

Employment Relations Act changes

A reminder that by 1 April 2017, all existing employment agreements need to be amended to comply with Employment Relations Act requirements introduced last year.

1. Employment agreements must:

- specify agreed hours of work - days of the week, start and finish times and any associated flexibility and, if they include an **availability** provision, that provision must:
- specify agreed hours of work, including some guaranteed hours
- provide the employee with reasonable compensation for agreeing to be available to work when the employer needs the work done

Employers must have genuine reasons based on reasonable grounds for negotiating an availability provision and for the number of hours of work specified.

Genuine reasons based on reasonable grounds are:

- whether business demands make the provision necessary
- the number of hours when the employee needs to be available
- the proportion of availability hours to agreed hours

Compensation payable is determined on the basis of:

- the relationship of availability hours to agreed hours
- the kind of restrictions the availability provision imposes
- the employee's pay under the employment agreement

Employees paid a salary may agree that it includes compensation for the employee being available under an availability provision.

Without an availability provision, an employee may refuse to work over and above any guaranteed hours. An availability provision not in the employment agreement is unenforceable.

2. **Secondary employment provisions**, restricting employees from working for other employers, are now permissible only if (and only to the extent necessary in light of the reasons below):

- there are genuine reasons based on reasonable grounds for having them and
- the reasons are stated in the employment agreement

Examples of genuine reasons are:

- protecting the employer's commercially sensitive information
- protecting the employer's intellectual property rights
- protecting the employer's commercial reputation
- preventing a conflict of interest that can't be managed without a secondary employment provision

A possible secondary employment provision clause might state:

Given the competitive nature of the employer's business and the consequent need to protect confidential information relating to the business, the employee agrees that he/she will not engage in any outside employment or otherwise participate directly or indirectly in any other business except as advised in writing to and withs prior written consent.

3. In organisations where **shift work** is carried out, shifts should not be cancelled unless the employment agreement:

- specifies a reasonable notice period
- provides for the payment of reasonable compensation if the specified notice isn't given

What constitutes a reasonable notice period depends on the nature of:

- the employer's business – whether the circumstances leading to the cancellation might be foreseen or controlled
- the employee's work, including the cancellation's likely effect on the employee
- the employee's employment arrangements, including whether he/she has agreed hours of work and if so, how many of the hours are guaranteed

What constitutes reasonable compensation depends on:

- the notice period specified
- what the employee would have been paid for working the shift
- whether the nature of the work means the employee will incur costs in preparing for the shift

An employee is entitled to what he/she would have earned for working the shift if:

- a shift is cancelled and the employment agreement doesn't specify a reasonable notice period or the payment of reasonable compensation
- a shift is cancelled but the employee wasn't notified until it was about to begin
- the remainder of the shift is cancelled after the shift has begun