

# GLOBALG.A.P. Risk-Assessment on Social Practice (GRASP)

## GRASP Module – Interpretation for New Zealand

Version 1.3, July 2015

English Version

Developed by NTWG New Zealand



New Zealand legislation referred to in this guideline can be found at the New Zealand Legislation website <http://www.pco.parliament.govt.nz/online-legislation/>.

Control Point	Compliance Criteria	Interpretation for New Zealand
<b>EMPLOYEES' REPRESENTATIVE(S)</b>		
1	<p>Is there at least one employee or an employees' council to represent the interests of the staff to the management through regular meetings where labor issues are addressed?</p>	<p>Documentation is available which demonstrates that a clearly identified, named employees' representative(s) or an employees' council representing the interests of the employees to the management is elected or in exceptional cases nominated by all employees and recognised by the management. The election or nomination takes place in the ongoing year or production period and is communicated to all employees. The employees' representative(s) shall be aware of his/her/their role and rights and be able to discuss complaints and suggestions with the management. Meetings between employees' representative(s) and the management occur at accurate frequency. The dialogue taking place in such meetings is duly documented. N/A if the company employs less than 5 employees.</p> <p>Section 18 of the Employment Relations Act 2000 gives express rights to a Union to represent members' interests. Section 20 (1) Employment Relations Act 2000 gives entitlement to a representative of a union to enter a workplace for purposes related to the employment of its members; or for purposes related to the union's business; or both.</p> <p>Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016, Subpart 2—Work groups prescribes the need for health and safety representatives to be elected to represent workers interests. The Regulations specify a minimum ratio of 1 representative for every 19 workers.</p>
<b>COMPLAINT PROCEDURE</b>		
2	<p>Is there a complaint and suggestion procedure available and implemented in the company through which employees can make a complaint or suggestion?</p>	<p>A complaint and suggestion procedure appropriate to the size of the company exists. The employees are regularly informed about its existence, complaints and suggestions can be made without being penalized and are discussed in meetings between the employees' representative(s) and the management. The procedure specifies a time frame to answer complaints and suggestions and take corrective actions. Complaints, suggestions and follow-up solutions from the last 24 months are documented.</p> <p>Part 9 of the Employment Relations Act 2000 refers to personal grievance and disputes procedures. Section 114 sets out that an employee has a right to raise a personal grievance case under the Employment Relations Act 2000. This must be done within 90 days of when the grievance occurred or came to his or her attention. However, the employer may consent to a personal grievance being raised after that time. If the employer doesn't consent the employee may apply to the Employment Relations Authority to be allowed to raise the personal grievance after the 90 day period.</p> <p>Note s 65(2)(vi) of the Employment Relations Act – employment</p>

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			<p>agreement must contain a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised.</p> <p>In all cases, the parties should seek to first resolve the matter at the workplace level. Both the employee and the employer may wish to seek advice on how to deal with the specifics of the case. If a problem can't be resolved, parties can go to mediation, either through Ministry of Business Innovation and Employment mediation service or through independent mediators. If this does not resolve the problem, employers or employees can go to the Employment Relations Authority for a determination. If either party is dissatisfied with the determination of the Employment Relations Authority, the issue can be taken to the Employment Court.</p> <p>Any personal information in relation to a complaint must be held in accordance with the Privacy Act 1993.</p> <p>Health and Safety at Work Act 2015, Part 3 Worker engagement, participation, and representation requires a person conducting a business or undertaking (PCBU) to engage with workers under agreed procedures.</p>
<b>SELF-DECLARATION ON GOOD SOCIAL PRACTICES</b>			
3	Has a self-declaration on good social practice regarding human rights been signed by the management and the employees' representative and has this been communicated to the employees?	The management and the employees' representative(s) have signed, displayed and put in practice a self-declaration assuring good social practice and human rights of all employees. This declaration contains at least commitment to the ILO core labor conventions (ILO Conventions 111 on discrimination, 138 and 182 on minimum age and child labor, 29 and 105 on forced labor, 87 on freedom of association, 98 on the right to organize and collective bargaining, 100 on equal remuneration and 99 on minimum	NZ has ratified all the core conventions of the ILO (International Labour Organisation). It is recommended that the declaration could include all NZ Employment and Labour legislation in this regard, specifically discrimination (Human Rights Act 1993, Part 2), child labour (The Education Act 1989), (Health and Safety at Work Act 2015), freedom of association and the right to organise and bargain collectively (Employment Relations Act 2000, Part 4), and minimum wages (Minimum Wage Act 1983).

