



## Working in Wine™

Employment information provided especially for the New Zealand wine and liquor industries

November 2010

The information in this newsletter will be of most interest to those in the wine and liquor industries who are involved with employing others.

### Topics in this Newsletter

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### Responsibilities for Employers who employ Foreign Workers

The new Immigration Act takes effect on 29 November 2010. It's no longer enough to hold an IR 330 form as a "reasonable excuse" for employing a foreign national who is not entitled to work in New Zealand. **Employers will need to prove that they took "reasonable precautions and exercised due diligence"** to check whether the person was entitled to work in New Zealand.

The Department of Labour has introduced an online system which will allow employers to obtain information on a potential employee's work entitlement. It's available at [www.immigration.govt.nz/VisaView](http://www.immigration.govt.nz/VisaView). Sounds good but evidently it's not that easy to use so you may need to take other steps.

One thing, employers should actually view the whole passport (not just a photocopied page or 2) and copy all of it for the employee's file to verify a work visa. You should also ask in your employment application form where they have been born – anyone born in NZ or Oz should be OK; you should check others thoroughly. Keep track of all employee work permits. Particularly important for those winery employers taking on overseas staff for vintage.

Fines - It is an offence to allow, or continue to allow any person to work for you, knowing that the person is not entitled to work in New Zealand, and can attract penalties of up to \$50,000. If an employer allows a person who is not entitled to work in New Zealand in the employer's service to do that work the maximum penalty is a fine of \$10,000.

Employers who exploit a person who is not legally entitled to work in New Zealand can be liable for a penalty of up to \$100,000, imprisonment of up to seven years, or both.

Also on Immigration – **anyone providing immigration advice must now be licensed** (since May this year). There are a number of exemptions, one of which is for those who provide immigration advice in an informal or family context only, where the advice was not provided systematically or for a fee. So, be careful if you are helping overseas workers with their work visa applications. Best to refer them to the immigration website or a licensed advisor.

### Approved Handler Certificates Renewals

The first Approved Handler Certificates and Approved Filler Test Certificates were issued under the HSNO legislation 5 years ago and are now becoming due for renewal. All approved handlers should check when their certificates expire as you could **need to renew** sometime soon.

It's illegal for you and your workplace if you work as an approved handler without a current certificate so check out the website link below to find out what you need to do. <http://www.ermanz.govt.nz/hs/ahrenewals/index.html>

### Registered Chemical Applicators

And, as reported in the latest WinePress from Marlborough, Contractors are required not only to have Growsafe and Approved Handler Certificates, but should also be Registered Chemical Applicators – an accreditation that is a requirement of the Resource Management Act. It's a Level 4 National Certificate in Agrichemical Application and covers in more detail all aspects of chemical application, spray drift, chemical spill etc. Once obtained, it provides the contractor with a recognised qualification that legitimises what they do, and they can then apply for national registration from the Agrichemical Education Trust.

Dave Giddens of Infratrain says that **employers should have someone on staff** with this qualification as well, it's not just for contractors.

Dean Bowden of Sprayschool says that if you don't have this qualification there is the possibility that your **insurer may renege on any claim** you make to them involving a chemical mishap – check with your insurance company to ensure you are covered for such events and compliant with local council Airplans.

For more info or to register, contact Dean at [sprayschool@xtra.co.nz](mailto:sprayschool@xtra.co.nz) or Dave Giddens, 03 541 0397, [dave@infratrain.co.nz](mailto:dave@infratrain.co.nz)

**Worth being safe around chemicals, don't you think, so how about upskilling someone at your place?**

## New Meal Break Law

All that is required now is for the new law to receive Royal Assent – likely to be before Christmas. The nonsensical change that was made requiring breaks to be in the middle of work patterns will be replaced and **common sense is prevailing**. Breaks must be provided so employees have a reasonable opportunity for rest, refreshment and attend to personal matters, and must be appropriate given the duration of the employee's work period. Restrictions on breaks are allowed provided they are reasonable and necessary given the nature of the employee's work (eg allowing the break to be interrupted to serve a customer). Compensatory measures (defined in the Bill as including measures such as a later start time, earlier finish time, or time off in lieu) can be provided instead of breaks but there are rules around this and **employers should always be aware of their Health and Safety obligations** if they restrict rest breaks.

Employers should ensure they have a clause in their new employment agreements so that ultimately they have the right to direct when breaks are taken. Any existing provisions may still apply – **seek advice if you're unsure**.

## Change to Personal Grievance Law

A significant **change to the Personal Grievance law** is the test of justification for dismissals. Currently, S103A of the ERA tests whether an employer's actions, and how the employer acted, were what a fair and reasonable employer **'would'** have done in all the circumstances at the time of the dismissal or action. This will be amended by replacing the word 'would' with **'could'**. The Bill provides that a dismissal or action must not be determined to be unjustified because of a minor flaw in the dismissal process because the substance of a case overrides a minor error in the process. In all cases where you are thinking of dismissing an employee you should take professional advice before any action.

There are many changes afoot to both the Employment Relations Act and Holidays Act, so April 2011 is going to be a busy time from a human resources perspective. We can provide professional advice on how **these changes may impact on your business**.

## Trial Periods

The existing law for being able to employ staff on a trial period applies to only those who have less than 20 employees. This will change to all businesses, regardless of size, from April 2011.

A trial period must be agreed to by both parties and included in a written employment agreement as a particular clause. The trial can not be for longer than 90 days.

The trial period **must start on the first day of employment** and applies only to those who have not worked for an employer before. It is particularly important that all employees must not start work until they have signed their employment agreement and that the dates are correct.

Employers must terminate employment on notice within the trial period and although no claims for unjustified dismissal can be taken, there are other avenues available to employees if they feel they have been wrongly treated.

