

## Covid -19 Free Online Seminars

### Welcome!



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This webinar will be recorded



Use the **chat** function to message hosts, panellists or everyone



Use **raise hand** to ask for help or to be unmuted



Use the **Q&A** function to ask questions during our Q&A session

**We'll start soon...**

March 2020



# Legislation

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## Legislation

- Employment Relations Act 2000
- Holidays Act 2003
- Health and Safety at Work Act 2015
- Parental Leave and Employment Protection Act 1987
- Wages Protection Act 1983
- Minimum Wage Order 2019

## Employment Relations Act 2000 (ERA) – Key provisions

### Section 4 – duty of good faith:

- ***“Active and constructive in establishing and maintaining a productive employment relationship*** in which the parties are, amongst other things, ***responsive and communicative***”
- Requires an employer who is proposing to make a decision that will, or is likely to, ***have an adverse effect on the continuation of employment*** provide access to information and an opportunity to comment ***before the decision*** is made



## ERA

### Section 103A:

- Whether the employer's actions, and how the employer acted, were what **a *fair and reasonable employer could have done in all the circumstances***
- The Court will have regard to the resources available to the employer when considering whether the employer sufficiently investigated the allegations against the employee before dismissing or taking action
- Whether the employer gave the employee **a *reasonable opportunity to respond*** to the employer's concerns **before** dismissing or taking action
- Whether the employer ***genuinely considered the employee's explanation*** in relation to the allegations **before** dismissing or taking action

## Variations to employment agreements

- With the exception of minimum statutory entitlements, employers and employees can agree almost anything including variations to their current employment agreements
- The starting point is always the employment agreement and any applicable policies and procedures.

# Leave and the Holidays Act

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## Leave and the Holidays Act

You cannot contract out of minimum requirements in the Holidays Act, even with the employee's consent

## Holidays Act 2003

- **Annual holidays** - Statutory minimum - 4 weeks after the end of each completed 12 months of continuous employment
- **Sick leave** – 5 days for each 12 month period of continuous employment – after the employee has completed 6 months current continuous employment with the employer
- **Bereavement leave** – 3 days for each 12 month period of continuous employment – after the employee has completed 6 months' current continuous employment

## Annual leave

- Employer must give an employee not less than 14 days' notice of requirement to take annual leave
- *When* annual holidays are to be taken, is to be agreed between employer and employee but employer must not unreasonably withhold consent to employee's request
- Once granted, an employer cannot withdraw that leave without the employee's agreement

## Closedown periods

- Closedown periods (where the employer customarily closes its operations or discontinues work and requires the employees to take all or some of their annual leave)
- Only one closedown period permitted in any 12 month period
- The Act does not prevent an employer and employee from agreeing that the employer may close its operations and discontinue the work of the employee at other times and on the arrangements that will apply during those times
- An employer may have different closedown periods for each part of the business
- 14 days' notice of requirement to take annual leave or to discontinue work is required

## Annual leave - options

- Can agree to an employee taking annual leave in advance of entitlements
- Employee may request employer pay out maximum 1 week in each entitlement year. Employer cannot require employee to be paid out
- Employer may allow employee to take annual leave if sick leave or bereavement leave exhausted
- Employer may allow employee taking annual leave to change to sick leave if has been unwell while on annual leave
- Employer must allow employee taking annual holidays to change to bereavement leave if bereavement suffered while on annual leave

## Sick leave

- Employee sick or injured
- Employee's spouse, partner or dependent sick or injured
- Employee must notify employer of intention as early as possible before the employee is due to start work on the day that is intended to be taken as sick leave or, if that is not practicable, as early as possible after that time
- Employee can carry over up to 15 days sick leave to a maximum of 20 days current entitlement in any year
- Sick leave not paid out



## Bereavement leave

Up to 3 days leave where employee suffers a bereavement on the death of employee's:

- Spouse or partner; parent; child; brother or sister; grandparent; grandchild; spouse or partner's parent; OR
- On the death of any other person if the employer accepts the employee has suffered a bereavement as a result of death (closeness of association between employee and deceased person; whether the employee has taken significant responsibility for ceremonies relating to death; any cultural responsibilities of employee in relation to death)

## Family violence leave

- After 6 months continuous employment, 10 days paid leave per year if employee or dependant affected by family violence
- Physical, sexual or psychological abuse

# Health and Safety at Work Act

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## Employer's responsibilities

- Ensure, ***so far as is reasonably practicable***, the health and safety of:
  - Workers while at work; and
  - Workers whose activities in carrying out work are influenced or directed by the employer while the workers are carrying out work.
- Employer must, ***so far as is reasonably practicable***, ensure the health and safety of other persons is not put at risk from work carried out as part of the employer's conduct

## ***“So far as is reasonably practicable” includes***

- Safe work environment
- Safe systems at work
- Safe use, handling and storage of substances;
- Provision of adequate facilities for the welfare of workers at work;
- Provision of information, training and instructional supervision that is necessary to protect all persons from risks to their health and safety
- Monitoring of the health of workers and conditions at workplace for the purpose of preventing injury or illness of workers

