

Paperwork, Holidays and Wages – Getting it Right on the Farm

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Introduction

No one likes paperwork, and sometimes it must feel like you spend more time at the desk than you do in the shed. However the consequences of not getting the paperwork done correctly and at the time can be very expensive and very time consuming. Nowhere is this truer, than with the paperwork resulting from legislation.

However that paper work is essential if employers and employees are to know where they stand in an employment relationship. It will prevent disputes that can escalate into legal problems.

What you should have (as a minimum)

Have an employment agreement for every employee. It is important that every single employee has a written employment agreement. Without written agreements you are in breach of the law and are exposed to penalties. The agreement provides important information to the employee, the employer and in a worst-case scenario the courts. In the absence of written information the courts are likely to believe the employee's side of the story unless it is proven they are mistaken or lying. One effect of the Holidays Act 2003 is that all existing employees are required to have their agreements updated to take into account changes brought in by that act. This must be done when their current employment agreement is next amended or from 1 April 2005 (whichever is sooner). New employees must have updated agreements that take into account the changes.

Have a time and wage record. This records all wages or salary paid. It must also keep track of the actual hours worked if that is relevant to the method of payment (for instance if you pay an hourly wage). This record must be kept for six years.

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Have a holiday record. This is a record of all holidays taken and due. It is important to separate out each type of leave taken to avoid confusion. For instance have separate columns for days in lieu of working statutory holidays, annual leave and gift days off. Again keep this record for six months.

Have a health and safety policy. This is an important requirement under the Health and Safety in Employment Act. It should be updated regularly.

Have an accommodation agreement (often included in an employment agreement). If you provide accommodation as an employer you are covered by the Residential Tenancy Act (even if it is not your property). You should have some clauses covering the rent, the bond, what condition the house should be left in and any limitations on the use of the property (such as a maximum number of guests or pets).

Holidays Act 2003

Changes have been made to:

- Public (Statutory) holiday entitlements taking effect 1 April 2004
- Special (sick/bereavement) leave entitlements taking effect 1 April 2004
- Obligations with regard to the recording of leave taking effect 1 April 2004
- Increase in penalties taking effect from 1 April 2004
- From April 1st 2007, increase in annual leave provisions.

These changes affect existing employment relationships and contracts. Employers *must* allow for these changes.

Employers must also inform any employee hired after the 1st of April 2004 about these entitlements, and that the employee can obtain further information of their entitlements under the Holidays Act from the Department of Labour.

Changes to public (statutory) holidays

There continue to be 11 statutory/public holidays where an employee normally rostered to work on such days is entitled to have the day off on pay, or an alternative day off on pay if he/she works that day. These days are Christmas Day, Boxing Day, New Years Day, 2nd of January, Waitangi Day, Good Friday, Easter Monday, ANZAC Day, Queens Birthday, Labour Day and the Anniversary Day of the Province.

From 1 April 2004, if an employee works on a statutory day they will be entitled to be paid one and half times the employee's "relevant daily pay that relates to the time worked on that day". This applies to all employees including casuals. Permanent employees will normally also receive a paid alternative day off.

Changes to special leave (sickness/bereavement leave)

From the 1st of April 2004 an employee will receive a minimum of 5 days leave for sickness/ non-work injury (including sickness/injury of the employee's spouse/partner, dependent child or parent). Sick leave will automatically apply after the first six months of employment (and a fresh five days will be available each subsequent 12-month period after that).

However, the parties will now be able to agree to allow sick leave in advance, including within the first 6 months of employment. Sick leave taken in advance can be deducted from future entitlements.

If sick leave is not used it will automatically accumulate, up to a maximum of 20 days (carrying over up to 15 days plus the 5 days entitlement for the current 12 month period).

The minimum annual leave entitlement for bereavement is outlined in the table below and is in addition to sick leave entitlements.

Table 1: Bereavement leave minimum entitlements

Relationship to person who died	Leave entitlement
Spouse, parent, child, sibling, grandparent, grandchild or spouse's parent	3 days for each bereavement
Other The employer must take into account at least the following when deciding whether to allow the leave: <ul style="list-style-type: none">• closeness of the association• the responsibilities of the employee in arranging the funeral• any cultural responsibilities of the employee in relation to the death).	1 day for each bereavement (if agreed to by the employer).

Four weeks annual leave (from 1st April 2007)

From 1st April 2007 all employees will be eligible for a minimum four weeks annual leave (up from the current three weeks annual leave).

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Wages

The top areas which cause farmers problems (in my view) are: bonuses, splitting wages between partners, deductions and rentals.

Bonuses

These need to be within the employee's control to have any motivational effect. For instance a grades free bonus that applies or is removed regardless of what (or who) actually causes the grade does little to encourage improvement. There also needs to be some thought placed around the wording for bonus clauses. For instance, what happens to a bonus based on an increase in production over last season if an employee leaves mid way through a season? Does he or she receive a portion of the bonus? Finally be aware of the effect that bonuses have on overall wages (including the calculation of holiday pay).

Splitting wages between partners

Splitting wages between partners that does not reflect actual work done. Some employees who work with their partners will put pressure on employers to split the combined wages in half to avoid higher taxes. This can backfire in a significant way on both the employer and the employee. For instance if the employee goes off on ACC the lower wage will be the figure used to calculate the payment to be made. The employer can likewise be stung if the employee who does the larger amount of work terminates their employment, leaving the other partner on a very high wage for little work. For these reasons, and a number of less common but equally serious reasons I would very strongly advise against splitting wages in a way that does not reflect the share of work done by a couple.

Deductions

All deduction made by the employer (excluding tax and court ordered payments) must be approved and signed for in writing. This includes deductions for loans made to the employee, purchase of motorbikes and damage to the rental property.

Rentals

Inland Revenue requires that all employers take a fair market rental. This deduction must be covered in the employment agreement. If the accommodation is genuinely free then fringe benefit tax must be paid on that value. Otherwise, there is nothing wrong with adding the rental to the wage, then taking tax off that higher amount, before deducting the rent. However the higher amount that PAYE is deducted from is the gross wage for the purposes of the Holidays Act, wage acts, ACC calculations and taxation law. It is simpler to have a taxed wage that is paid by the employer, and then deduct a rent as the landlord. This avoids confusion and allows

rentals to still be charged if the employee is off on ACC, parental leave or is tardy in leaving the accommodation after terminating the job.

The views expressed in this paper are the writer's own and may not necessarily reflect the views of the Federated Farmers of New Zealand (Inc.).

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