- must be paid at least time-and-a-half for the time you work
- are also entitled to an alternative holiday, if the public holiday falls on a day that you would normally work.

More information about public holidays, and when they occur, is available on the Department of Labour's website: www.ers.dol.govt.nz/holidays

Sick leave

After six months' employment with an employer, you are entitled to five days' paid sick leave a year. You can take sick leave for yourself or to care for your spouse or partner, dependent child or parent. Unused sick leave can accumulate up to 20 days.

After three consecutive days of sick leave, an employer can request proof of the illness such as a medical certificate. Sick days cannot be exchanged for payment and are not paid out at the end of the employment relationship.

Special eligibility tests apply for people with variable hours and in intermittent employment. See www.ers.govt.nz/holidays_act_2003/ for more information.

Bereavement leave

After six months' employment with an employer, you are entitled to paid bereavement leave of:

- three days on the death of a spouse or partner, parent, child, sibling, grandparent, grandchild, or your spouse's or partner's parent, and
- one day if your employer accepts that you've suffered a bereavement on the death of any other person not included above.

You do not have to take all of your bereavement leave entitlement at the same time. Special eligibility tests apply for people with variable hours and in intermittent employment. See www.ers.govt.nz/holidays_act_2003/ for more information.

Parental leave

You may be entitled to parental leave if you have worked for the same employer for an average of at least 10 hours per week, and at least one hour in every week or 40 hours in every month, for either the immediately preceding six or 12 months before the expected due date of your baby or the date you first assume care of a child you intend adopting.

If you meet the six-month employment eligibility criteria or have been self-employed for six months immediately preceding the expected due date of your baby or the date you assume care of a child you intend to adopt, you may be entitled to 14 weeks' paid parental leave (some or all of which can be transferred to an eligible spouse/partner).

If you meet the 12-month eligibility criteria, you may also be entitled to up to 52 weeks' extended parental leave (less any maternity leave taken), which can also be shared with a spouse/partner if they meet the 12-month eligibility criteria.

A spouse/partner with six months' service may be entitled to an additional one weeks' unpaid paternity/partner's leave, and a spouse/partner with 12 months' service may be entitled to two weeks' unpaid paternity/partner's leave. Up to 10 days' unpaid special leave for pregnancy-related reasons is available for a pregnant mother before maternity leave begins.

It is illegal for an employer to either dismiss or discriminate against an employee on grounds of pregnancy or for taking parental leave.

Other leave rights

You may also be entitled to other rights in some situations. For example:

- If you are injured in an accident at work or somewhere else you may be eligible for accident compensation. Your nearest ACC office can give you information about this (see the blue pages in the front of the phone book) or call ACC Claims Enquiries on 0800 101 996.
- If you do full-time or part-time voluntary training in the armed forces, you may be able to get unpaid leave.

Flexible working arrangements

Employees with caring responsibilities have a statutory right to request a variation to their hours of work, days of work, or place of work.

To be eligible you must be caring for someone and have been employed by your employer for at least six months prior to making the request. When making the request, you must explain how the variation will help you to provide better care for the person concerned. Employers must consider a request and can refuse it only on certain grounds.

Equal pay & equal rights

Your employer can't pay employees differently if the only difference is whether they are male or female.

Also, in most cases, your employer cannot discriminate in hiring or firing, pay, training or promotion because of your race, colour, national or ethnic origin, sex or sexual orientation, marital or family status, employment status, age, religious belief or political opinion, or if you have a disability, or participate in certain union activities.

Fixed-term employees

You can agree to be employed for a fixed-term rather than being a permanent employee. Your job may be for a certain time (e.g. for six months) or until something happens (e.g. when the project ends) or until work is completed (e.g. until the fruit is picked). You have the same rights as other employees, except that your job will finish at the end of the fixed-term. Your employer can only offer you fixed-term employment where:

- there are genuine reasons for it (like seasonal work, project work, or where you are filling in for a permanent employee on leave), and
- your employer tells you the reasons and how or when the employment will end, and you agree to this in your employment agreement.

Like other employment agreements, fixed-term agreements must be in writing.

Employees who are on trial periods of up to 90 days

From 1 March 2009, a new employer – who employs 19 or fewer employees – can provide you with an offer of employment that includes a trial period. A trial period is voluntary, and must be agreed to in writing in good faith as part of your employment agreement. An employer and employee may agree to a trial period only if the employee has not previously been employed by the employer.

If you are given notice of dismissal before the end of a trial period, you cannot raise a personal grievance on the grounds of unjustified dismissal. You may, however, raise a personal grievance on other grounds, such as discrimination or harassment or unjustified action by the employer that disadvantages you.

