

Cook Islands Law Society

This is the first in a series of two articles by the Law Society on the Employment Relations Act 2012.

This article will focus on what the law says must be in an employment contract. The next article will concentrate on disputes between employers and employees.

This article is a simplified summary of the Act and it isn't a substitute for proper legal advice. If you are worried about your employment contract or the way you are being treated by an employer, you should seek legal advice or contact INTAFF's Labour and Employment Relations Office. If you are an employer and you are not sure if your employment contracts or your workplace complies with the Act, you should get advice from a lawyer.

Many employers and employees might be unaware of their rights and obligations under the Act – especially in relation to what must be in an employment contract.

Part 4 of the Act sets out some minimum terms and conditions of employment. What this means is that, as an employee, your contract must be at least as favourable to you as the terms set out in Part 4. On the other hand, if your contract is more generous to you than the terms set out in Part 4, your contract will apply instead.

Some of these terms might not apply if the employee is a casual worker. Minimum terms include:

Hours

If an employee works for three hours or more, they must be allowed a break of at least 10 minutes.

If they work for five hours or more, they must be allowed a break of at least 30 minutes.

If an employee is paid an hourly rate (rather than a salary) and works more than 40 hours in a week, the employee must be paid at one and a half times their ordinary rate of pay for the hours worked over 40 hours.

Wages

An employee must be paid at least the minimum wage, which is currently \$6.00 per hour. The minimum wage is being reviewed by the government and might change soon.

The wages should also be similar to the wages normally paid to other people with the employee's skill and experience in the Cook Islands for the same work.

An employer must pay their workers in money (e.g. in cash, cheque, etc) and, with each payment of wages, an employer must give the employee a statement showing how the amount of wages has been calculated.

An employer cannot make deductions from wages except as provided for in another law (e.g. tax deductions) or with the agreement of the employee. That agreement can be included in the terms of the employment contract.

Leave

Employees are entitled to paid holidays. How many days an employee is entitled to will depend on whether the employee is part time or full time, and on how long the employee has worked for that employer.

Employees are also entitled to have public holidays (e.g. Christmas Day) off or, if they must work on public holidays, they are entitled to extra benefits from the employer, e.g. a higher rate of pay, or extra holiday.

Employees are also entitled to paid sick leave – again the amount of that sick leave depends on whether the employee is full time or part time, and on how long they have worked for the employer. The employer can require the employee to provide evidence (e.g. a sick note from a doctor) before they give the employee sick leave.

Employees are also entitled to six weeks' paid maternity leave at the minimum wage. Employee spouses of pregnant women are also entitled to two days' paid (at the normal rate of pay) and three days' unpaid paternity leave.

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As with the last article, some of these provisions might not apply in some circumstances, e.g. where the employee is a casual employee.

Some of the most important provisions in the Act relating to disagreements in the workplace are:

Termination

There are strict rules in the Act about when an employer can terminate an employment contract. If you are an employer and you are thinking of terminating an employment contract, or if you are an employee and you think your contract may have been unfairly terminated, you should seek legal advice.

An employer can only terminate an employment contract for a reason relating to the employees ability to carry out their duties, or because of the employee's conduct, or because of a genuine redundancy (i.e. where the employer's business does not need the employee any more).

The employer must either give notice to the employee of the termination or pay them instead for the period of the notice, except where the termination is for serious misconduct. The length of the notice period will depend on why the employment contract was terminated.

An employee must be given reasons for the termination and must be paid out any benefits they are owed, e.g. accrued leave.

Disputes

Part 6 of the Act has some rules about how disagreements and disputes between employers and employees should be dealt with. Central to these rules is that the employer and employee should try to resolve the dispute in a fair way.

Both the employer and employee are entitled to be represented in the dispute by a person they choose, and they can refer the dispute to mediation if they wish. Mediation is where a third person who is neutral and who is not involved in the dispute tries to help the employer and the employee resolve the dispute.

If mediation fails, the dispute might go to arbitration. Arbitration is like a less formal version of a Court.

Health & Safety

Under the Act, employers must provide a working environment that is safe and healthy.

An employer must also have proper accident procedures in place and must train employees properly on any dangerous machinery they need to use.

Discrimination & Harassment

An employer must refrain from sexually harassing an employee and must not allow sexual harassment to go on in the workplace.

Racial harassment is prohibited in the same way.

Harassment does not need to be direct – someone can also be harassed indirectly, for example if sexual comments are made in the workplace that an employee finds offensive.

An employer must also refrain from acting in a way that discriminates against an employee or a prospective employee on the basis of one of the following grounds: race, nationality, belief, religion, gender, sexual preference, disability, age, health status, or maternity.

Employees must also be allowed to join unions or other employee organisations and an employer must not treat the employee any worse than if they were not a member of that organisation.

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