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		wage) and transparent and non-discriminative hiring procedures and the complaint procedure. The self-declaration states that the employees' representative(s) can file complaints without personal sanctions. The employees have been informed about the self-declaration and it is revised at least every 3 years or whenever necessary.	
<b>ACCESS TO NATIONAL LABOR REGULATIONS</b>			
4	Do the person responsible for the implementation of GRASP (RGSP) and the employees' representative(s) have knowledge of or access to recent national labor regulations?	The responsible person for the implementation of GRASP (RGSP) and the employees' representative(s) have knowledge of or access to national regulations such as gross and minimum wages, working hours, trade union membership, anti-discrimination, child labor, labor contracts, holiday and maternity leave. Both the RGSP and the employees' representative(s) know the essential points of working conditions in agriculture as formulated in the applicable GRASP National Interpretation Guidelines.	Any minimum standards for employment are in statute and available at <a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a> there is also good material available on <a href="http://www.business.govt.nz">www.business.govt.nz</a> .  The Health & Safety at Work Act 2015 Part 3, Subpart 1 section 58 requires employers to provide information and training for workers in relations to health and safety.
<b>WORKING CONTRACTS</b>			
5	Can valid copies of working contracts be shown for the employees? Are the working contracts compliant with applicable legislation and/or collective bargaining agreements and do they indicate at least full names, a job description, date of birth, date of entry, wage and	For every employee, a contract can be shown to the assessor on request (on a sample basis). Both the employees as well as the employer have signed them. Records contain at least full names, nationality, job description, date of birth, the regular working time, wage and the period of employment (e.g. permanent, period or day laborer etc.) and for non-national employees their legal status and working permit. The contract does not show any contradiction to the self-declaration on good social practices. Records of the employees must be accessible for the	Employers by law are required to keep records of all employees. These include signed copies of employment agreements or the current terms and conditions of employment that make up the employee's individual terms and conditions of employment and copies intended employment agreements that have been provided.  According to the Employment Relations Act 2000 sections 65 and 69OJ and the Holidays Act 2003 section 52, an employment agreement must include the following; (a) the names of the employee and employer concerned (b) a description of the work to be performed by the employee

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	the period of employment? Have they been signed by both the employee and the employer?	last 24 months.	(c) an indication of where the employee is to perform the work (d) an indication of the arrangements relating to the times the employee is to work (e) the wages or salary payable to the employee (f) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days within which a personal grievance must be raised (g) an employee protection provision requiring an Employer to provide information and consider comments in restructuring situations and include a process that the employer must follow in negotiating with a new employer about the restructuring (h) a provision that confirms the right of the employee to be paid at least time and a half for working on a public holiday.
<b>PAYSLIPS</b>			
6	Is there documented evidence indicating regular payment of salaries corresponding to the contract clause?	The employer shows adequate documentation of the salary transfer (e.g. employee's signature on pay slip, bank transfer). Employees sign or receive copies of pay slips / pay register that make the payment transparent and comprehensible for them. Regular payment of all employees during the last 24 months is documented.	Employers by law are required to keep records of all employees. These include wage records and time sheets. According to the Employment Relations Act 2000 section 130 and the Holidays Act 2003 section 81, every employer must at all times keep a record (called the wages and time records) in the case of each employee employed by that employer.  See Annex 1 for details required in wages and time records and holiday and leave records.
<b>WAGES</b>			
7	Do pay slips / pay registers indicate the conformity of payment with at least legal regulations and/or collective bargaining agreements?	Wages and overtime payment documented on the pay slips / pay registers indicate compliance with legal regulations (minimum wages) and/or collective bargaining agreements as specified in the GRASP National Interpretation Guideline. If payment is calculated per unit, employees shall be able to gain at least the legal minimum wage (on average) within regular working hours.	Minimum Wages are regulated by statute under the Minimum Wage Act 1983. Minimum Wages change with the discretion of the Government and are published under Legislative Instrument as Minimum Wage orders.

