

Window and Glass Association of New Zealand newsletter January 2019

23 days left

A reminder that the Government is consulting on a new approach to employer-assisted work visas and regional workforce planning and has invited all individuals, groups or organisations to submit their proposals and input by 5pm on 18 March 2019. The Regulatory Systems (Workforce) Amendment Bill (No2) is presently before the Select Committee. The matter is of vital importance to our sector.

The consultation will be used to prepare recommendations to Cabinet on final proposals and implementation.

The proposals will affect the following 6 temporary work visa categories:

- Essential Skills including the Essential Skills in Demand Lists (ESID)
- Approval In-principle
- Talent (Accredited Employer)
- Work to Residence – Long-term Skill Shortage List Occupation
- Silver Fern (Practical Experience)
- Silver Fern (Job Search).

Several fact sheets, including one on employer-assisted work visas and Regional Workforce Planning, can be found at <https://www.mbie.govt.nz/have-your-say/consultation-on-a-new-approach-to-employer-assisted-work-visas-and-regional-workforce-planning/>.

IRD Payday Filing

To avoid penalties employers must switch to payday filing by 1 April 2019. The IRD's quick reference guide on how to switch is here - <https://www.ird.govt.nz/campaigns/2018/campaign-payday-filing.html>

For a simpler and easier to read overview with how-to videos, checklists and on-demand webinars check out this page - <https://www.ird.govt.nz/campaigns/2018/campaign-payday-filing.html>

As ir-File will be discontinued on 11 March 2019, the first step is to opt in through your myIR account and to start payday filing in March, unless you are waiting on your payroll software to become payday filing compliant.

If you're still filing monthly schedules after 11 March, you must use the 'payroll returns' account in the myIR business section of myIR to file your EMS and employer deductions. This is the same area of myIR that you file your GST returns. The payroll returns account will automatically show in your myIR account My business section from 28 February 2019 and you will be provided with automatic access if you currently have access.

KiwiSaver changes

From 1 April 2019 KiwiSaver members will have two new contribution rates to choose from: 6% or 10%. This is in addition to the current 3%, 4%, and 8% options available.

From 1 July 2019 those 65 years and over can opt into KiwiSaver. IRD has promised to have more information shortly on these proposed changes.

Domestic Violence – Victims’ Protection Act 2018

This is a simplified guide to the new law, which takes effect on 1 April 2019. The law will allow employees to take paid leave to deal with the effects of domestic violence.

There is special protection against an employee being treated adversely because they are or are suspected to be affected by domestic violence.

Domestic violence could be against the employee or against a child who usually or periodically stays with them. The violence could be ongoing or have occurred in the past (regardless of how long ago), even before the person became an employee. For those who are interested, domestic violence is defined in section 3 of the Domestic Violence Act 1995 -

<http://www.legislation.govt.nz/act/public/1995/0086/latest/DLM372117.html>.

Leave

Up to 10 days of paid domestic violence leave per year is available. Employees will be able to take this leave as needed. It will be treated much the same as sick and bereavement leave, and in fact, the interaction with public holidays, annual holidays and ACC is the same. While domestic violence leave does not accrue, it need not be paid out when employment ends.

Like sick and bereavement leave, domestic violence leave is available after 6 months’ current continuous employment or if the employee has, over a period of 6 months, worked for the employer for at least an average of 10 hours a week and at least 1 hour every week or at least 40 hours every month (just like sick and bereavement leave). The employee is entitled to up to 10 days leave during the following 12 months.

The employer can agree to grant the leave in advance, and if the employee agrees, leave in advance can be deducted from the employee’s entitlement.

The employer must be notified as early as possible before the employee is to start work on the day or, if that is not practicable, as early as possible after that time.

Payment is at relevant daily pay or average daily pay. The employee may not be required to take domestic violence leave while the employee is on ACC compensation (including the first week employer payment). If the employer tops up the first week’s pay, employer and employee can agree that the employer can reduce domestic violence leave by 1 day for every 5 days that the ACC payment has been topped up.

The employee may be required to provide proof and if that is not provided within 10 days, the employer need not pay for leave. The employer must ask for the proof within 3 working days.

Temporary flexible working

New, short-term (up to 2 months) flexible working arrangements will also be available to help employees deal with domestic violence. This type of flexible working arrangement is in addition to and broader than the present flexible working provisions of the Act. It can include changes to hours of work, location, duties of work or any other term of employment that the employee thinks is necessary to deal with the violence.

The written request must –

- state the employee's name, date of the request, and that the request is made under Part 6AB of the Employment Relations Act
- specify the changed working arrangements requested, how long it will last, and when it will start and end
- say how, in the employee's view, the variation will help the employee deal with the effects of the violence
- explain, in the employee's view, what changes the employer may need to make if the request is approved.

Requests must be responded to in writing within 10 working days. The employee must be provided with information about appropriate specialist domestic violence support services before their request is responded to, and again in the written response.

Refusals must give and explain the grounds for refusal. There are two grounds for refusal –

- that proof of domestic violence was not produced within 10 working days after receipt of the request
- that the request cannot be accommodated reasonably on 1 or more of the following grounds –
 - inability to reorganise work among existing staff
 - inability to recruit additional staff
 - detrimental impact on quality
 - detrimental impact on performance
 - insufficiency of work during the periods the employee proposes to work
 - planned structural changes
 - burden of additional costs
 - detrimental effect on ability to meet customer demand.

Resolving disputes

The employee can take a dispute to a Labour Inspector, or to mediation or to the Employment Relations Authority, but must do so within 6 months (the exact date depends on circumstances).

If the employee is unhappy with the Labour Inspector's results, the matter can be referred to mediation within 6 months of a date again dependent on the circumstances.

If the employee is unhappy with the result of mediation the matter can be taken to the Employment Relations Authority within 6 months of a date dependent on the circumstances.

The Employment Relations Authority can order a penalty of up to \$10,000 for an individual employer or \$20,000 for a company for failure to respond to a request for temporary flexible work within 10 days. The penalty will be payable to the employee concerned.

Employees can only challenge a refusal to grant leave or a failure to respond to a request for leave if the employee believes the employer has not responded within the time and in the manner prescribed by law. They must also follow the dispute resolution process set out in the law.

Many aspects of the new law are still unclear, such as the exact nature of the proof that may be required for leave and the deadlines involved. The next newsletter should have more information.

This article is brought to you by WGANZ's free employment helpline 0800 692 384. If you have any questions or would like to discuss the article above, please call Philip or Anthony on the helpline.