If any employment relationship problem arises during the trial period, or if the employee is dismissed, the employee and the employer can access mediation services.

Employees on trial periods are entitled to all other minimum employment rights in relation to, for example, health and safety, employment agreements, minimum pay, annual holidays, public holidays, leave and equal pay.

Extra rights for employees doing certain catering, cleaning, caretaking, laundry and orderly work

Special rules apply to employees who do this work where their employer's business is sold or their work is contracted out or given to a new contractor. You can obtain further information by visiting www.dol.govt.nz or by contacting the Department of Labour on freephone 0800 20 90 20.

Union membership rights

You have the right to decide whether you want to join a union and, if so, which union. It is illegal for an employer to put unreasonable pressure on you to join or to not join a union, or to discriminate against you because you joined or didn't join a union.

It is also illegal for anyone else to put unreasonable pressure on an employee to join or to not join a union.

Union members may be nominated by their union to undertake employment relations education on paid leave, and have rights to attend paid union meetings. You can also require your employer to deduct union fees from your wages and pay them to your union. You can ask your union about this.

Employment relationship problems

Sometimes you might be worried about something at work. Maybe you're not sure if your employer is paying you enough, or letting you have the leave you should get. Perhaps you think your employer has done something unfair, or hasn't stopped something unfair happening. First, you should check your facts, and talk about the problem with your union or a family member or friend, or with an advisor. You could either visit www.dol.govt.nz or contact the Department of Labour on freephone 0800 20 90 20 for information about your rights and obligations, and what to do. You should talk about the problem with your employer. You might want to take a union representative, or a family member, or a friend, or other representative to support you. If you and your employer can't resolve the problem by talking, you or your employer can ask the Department of Labour for assistance to help sort things out. A mediator or a labour inspector may be able to help. The service is free – call 0800 20 90 20 to find out more.

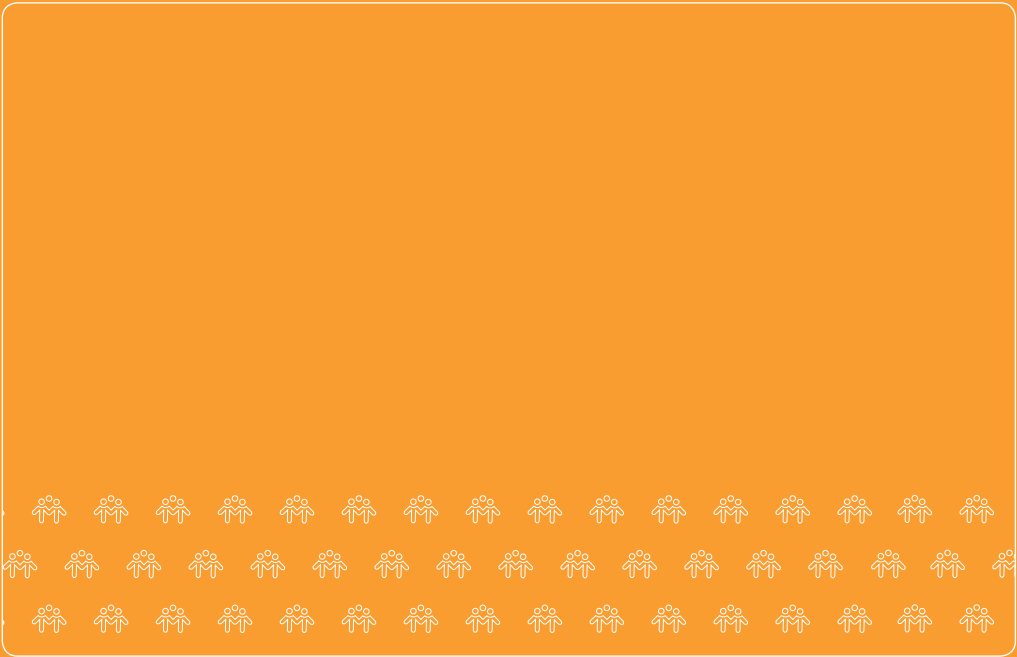
If mediation or a labour inspector doesn't solve the problem, then you or your employer, or in some cases, the labour inspector can take the problem to the Employment Relations Authority or later to the Employment Court.

Further information & guidance

We welcome the opportunity to help you further. If you can't find an answer to your question, or you want further clarification, more detailed information or guidance on any matter covered here, please contact us. We value your query and will respond to you as quickly as possible.



FOR MORE INFORMATION ON EMPLOYMENT RELATIONS
VISIT WWW.DOL.GOVT.NZ



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