



# EMPLOYING STAFF AND CONTRACTORS – AN OVERVIEW

*the easy complete guide for employers*

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This publication is a general guide only. No person should act on any statement contained in this guide, without first getting professional advice. For specific advice applicable to your circumstances, contact 0800 WANZHELP (0800 9269 4300).



# CONTENTS

Chapter		Page
	<b>CONTENTS</b>	<b>2</b>
<b>1</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>2</b>	<b>THE LAWS GOVERNING EMPLOYERS</b>	<b>4</b>
	All aspects of employment are regulated	4
	Unions	4
<b>3</b>	<b>EMPLOYING THE RIGHT STAFF</b>	<b>7</b>
	How much time should I spend?	7
	It's all about relationships	7
	5 Easy steps to appointing staff	7
	Types of employees	7
	Allowing for growth – trial or probationary agreements	9
<b>4</b>	<b>MANAGING PERFORMANCE</b>	<b>10</b>
	Performance management is not a disciplinary tool	10
	Align reviews with company objectives	10
<b>5</b>	<b>HOLIDAYS AND LEAVE</b>	<b>11</b>
	The types	11
<b>6</b>	<b>DISCIPLINE, DISMISSALS AND REDUNDANCIES</b>	<b>12</b>
	Most grievances are lost on faulty procedure	12
	A simple procedure for all cases	12

# CHAPTER 1 - INTRODUCTION

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## **Introduction**

Welcome to this, the fourth edition of the **0800WANZHELP Employment Management Kit**. It remains much in demand as a practical guide and reliable resource, and we continue to assess and develop it. This edition includes a major addition – OSH. One of the guides has been comprehensively updated and rewritten (Discipline, dismissals and redundancies) as has Part 2 of the Holidays guide, which deals with Parental Leave.

The entire kit is also available on our website at [www.0800wanzhelp.co.nz](http://www.0800wanzhelp.co.nz). You will find this useful for downloading single documents, as you need it.

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## **Freephone assistance - 0800WANZHELP**

Underpinning this guide is the 0800WANZHELP (0800926943) employment management helpline. This service has now been thoroughly tried and tested and provides a quick and easy resource for peace of mind. It remains free for current WANZ members.

## **Extra Helpline Services**

If you need something special done by the helpline (like document review or drafting, or representation with a personal grievance or help with union negotiations), the helpline staff will advise you of the cost, in advance. The service has repeatedly shown that early advice from experts lowers the cost.

## **These Documents are a Starting Point**

There is a limit to what standard or generic documents like those in this kit can do. You should carefully consider each document in the kit, and where necessary, modify it to suit your particular purposes. Checking it by telephone with the helpline is quick and often free.

## **The Bottom Line**

This service is intended to allow you to focus on the main thing - your business - without letting legal compliance get overlooked. Pick up the phone and talk to those who know and can guide you!

## **WANZ Executive Committee**

June 2007

## CHAPTER 2 - THE LAWS GOVERNING EMPLOYERS

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### ALL ASPECTS OF EMPLOYMENT ARE REGULATED

If you employ people, you must comply with laws covering a number of areas, such as –

- **Compulsory benefits** to be provided by the employer (Holidays Act 2003, Parental Leave and Employment Protection Act 1987, Accident Insurance Act 1998, Injury Prevention, Rehabilitation, and Compensation Act 2001), including –
  - paid annual holidays
  - paid public holidays
  - paid sick leave
  - paid bereavement leave
  - pay for the first week of a work-related injury
  - parental leave
  - ACC insurance
  - employment relations leave
  - Kiwisaver.
- **Minimum and other prescribed pay levels** (Minimum Wage Act 1983, Wages Protection Act 1983, Equal Pay Act 1972)
- **Job protection** (Volunteers Employment Protection Act 1973, Parental Leave and Employment Protection Act 1987, Employment Relations Act 2000)
- **Tax** (Income Tax Act, Child support Act 1991, Student Loan Scheme Act 1992, Tax Administration Act 1994, Social Security Amendment (No 3) Act 1993)
- **Health and safety** (Hazardous Substances and New Organisms Act 1996, Health and Safety in Employment Act 1992, Machinery Act 1950, Smoke-Free Environments Act 1990)
- **Training** (Industry Training Act 1992)
- **Human rights and privacy** (Human Rights Act 1993, Privacy Act 1993)
- **Employment relationships** and the resolution of problems arising from it (Employment Relations Act 2000).

### UNIONS

#### *Registration*

Unions must be registered to have any protection under the Employment Relations Act. Such registration requires –

- At least 15 members
- Being an incorporated society
- Have democratic rules
- Being independent of employers.

#### *Union Membership Is Voluntary*

One of the objectives of the Act is to establish that employees have freedom of association, and to ensure that no one is prejudiced in any way because of their union membership or non-membership.

#### *Union Right Of Access To The Workplace*

Union representatives may enter your workplace with your permission –

- For purposes related to the employment of its members, or

- For purposes related to its business, or
- Both.

