



Working in Wine™

Employment information provided especially for the New Zealand wine industry

April 2006

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

New minimum adult wage rates

Do you have to pay holiday pay?

Easter Public Holidays

What about time and a half on public holidays?

Four weeks annual leave

Who says playing golf isn't working? (Latest case from the Employment Courts)

Minimum Wage Rates

New minimum adult wage rates took effect on 27 March this year so you should be paying your people at the new rate by now. For people over 18, that's \$10.25 per hour, up from \$9.50. That's \$82 per 8-hour day, \$410 per 40-hour week or \$21,320 per annum.

If you are employing people aged 16 or 17, then you need to pay them the minimum youth rate, which has increased to \$8.20 per hour, \$57.60 per day, \$328.00 per week or \$17,056 per annum.

If you are paying anyone in your team less than these amounts you are breaking the law. Any employee who is being paid less than the minimum rate can make a complaint to the Labour Department who may investigate the complaint and act to recover any money owing. Employees or their representatives can also enforce the minimum rate themselves through mediation assistance.

There has been much written about employing young people and paying them youth rates for work that could be done by adults, and also about unsavoury pay practices in our industry and we are not about to get into those topics here. But we do think that some people take advantage of youth labour, and we know that not all employers pay their people fairly for the work they do – often hard labour.

If you're an employer then we urge you to think about your pay rates particularly for vineyard labour. We also endorse participation in the NZ Winegrowers Annual Salary Survey conducted by Strategic Pay and would urge all wine industry employers to participate in this valuable survey.

While on the subject of wages, a reminder to employers that **you are obliged to keep wage and time records for each of your employees for six years** and employees and their representatives have the right to see these. Your records must include the following:

1. the employee's name, age if under 20 years and postal address.
2. the type of work the employee undertakes
3. the type of employment agreement – individual or collective
4. the title, expiry date and employee classification in any applicable collective agreement
5. where payment is calculated by the hour, the hours and days of employment in each pay period
6. the wages paid each pay day
7. details of any employment relations leave taken
8. details of annual leave taken
9. details of public holidays worked and alternative days provided
10. details of salary deductions, such as PAYE and agreed superannuation contributions.

You are also obliged to keep holiday records. These may be kept as part of the wages and time records.

Do you have to pay holiday pay?

You may be surprised at how many employers ask us if they have to pay holiday pay to everyone.... We hear comments like: "They're casual employees so we don't pay extra for holiday pay", or, "They're overseas workers so they don't get holiday pay", etc. And, sometimes we find that these workers have been there for several months working 30 or 40 hours a week. Two things here – these employees are not casual workers if that's been their work history, and **YES you do have to pay holiday pay on top of an hourly rate.** There are one or two occasions where holiday pay can be included in an hourly rate. Contact us if you would like to know how this can be done.

Easter Public Holidays

Just a reminder that the Public Holidays over Easter are Good Friday and Easter Monday. Easter Day itself (Sunday) is not one of the recognised days so no public holiday payments nor time and a half payments are required. There are trading restrictions for Easter Sunday for those employers who run retail businesses and you should be sure you comply if you want to avoid a prosecution.



Public Holiday Pay Rates

All employees for whom a Public Holiday would otherwise have been a working day, are entitled to a paid day off from work. Payment is to be made at their relevant daily rate. Those who actually work on the day must be paid time and a half their relevant rate and, in addition, given another day off as an alternative holiday, which can be taken at an agreed time later.

Even salaried employees are to be paid time and a half and given an extra day's holiday. Casual employees can be rostered off so that you don't have to pay them, but those on fixed term contracts (eg vintage winery workers) will in most cases be entitled to the extra pay and holiday.

Four weeks annual leave

Effective 1 April 2007 all employees will be eligible for four weeks annual holidays on the date they next become entitled to their annual holidays (usually their start date anniversary). It does not mean that employees who currently have four or more weeks annual holidays will qualify for an extra week.

We have already read so many conflicting opinions on the exact interpretation of the Holidays Act 2003 Amendments on this one, it seems that even the so-called experts are having trouble. The following are examples from the Department of Labour.

An employee who finishes with their employer after 1 April 2007 but before their next entitlement date will be entitled to:

** Payment for any annual holidays that may have been previously accrued at the greater of average or ordinary earnings; and*

** Payment at 8% of gross earnings for the period between the last time they became entitled to annual holidays and their termination date.*

It has been suggested that employers should start accruing holidays now at the new rate from the holidays anniversary in 2006 although employees are unable to access their four week leave entitlements until 1 April 2007. In an automated payroll system this would mean an overpayment if an employee left prior 1 April 2007. Our thoughts are that employers should be aware of the change so that holiday pay can be budgeted as a future liability but not formally accrue the holidays in a computer system, to avoid confusion. This means employers need to start budgeting for the increase from their employee's anniversary dates after 1 April 2006.

It's still a bit unclear - We will keep you posted.....

From the Employment Courts

Playing Golf in Work Hours is OK, says Employment Authority

A recently reported "bizarre" employment case has come before the Employment Authority recently. **A man who was sacked for playing golf during work hours has been reinstated in his job and will get back pay and costs.** His employer is appealing the decision.

The man was fired for "theft of company time" as he was playing golf while he was supposed to be working. But he argued that golf was part of his job and it earned dollars for the company. He played an average of 4 hours a month over 15 months, saying that networking with farmers at rural golf days was an important part of his job and often brought benefits, clients and sales to the company. He said he always worked more than 40 hours a week and, as he was a technical rep selling agricultural products to farmers, was often called by them from 6.30 am till after 10 pm and he worked two hours every Sunday.

Interestingly, he was fired just 2 days after a half-yearly performance review when everything went like clockwork, all his objectives being met. He was then summonsed to a meeting by his employers saying it had come to their notice that he was playing golf in working hours. His lawyer imagined that the worst that would happen was that he would get a warning for general misconduct but the employee was floored when they told him it was serious misconduct and therefore instant dismissal.

Unless you have a very supportive, understanding (golfing) boss, we don't suggest you try it!!! It's certainly one of the more interesting cases we have read about.

If you're involved with the 2006 grape harvest, we hope things are going well at your place.

Paddy and Heather Battersby

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