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<b>NON-EMPLOYMENT OF MINORS</b>		
8	Do records indicate that no minors are employed at the company?	<p>Records indicate compliance with national legislation regarding minimum age of employment. If not covered by national legislation, children below the age of 15 are not employed. If children -as core family members- are working at the company, they are not engaged in work that is dangerous to their health and safety, jeopardizes their development or prevents them from finishing their compulsory school education.</p> <p>The Education Act 1989 requires children and young persons to attend school until 16 years of age. The Act also prevents the employment of school age children or young persons within school hours or if the employment interferes with their attendance at school. The Health and Safety in Employment Regulations 1995 regulation 59 prohibits young employees under 15 from being employed to do any work that is likely to harm them, such as using machines, driving or riding tractors or forklifts or lifting heavy loads. Young employees cannot work on-site in logging, manufacturing or construction. There is a limited exception for driving/riding tractors if the young person lives on the farm or works as an independent contractor.</p> <p>Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, Part 4 Young persons at workplace, outlines restrictions on work carried out by young persons. The employer has a duty to ensure that as far as is reasonably practicable that no worker aged under 15 years carries out the following types of work:</p> <ul style="list-style-type: none"> <li>(a) the manufacture or preparation of goods for trade or sale:</li> <li>(b) construction work:</li> <li>(c) logging or tree-felling:</li> <li>(d) the manufacture, use, or generation of hazardous substances:</li> <li>(e) any other work of a type that is likely to cause harm to the health and safety of a person aged under 15 years.</li> </ul> <p>The restrictions do not apply to a worker under 15 years who is carrying out administrative or retail work in a business.</p> <p>Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, Part 4 Young persons at workplace, Section 46 requires employers to ensure young persons aged under 15 years do not work at or with machinery at the workplace.</p> <p>Machinery means an engine, motor, or other appliance that</p>

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			provides mechanical energy derived from compressed air, the combustion of fuel, electricity, gas, gaseous products, steam, water, wind, or any other source; and includes any plant by or to which the motion of any machinery is transmitted; and a lifting machine, a lifting vehicle, a machine whose motive power is wholly or partly generated by the human body, and a tractor.
<b>ACCESS TO COMPULSORY SCHOOL EDUCATION</b>			
9	Do the children of employees living on the company's production/ handling sites have access to compulsory school education?	There is documented evidence that children of employees at compulsory schooling age (according to national legislation) living on the company's production/ handling sites have access to compulsory school education, either through provided transport to a public school or through on-site schooling.	<p><i>The Education Act 1989 requires children and young persons to attend school until 16 years of age. The Act also prevents the employment of school age children or young persons within school hours or if the employment interferes with their attendance at school.</i></p> <p>Education Act 1989: Part 3 Enrolment and attendance of students, 20 New Zealand citizens and residents between 6 and 16 to go to school.</p> <p>Section 30 of this Act covers the Employment of school-age children (under the age of 16) where employment interferes with the person's ability to participate in education and learning programmes, prevents attendance and their ability to complete the work of the programme.</p>
<b>TIME RECORDING SYSTEM</b>			
10	Is there a time recording system that shows working time and overtime on a daily basis for the employees?	There is a time recording system implemented appropriate to the size of the company that makes working hours and overtime transparent for both employees and employer on a daily basis. Working times of the employees during the last 24 months are documented. Records are regularly approved by the employees and accessible for the employees' representative(s).	<p>Employers by law are required to keep records of all employees. These include wage records and time sheets. According to the Employment Relations Act 2000 section 130, every employer must at all times keep a record (called the wages and time record) showing (amongst other things), in the case of each employee employed by that employer:</p> <p>(a) where necessary for the purpose of calculating the employee's pay, the hours between which the employee is employed on each day, and the days of the employee's employment during each pay period:</p> <p>(b) the wages paid to the employee each pay period and the method of calculation.</p>