## Workplace includes

- A place where work is being carried out or is customarily carried out and includes any place where a worker goes or is likely to be while at work
- Workers' accommodation that is owned by or under the management or control of the employer and where occupancy is necessary for employment
- Vehicle, aircraft, ship necessary for employment



## Control of the Workplace

Employer who manages or controls a workplace must ***so far as is reasonably practicable***, ensure that the workplace and the means of entering and exiting the workplace and anything arising from the workplace, are without risks to the health and safety of any person

## Employee's responsibilities

- While at work a worker must:
  - take reasonable care for his or her own health and safety
  - Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
  - Comply, as far as the worker is reasonably able, with any reasonable instruction given by the employer to allow the employer to comply with health and safety obligations
  - Cooperate with any reasonable policy or procedure relating to health or safety at the workplace

## Duty of other persons at workplace

- A person at a workplace must:
  - Take reasonable care of his or her health and safety; and
  - Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
  - Comply, as far as he or she is reasonably able, with any reasonable instruction that is given by the entity controlling the workplace to allow that entity to comply with its health and safety obligations

# Alternatives to Redeployment / Redundancy

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## Agreed variations / options

- Employers and employees, in good faith, can agree variations to employment agreements. Options include:
  - Reducing wages and salary (not below minimum wage)
  - Reducing hours
  - Reducing days of work
  - Redeployment into different positions
  - Agreeing to a period of leave without pay
  - Access to Government subsidies
  - Accessing workers from heavily affected regions e.g. Queenstown

## Agreed variations / options continued

- Options continued
  - Secondment
  - Collaborative employer approach across sectors and industries
  - Consider variation to fixed-term or casual agreements
  - Working from home
  - Consider varying or releasing restraints of trade
  - Consider varying or removing prohibitions on secondary employment



## Working from home

- Considerations
  - Workplace (ergonomics etc)
  - Home computer security
  - Broadband speed
  - Health and safety obligations and directions (micro-breaks; stretches; monitoring hours of work; monitoring emotional wellbeing)
  - Employer's obligation to provide or agree provision of workplace equipment
  - Impact of family pressures

## Documenting the changes

- In writing
- Opportunity to take legal advice
- Signed and dated by both parties
- Witnessed

# Redeployment / Redundancy

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## Redeployment / Redundancy

- Consider alternatives first
- Consultation still required but can be truncated timeframe
- Still need a sound rationale
- Also need to consider redeployment
- Persons intending to work

# Looking to the future

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## Our future?

- We ***will*** come out the other side of this
- There may be a rapid need to respond to demand
- Have you retained your key workers?
- Options for continuing employment relationship

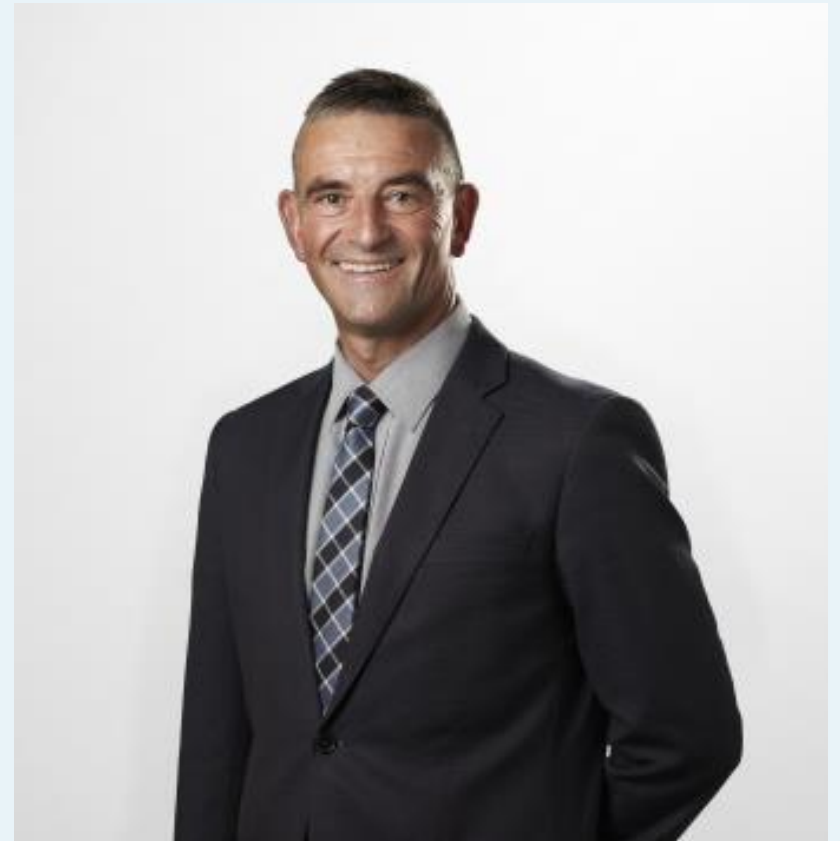


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