

A CHANGE OF SEASONS

May 2019



*With the change in seasons,
so too have there been a number of changes with
Employment Legislation, Inland Revenue Web-based Services and ACC*

Employment Legislation Changes

The Government have enacted a number of significant changes in the employment arena. These are now in effect and affect you as an employer. We highlight these below:

- **Minimum Wage** - increase to \$17.70/hour (effective from 1 April 2019)
- **Rest & Meal breaks** – Where these can't be agreed between Employer and Employee, a prescriptive regime has been put in place to deal with this.

Legislation will require the break to be taken in the middle of the work period to which they relate, if reasonable and practicable to do so.
- **Trial Periods** – These are now only available to employers with **less than 20 employees**.

Employers with 20 or more employees can no longer use a *Trial Period* clause in employment agreements and should instead use a *Probationary Period* clause.

Any *Trial Periods* that commenced prior to 6 May 2019 can still run their course.
- **Domestic Violence Leave** – In accordance with the *Domestic Violence Victims' Protection Act (2018)*, which took effect from 1 April 2019, all companies are now required to have a comprehensive policy in place which provides support to the employee and addresses payroll privacy and employer obligations, with respect to Domestic Violence.

Contact Deb McCarthy (ext 812) if you want to know in more detail how this will impact on your particular situation.

RECENT DECISIONS IMPOSED BY EMPLOYMENT RELATIONS AUTHORITY

Company Director Personally Liable for Wage Arrears

The Employment Relations Authority (ERA) has recently made an order for a Company Director to **personally** pay over \$18,000 in holiday pay, wage arrears, unpaid public holiday pay and unpaid alternate days for public holidays worked.

Although the employee was employed by a company, the director was held personally liable because they knew of the company's obligation to make the payments and authorized the default by the company in making those payments. The action was taken against the director after an order against the company was not paid.

Directors should be aware that they cannot hide behind a corporate entity when it comes to the non payment of wages and holiday pay due to the extensive powers to make directors **personally liable** for the failure of the company to make those payments.

Penalty Resulting from no Employment Agreement

The ERA has penalised an employer that failed to pay wages and holiday pay and also failed to provide a **written employment agreement**.

When a part-time employee resigned to move to another position the employer failed to pay wages and holiday pay due. They had also failed to provide a written employment agreement. In addition to being ordered to pay the outstanding wages and holiday pay, the employer was fined \$2,500 for breaches of the Employment Relations Act.

The penalty in this case was almost **four times** the unpaid wages, so it would have made sense for the employer to have just paid the employee and provided a written employment agreement.

Inland Revenue Changes

You will no doubt have seen in the media of late that IRD have undertaken a major upgrade of their web-based services, to transition all tax types to their myIR platform. As a result of the upgrade, there have been some key changes in the way that IRD manage taxation payments and account credits, which could significantly impact you.

We highlight some of these key changes below:

- When making tax payments to IRD, please ensure that you enter the **correct Tax Period and Tax Type** to which payments apply.

Where an incorrect tax period/tax type has been used and payment is applied to that period/type resulting in a credit balance, the IRD system will **automatically refund** the amount of that credit balance. In order for any tax payment to be treated as being received on time and in the correct tax period (and to avoid possible penalties), the correct Tax Period and Tax Type **MUST** be used at the time of making the payment.

Previously, IRD allowed the transfer of tax payments to the correct period/type and also allowed a two-week period within which refunds could be returned to IRD and applied at the original date paid. Not now! With the migration to their new platform, the system no longer allows this to happen. **Please note: If you receive any refunds from IRD that you are not expecting, please get in touch with us so that we can check it for you.**

- IRD have also notified us that they are currently going through a process of refunding historic tax credits held in taxpayers accounts (i.e. from tax periods since 2017). Refunds will apply where a return has been filed and assessed and a credit remains in the account.

For tax periods relating to 2016 and earlier years, refunds will be processed commencing from August 2019.

- Where we have asked you to make a DWT payment for a future period, IRD are also actioning refunds in these cases and requesting bank account numbers for this tax type. **Please call us first** before providing the bank account details to IRD or if you receive any refund from IRD that you were not expecting.
- Any IRD refunds will be automatically deposited into the bank account nominated in your client profile with IRD.
- Annual Income tax calculations will be automatically undertaken by IRD for individuals whose only income is from wages and salary, or from investments (interest on bank deposits and savings). Between mid-May and July each year income tax assessments will be issued which will show details of earnings, tax payments and any resulting tax refund or tax to pay.
- With the migration to the new platform, there are inconsistencies with the calculation of penalties and interest. Please **check with us first** before making any payments that have penalties and/or interest attached.

As always, please do not hesitate to contact our office (0508) 376 0092 if you have any queries with the matters raised above, or are unsure about any correspondence that you receive from IRD. This includes unexpected refunds, no matter how good they feel to receive!

ACC Change Invoicing Timings

ACC have advised that they will no longer invoice customers in advance and will now invoice in arrears. This means that most self-employed customers will not receive an invoice in the 2019/2020 year.

The next self-employed notices will be sent in the 2020/2021 year (approx. July—August 2020), which will cover the 2019/2020 year and will be calculated using the actual earnings for the 2019/2020 year as filed with Inland Revenue.

Own residential property? Take note!

In an effort to level the playing field between property investors and home buyers, a new law ring-fencing rental losses looks set to come into effect on 1 April 2019. It means you'll no longer be able to offset tax losses from your residential properties against other income (e.g. salary or wages, or business income). However, the losses will be able to be used in the future when the properties are making profits, or if you are taxed on the sale of land.
Need more information? Give us a call.

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