**Purposes connected to the employment of union members include –**

- Participating in bargaining for a collective agreement
- dealing with matters concerning the health and safety of members
- checking whether the employer is complying with a collective agreement
- checking whether the employer is complying with the ERA and other employment legislation in so far as union members are concerned
- with the authority of an employee, dealing with matters relating to an individual employment agreement or its terms and conditions, or a proposed one or its terms and conditions. **(This covers non-union staff)**
- pointing out non-compliance to an employer, and asking for compliance.

**Purposes related to a union's business include –**

- discussing union business with members
- recruiting new members
- promoting the union to any employee on the premises.

All that a union representative needs to enter your workplace is a reasonable belief that a member of the union works or normally works there, or that the union's membership rule covers an employee who works there or normally works there.

Union representatives intending to visit a workplace need the employer's permission, and such permission cannot be unreasonably withheld. The employer must respond to a request to visit within one working day after the request is received. If access is denied, written reasons must be provided within one day after the decision. Failure to respond within two days is interpreted as consent to enter.

There are penalties for failing to provide reasons for denying access, or for unreasonably denying access.

Access must be –

- at reasonable times during your working hours, and
- in a reasonable way, having regard to the normal business operations in the workplace, and
- comply with existing reasonable safety, health or security procedures in the workplace.

Union representatives must announce and identify themselves on arrival and when requested to do so.

*How Union Membership Affects Employment Agreements*

Unions generally try to enter into a collective agreement (as opposed to an individual employment agreement) on behalf of their members working for a particular employer. This agreement sets minimum terms and conditions for union members, regardless of performance, although it is possible to have performance issues covered. Any new union employee and, as is explained below, any new employee, automatically gets the minimum benefits.

Collective agreements last for a maximum of 3 years.

Union members may negotiate further terms and conditions with an employer, but these may not be less favourable than the collective agreement.

If an employee resigns from a union while working under a collective agreement, the terms and conditions of the collective and any other agreement that s/he has with the employer, automatically turn into an individual employment agreement. Employer and employee may then change those as they see fit, either more or less favourable than the collective agreement.

When new employees who are not union members join a company where a collective agreement is in effect, they must be given an individual employment agreement on at least the same terms and conditions as the collective agreement, for the first month. The employee must also be informed in writing that a collective agreement exists, be given a copy thereof and told how to contact the union. After the first month, employer and employee can change the terms and conditions as they see fit.

## CHAPTER 3 - EMPLOYING THE RIGHT STAFF

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### HOW MUCH TIME SHOULD I SPEND?

How much time and effort should one spend on choosing staff? About as much as you do choosing any other investment.

How careful were you in choosing your last expensive piece of equipment? How does the cost of that piece compare with the cost of an employee over the period of their employment with you?

There is no difference between equipment and people in this comparison –

- both are investments, and call for careful consideration.
- both should be selected for the purpose in mind, even if it is for a general purpose.
- a machine that is used within its specifications lasts longer and has lower maintenance costs. Likewise with a person whose skills, training and attitude suit the job and the company.
- preventive maintenance extends the life of an asset significantly. Holidays and time off when it is important to the employee, and respect for them and their contribution, make for productive and satisfied staff.

### IT'S ALL ABOUT RELATIONSHIPS

The Employment Relations Act correctly emphasizes the importance of the relationship between employers and their staff. The problems that arise in the course of the employment must be dealt with as having happened in the course of a relationship, rather than as a single, random event.

The thing about relationships is that you get exactly what you put in. When problems arise, you have to deal with it in the environment that you have created. If this is open and trusting, the issue will be dealt with in the same way.

This is why it is so crucially important to consider whether new employees will fit into the culture of your business. If you have any reservations in this regard, trust your instincts.

### 5 EASY STEPS TO APPOINTING STAFF

Step 1 – Define the job and person required

Step 2 – Attract the right applicants

Step 3 – Do the initial screening

Step 4 – screen the high performers from the average and poor performers

Step 5 – Choose the best applicant

These steps are explained in detail in the guide “Employ the best staff every time” at the back of this resource kit.

## TYPES OF EMPLOYEES

<i>Type of employee</i>	<i>Hours worked</i>	<i>notes</i>
Permanent	Full time	1 & 2
	Part time	1 & 3
Fixed term (temporary)	Full time	2 & 4
	Part time	3 & 4
Casual	Works hours agreed	5

There are three kinds of employee: **permanent**, **fixed term (temporary)** and **casual**.

Note 1 **Permanent** employees can work either full time or part time.

Note 2 **Full time** employees work 5 days a week, generally 8 hours per day or 40 hours per week.

Note 3 **Part time** employees work less than a full week, either by not working on all 5 days or by working fewer hours each day, or both. Part time employees in particular, should have their normal days of work spelled out in their agreements, because their annual and public holidays and sick and bereavement leave are based on that.

Note 4 **Fixed term** employees can also work either full or part time.