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			Records are required to be kept for 6 years.
<b>WORKING HOURS AND BREAKS</b>			
11	Do working hours and breaks documented in the time records comply with applicant legislation and/or collective bargaining agreements?	Documented working hours, breaks and rest days are in line with applicant legislation and/or collective bargaining agreements. If not regulated more strictly by legislation, records indicate that regular weekly working hours do not exceed a maximum of 48 hours, during peak season (harvest), weekly working time does not exceed a maximum of 60 hours. Rest breaks/days are also guaranteed during peak season.	An indication of the arrangements relating to the times the employee is to work is a mandated requirement of an employment agreement under the Employment Relations Act 2000 sections 65. Rest and meal breaks are regulated within the Employment Relations Act, Part 6D. An employee is entitled to, and an employer must provide the employee with, rest breaks and meal breaks that provide the employee with a reasonable opportunity, during the employee's work period, for rest, refreshment, and attention to personal matters; and are appropriate for the duration of the employee's work period. The employee's entitlement to rest breaks and meal breaks may be subject to restrictions, but only if the restrictions are reasonable and necessary, having regard to the nature of the employee's work. To the extent that an employer is not required to provide rest breaks and meal breaks the Act, an employee is entitled to, and the employee's employer must provide the employee with, compensatory measures.
<b>ONLY APPLICABLE FOR PRODUCER GROUPS INTEGRATION INTO QMS</b>			
QMS	Does the assessment of the Quality Management System (QMS) of the producer group show evidence of the correct implementation of GRASP for all participating producer group members?	The assessment of the Quality Management System of the producer group demonstrates that GRASP is correctly implemented and internally assessed. Non-compliances are identified and corrective actions are taken to enable compliance of all participating producer group members.	<i>This control point normally has no Interpretation, as it connects the GRASP requirements to the GLOBALG.A.P. Option 2 groups.</i>
<b>ADDITIONAL SOCIAL BENEFITS</b>			
R 1	What other forms of social benefit does the company offer to employees, their		<i>No interpretation needed, this is a voluntary extra point. Maybe give examples of typical social benefits.</i>



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<p>families and/or the community? Please specify incentives for good and safe working performance, bonus payment, support of professional development, social benefits, child care, improvement of social surroundings etc.).</p>		

## Annex 1

### New Zealand Legislation relating to GRASP

*Employment Relations Act 2000*

<http://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58317.html>

#### *Part 1 Purpose and object of the Act*

(a) to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship—

- (i) by recognising that employment relationships must be built not only on the implied mutual obligations of trust and confidence, but also on a legislative requirement for good faith behaviour; and
- (ii) by acknowledging and addressing the inherent inequality of power in employment relationships; and
- (iii) by promoting collective bargaining; and
- (iv) by protecting the integrity of individual choice; and
- (v) by promoting mediation as the primary problem-solving mechanism other than for enforcing employment standards; and
- (vi) by reducing the need for judicial intervention; and

(ab) to promote the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority, and the court; and

(b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.

#### *Part 4: Recognition and operation of unions*

The object of this Part is—

- (a) to recognise the role of unions in promoting their members' collective employment interests; and
- (b) to provide for the registration of unions that are accountable to their members; and
- (c) to confer on registered unions the right to represent their members in collective bargaining; and
- (d) to provide representatives of registered unions with reasonable access to workplaces for purposes related to employment and union business. Employer must retain copy of individual employment agreement or individual terms and conditions of employment

#### *Section 18: Union entitled to represent members' interests*

(1) A union is entitled to represent its members in relation to any matter involving their collective interests as employees.

(2) This Act does not prevent a union offering different classes of membership.

(3) A union may represent an employee in relation to the employee's individual rights as an employee only if the union has an authority from the employee to do so given under section 236.

#### *Section 20: Access to workplaces*

(1) A representative of a union is entitled, in accordance with this section and sections 20A and 21, to enter a workplace—

- (a) for purposes related to the employment of its members; or
- (b) for purposes related to the union's business; or
- (c) both.

(2) The purposes related to the employment of a union's members include—

- (a) to participate in bargaining for a collective agreement:
  - (b) to deal with matters concerning the health and safety of union members:
  - (c) to monitor compliance with the operation of a collective agreement:
  - (d) to monitor compliance with this Act and other Acts dealing with employment-related rights in relation to union members:
  - (e) with the authority of an employee, to deal with matters relating to an individual employment agreement or a proposed individual employment agreement or an individual employee's terms and conditions of employment or an individual employee's proposed terms and conditions of employment:
  - (f) to seek compliance with relevant requirements in any case where non-compliance is detected.
- (3) The purposes related to a union's business include—
- (a) to discuss union business with union members:
  - (b) to seek to recruit employees as union members:
  - (c) to provide information on the union and union membership to any employee on the premises.
- (4) A discussion in a workplace between an employee and a representative of a union, who is entitled under this section and sections 20A and 21 to enter the workplace for the purpose of the discussion,—
- (a) must not exceed a reasonable duration; and
  - (b) is not to be treated as a union meeting for the purposes of section 26.
- (5) An employer must not deduct from an employee's wages any amount in respect of the time the employee is engaged in a discussion referred to in subsection (4).