A recent Court case has set out some important steps that employers must follow – You must give reasons, comply with all company policies and behave in good faith – so do take professional advice.

## Christmas/New Year Public Holiday Pay

Christmas and New Year Public holidays fall on Saturdays and Sundays this year, so the public holidays are transferred to the following Monday and Tuesday for those employees who do not usually work on a Saturday or Sunday. Those who do usually work on weekends will observe the public holidays on the days they fall.

An employee is only entitled to be paid for a public holiday if that day would otherwise have been a working day for the employee. An employee is not entitled to an alternative holiday if he or she is not normally employed on the day the public holiday falls, or works only on public holidays. (Casual shop staff for example). Anyone who works on a Public Holiday whether it is a normal working day or not, must be paid time and a half their usual rate (salaried staff too).

Here are some examples to assist you to understand holiday entitlements. Make sure your payroll person knows what to do. Rosters and work patterns can assist you to work out if or when the employee is entitled to a paid public holiday.

And remember, employees are entitled to a maximum of 4 public holidays over this period.

Day of Public Holiday	Normally works a Saturday or Sunday but <b>does not work on the holiday</b>	Normally works a Saturday or Sunday <b>and works on the holiday</b>	If Saturday or Sunday are not normally working days (i.e. usually works Monday to Friday)
Saturday 25 December	Public Holiday – if normally works Saturdays, paid day off	If normally works Saturdays, paid time and a half for hours worked plus given another full day off later	The holiday is Mondayised – transferred and observed Monday 27 December
Sunday 26 December	Public Holiday – if normally works Sundays, paid day off	If normally works Sundays, paid time and a half for hours worked plus given another full day off later	The holiday is Tuesdayised – observed Tuesday 28 December
Saturday 1 January	Public Holiday – if normally works Saturdays, paid day off	If normally works Saturdays, paid time and a half for hours worked plus given another full day off later	The holiday is Mondayised – transferred and observed Monday 3 January
Sunday 2 January	Public Holiday – if normally works Sundays, paid day off	If normally works Sundays, paid time and a half for hours worked plus given another full day off later	The holiday is Tuesdayised – observed Tuesday 4 January

## Our Christmas Gift to your Business

### How do your OSH and HR Documents measure up?

Battersby HR Consulting (us, Paddy and Heather) are offering wine employers a no-cost assessment of all that you have in place (value \$336). How do you know that you are meeting your obligations as an employer? With fines for non-compliance set to increase, it pays to know that you are doing everything correctly by your employees.

Just ring Heather on 09 838 1455 or email – mail@winejobsonline.com – to find out how easy it is.

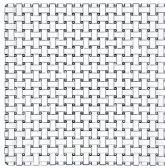
## Christmas Shopping with Spiegelau – Extra Hot Prices just for you... Stock up the cellar door, lunch room, bach, or kitchen cupboard! or Great gifts for winelovers



**Bellevue Burgundy Glass** with flared lip  
RRP \$282.00 per 6 pack  
winejobsonline **Special \$50.00** per 6 pack  
Sold in boxes of 6 stems only



**Vino Grande Young White Wine  
/Riesling Glass**  
RRP \$255.00 per 6 pack  
winejobsonline **Special \$75.00**  
Sold in boxes of 6 stems only



**Bossa Nova Glass Plate**  
Square 28cm  
RRP \$470.00 per 6 pack  
winejobsonline **Special \$166.00**  
Sold in boxes of 6 plates only



**Boss Nova Glass Plate**  
Rectangle 42cm  
RRP \$690.00 per 6 pack  
Winejobsonline.com **Special \$245.00**  
Sold in boxes of 6 plates only  
Please note picture does not represent true size



**Ocean Decanter**  
RRP \$30.00 each  
winejobsonline **Special \$11.50**



**Festival Pilsner Glass**  
RRP \$117.00 per 6 pack  
winejobsonline **Special \$40.00**  
Sold in boxes of 6 stems only



**Vino Vino Glasses**  
Red Wine (01) with 100ml etched pour line  
Bordeaux (35) with 200ml etched pour line  
Burgundy (00) with 200ml etched pour line  
RRP \$552.00 per 12 pack  
winejobsonline **Special \$96.60**  
Sold in boxes of 12 stems only  
(Stemless glass shown here not available)

For further info or to order:

contact Vicky Bouwhuis Macvine International Limited Mobile: 027-2222-8780r Email: vicky@macvine.co.nz

Products quoted are subject to availability. Special ends 24 December 2010 - All prices include GST (Payment credit card, Amex add 3% service charge)

Don't forget name, delivery address and instructions, daytime phone number, credit card details etc.

Freight charges will apply per 24 glasses or part thereof: Auckland - \$5.65 per case, rest of North Island including outer Auckland and Waiheke \$10.35,

South Island - \$13.80 per case. Rural delivery will incur a \$8.62 per box excess

**REMEMBER – MENTION WINEJOBSONLINE SPECIAL OFFER TO GET THIS PRICING**



Very best wishes to everyone at your place for great times  
with good wines and special people over Christmas and  
New Year  
*Paddy and Heather Battersby*



Working in Wine™ contains employment information provided by Battersby HR Consulting for winejobsonline.com for general information purposes and is not intended to replace legal advice. If you have any questions you should contact us. Telephone Paddy on (+64) 09 838 6338. We are available to assist employers through our consultancy services.

Check out the latest New Zealand wine and liquor industry job vacancies and jobseekers at www.winejobsonline.com and www.LIQUORJOBS.CO.NZ. If you know someone who may be interested in a job change, please refer them to the websites. Or, if you need someone new to work with you, advertise your vacancy for national and international coverage. You can email us at mail@winejobsonline.com if you have any queries. Jobseekers and industry networking service available too...