**Fixed term agreements must spell out when (date or occurrence of an event), why (the reason for the agreement) and how (what notice must be given) the agreement will come to an end, and both parties must explicitly agree to this.**

If a temporary employee works beyond the agreed period, they automatically become permanent. It is therefore important to keep an eye on temporary agreements – there is no excuse if the agreement extends beyond the agreed period.

A fixed term agreement cannot be used as a form of trial employment.

Note 5 Casual Employees. **The Holidays Act 2003 effectively defines a casual employee as someone who works “intermittent or irregular” hours.**

**Casuals become entitled to sick and bereavement leave if, during any 6-month period, they work –**

- at least an average of 10 hours per week; and
- at least 1 hour in every week during the period or
- at least 40 hours during every month during the period.

As soon as their hours drop below this level, they lose sick and bereavement leave benefits, but not annual and public holidays.

## ALLOWING FOR GROWTH - TRIAL OR PROBATIONARY AGREEMENTS

A trial agreement is simply a permanent or fixed term agreement with a trial or probationary clause, usually three or six months. There is no “trial agreement” as such.

It is recommended that employers include a trial or a probationary clause in all employment agreements.

**SAMPLE DOCUMENTS AND FORMS** are available on the Documents tab.

### **PERFORMANCE MANAGEMENT IS NOT A DISCIPLINARY TOOL**

Managing performance means no more and no less than –

- telling staff what your (the company's) and their goals are; and
- how you are both doing.

It has nothing to do with –

- giving company secrets away, or
- wage and salary increases.

A proper process takes no more than two hours per year per employee – if it does, it should be simplified. Multiply this by the number of staff you have before reflecting on the value you could get from it. Of course this time excludes the time that you spend each year on strategic or business planning. Those plans should be broken down into job descriptions and targets.

### **ALIGN REVIEWS WITH COMPANY OBJECTIVES**

Does every member of your staff spend all their time at work pursuing the company's goals? Would it improve your profits if they did? You, the business owner, are able to break down your goals into smaller goals for every employee. They cannot.

### **HOUSE RULES**

Your house rules or policies set the boundaries for employee behaviour. If these are not known, or inconsistently applied, it leads to confusion, and when employment relationship problems arise, you will have difficulties.

A sample set of house rules is included on the Documents tab.

## CHAPTER 5 - HOLIDAYS AND LEAVE

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### THE TYPES

The law requires that you give your employees certain benefits. These are –

- paid annual holidays
- paid public holidays
- paid sick leave
- paid bereavement leave
- paid leave for the first week of a work-related illness or accident
- ACC leave
- parental leave
- employment relations leave.

The circumstances under which such leave is to be given, and the calculations to use are set out in the guide “Holidays and leave” at the back of this resource kit.

## CHAPTER 6 - DISCIPLINE, DIMISSALS AND REDUNDANCIES

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### **MOST GRIEVANCES ARE LOST ON FAULTY PROCEDURE**

The Employment Relations Act has the objective, among others, to dispense with technicalities in resolving employment relations problems. The substance of the relationship and the protection thereof is intended to be of overriding concern.

Unfortunately this is usually not the case, and employers who have been made aware of a flaw in their process invariably settle the matter by paying the employee off. The Authority and Court enforce process, on the basis that these are employee rights. The penalty for not following a fair process is a tax free payment to the employee for hurt, humiliation and injury to feelings.

Although employers cannot protect themselves from the cost of an action (payments and fines, except for representation fees, cannot be covered by insurance) the best way of reducing the likelihood of a personal grievance proceeding beyond mediation, is to follow their disciplinary process (the employee's rights) rigidly, regardless of the circumstances.

And it is **essential** to have a disciplinary code and procedure, known to all staff and followed consistently.

### **A SIMPLE PROCEDURE FOR ALL CASES**

The purpose of a disciplinary meeting is to establish what happened, so that you can make an informed decision on how to prevent the incident from occurring again. In other words, deciding whether to discipline, and how, is done **AFTER** the disciplinary meeting.

**First**, investigate the incident thoroughly, and collect enough facts to allow you to decide whether to call the employee to account or not. If there are no allegations to put to the employee, there is no disciplinary meeting. If there are enough facts for a clear and specific allegation, the employee should be called to a disciplinary meeting.

**Next**, write to the employee, and tell them –

- what the allegations are that you wish to discuss and get an explanation on
- call them to a meeting, and give them the time and date for it.
- advise them that they may bring a representative, whether friend, co-worker, union representative, advocate or lawyer to the meeting
- whether their job is at risk.

**Then** hold the disciplinary meeting and listen to the employee's explanation.

### **Close the meeting**

After the meeting undertake more investigation (if necessary in the light of the employee's explanation). Then consider all the evidence and decide whether the explanation is acceptable. If so, advise the employee in writing. If not, decide what disciplinary action is required to change the employee's behaviour. Write to and advise the employee without delay, giving the reason for the disciplinary action.

### **Disciplinary code and procedure**

A sample disciplinary code and procedure is included on the Documents tab.