

Minimum Wage increase

The Prime Minister has announced that the adult minimum wage will be rising to \$22.70 per hour from 1 April 2023.

This is an increase of \$1.50 per hour from the current hourly rate of \$21.20 and aligns with the 7.2% rate of Consumer Price Index inflation in the year ended December 2022.

The training and starting-out minimum wages will also both increase to \$18.16 per hour, remaining at 80% of the adult minimum wage. This is a rise from the current minimum rate of \$16.96 per hour. For an employee who works 40 hours a week, the minimum wage rise to \$22.70 per hour means they'll earn an extra \$60 each week before tax.

Around 222,900 New Zealand workers currently paid between the current and new minimum wage rates will get an increase in their pay packets as a result of the change in the minimum wage.

The Government will review the minimum wage rate again later this year.

Source: [MBIE.Govt.NZ](https://www.mbie.govt.nz)

Wage change and visas

From Monday 27 February, the median wage used to calculate most work visa applications will increase to \$29.66 per hour (or \$61,692.80 per annum) based on a 40-hour week. This applies to Accredited Employer Work Visa (AEWV) applications, sector agreement occupations and residence visa categories.

Source: [Malcolmpacific.com](https://www.malcolmpacific.com)

Working Holiday Schemes dates announced

The 2023 reopening dates for capped Working Holiday Schemes have been confirmed. The table provided on the Immigration NZ website outlines the date each scheme opens, as well as how many places are available in each scheme this year. Once each scheme opens, applications will remain open until the quota is filled. Once filled, the scheme will close until 2024.

Source: [Immigration.govt.nz](https://www.immigration.govt.nz)

Availability provisions - compensation

The recent Employment Court case of [Stewart v AFFCO New Zealand Ltd](#) [2022] NZEmpC 200 considered whether an employee had been disadvantaged because the availability provisions in his employment agreement did not comply with the Employment Relations Act. The Court found that the employee had been disadvantaged and overruled an earlier decision of the Employment Relations Authority.

The employee was employed in a seasonal position at a meat-processing plant. His employment agreement required him to work extra hours as required, but did not include any compensation provision, as required by [s 67D\(3\)\(b\)](#) of the Act.

The employer subsequently offered to employ the employee under an employment agreement that included a 1.5 per cent pay rise, as compensation for availability. The employee declined the offer because he felt a 1.5 per cent increase did not amount to compensation for availability when it worked out at “a little over 14 dollars a week”.

The employee claimed he was unjustifiably disadvantaged by the non-compliant availability provision in his employment agreement. The employer claimed he was not disadvantaged because the provision was never enforced. The employer had not needed to enforce the provision, because the employee had not refused to work overtime.

The Court agreed that the employee was disadvantaged by the inclusion of the availability provisions in the employment agreement, because the employer had not provided consideration (compensation) for the availability.

It is highly recommended that you review the whole of section 67D of the Act together with your current practice in this important, changing area of employment law. A few important parts of the section are set out below for your convenience.

“67D Availability provision

- (3) An availability provision must not be included in an employment agreement unless—
 - (a) the employer has genuine reasons based on reasonable grounds for including the availability provision and the number of hours of work specified in that provision; and
 - (b) the availability provision provides for the payment of reasonable compensation to the employee for making himself or herself available to perform work under the provision.
- (5) In considering whether there are genuine reasons based on reasonable grounds for including an availability provision, an employer must have regard to all relevant matters, including the following:
 - (a) whether it is practicable for the employer to meet business demands for the work to be performed by the employee without including an availability provision:
 - (b) the number of hours for which the employee would be required to be available;
 - (c) the proportion of the hours referred to in paragraph (b) to the agreed hours of work.
- (6) Compensation payable under an availability provision must be determined having regard to all relevant matters, including the following:
 - (a) the number of hours for which the employee is required to be available;
 - (b) the proportion of the hours referred to in paragraph (a) to the agreed hours of work;
 - (c) the nature of any restrictions resulting from the availability provision;
 - (d) the rate of payment under the employment agreement for the work for which the employee is available:

(e) if the employee is remunerated by way of salary, the amount of the salary.

(7) For the purposes of subsection (3)(b), an employer and an employee who is remunerated for agreed hours of work by way of salary may agree that the employee's remuneration includes compensation for the employee making himself or herself available for work under an availability provision. (Emphasis added)."

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