*Part 6: Individual employees' terms and conditions of employment*

The object of this Part is—

- (a) to specify the rules for determining the terms and conditions of an employee's employment; and
- (b) to require new employees, whose terms and conditions of employment are not determined with reference to a collective agreement, to be given sufficient information and an adequate opportunity to seek advice before entering into an individual employment agreement; and
- (c) to recognise that, in relation to individual employees and their employers, good faith behaviour is—
  - (i) promoted by providing protection against unfair bargaining; and
  - (ia) required when entering into and varying individual employment agreements; and
  - (ii) consistent with, but not limited to, the implied term of mutual trust and confidence in the relationship between employee and employer.

*63A: Bargaining for individual employment agreement or individual terms and conditions in employment agreement.*

(1) This section applies when bargaining for terms and conditions of employment in the following situations:

- (a) under section 61(1), in relation to additional terms and conditions to the applicable collective agreement;
  - (b) under section 61(2), in relation to—
    - (i) additional terms and conditions to the collective agreement on which the individual employment agreement is based; and
    - (ii) variations to the individual employment agreement in subparagraph (i);
  - (c)[Repealed]
  - (d)[Repealed]
  - (e) in relation to terms and conditions of an individual employment agreement, including any variations to that agreement;
  - (f) where a fixed term of employment, or probationary or trial period of employment, is proposed;
  - (g) under section 69OJ in relation to employee protection provisions in individual employment agreements;
  - (h) under section 69N in relation to redundancy entitlements with a new employer.
- (2) The employer must do at least the following things:
- (a) provide to the employee a copy of the intended agreement under discussion; and
  - (b) advise the employee that he or she is entitled to seek independent advice about the intended agreement; and
  - (c) give the employee a reasonable opportunity to seek that advice; and
  - (d) consider any issues that the employee raises and respond to them.
- (3) Every employer who fails to comply with this section is liable to a penalty imposed by the Authority.
- (4) Failure to comply with this section does not affect the validity of the employment agreement between the employee and the employer.
- (5) The requirements imposed by this section are in addition to any requirements that may be imposed under any provision in this Act.
- (6)[Repealed]
- (7) In this section, employee includes a prospective employee.

*64. Employer must retain copy of individual employment agreement or individual terms and conditions of employment.*

- (1) When [section 63A](#) applies, the employer must retain a signed copy of the employee's individual employment agreement or the current terms and conditions of employment that make up the employee's individual terms and conditions of employment (as the case may be).
- (2) If an employer has provided an employee with an intended agreement under section 63A(2)(a), the employer must retain a copy of that intended agreement even if the employee has not—
- (a) signed the intended agreement; or
  - (b) agreed to any of the terms and conditions specified in the intended agreement.
- (3) If requested by the employee, the employer must, as soon as is reasonably practicable, provide the employee with a copy of the employee's—
- (a) individual employment agreement or current terms and conditions of employment retained under subsection (1); or
  - (b) intended agreement retained under subsection (2).
- (4) An employer who fails to comply with subsection (1), (2), or (3) is liable, in an action brought by a Labour Inspector or the employee concerned, to a penalty imposed by the Authority.
- (5) Before bringing an action under subsection (4), the Labour Inspector must—
- (a) give the employer written notice of the breach of this section; and

- (b) give the employer 7 working days to remedy the breach.
- (6) To avoid doubt, an intended agreement must not be treated as the employee's employment agreement if the employee has not—
  - (a) signed the intended agreement; or
  - (b) agreed to any of the terms and conditions specified in the intended agreement.

*65. Form and content of individual employment agreement*

- (1) The individual employment agreement of an employee—
  - (a) must be in writing; and
  - (b) may contain such terms and conditions as the employee and employer think fit.
- (2) However, the individual employment agreement—
  - (a) must include—
    - (i) the names of the employee and employer concerned; and
    - (ii) a description of the work to be performed by the employee; and
    - (iii) an indication of where the employee is to perform the work; and
    - (iv) any agreed hours of work specified in accordance with section 67C or, if no hours of work are agreed, an indication of the arrangements relating to the times the employee is to work; and
    - (v) the wages or salary payable to the employee; and
    - (vi) a plain language explanation of the services available for the resolution of employment relationship problems, including a reference to the period of 90 days in section 114 within which a personal grievance must be raised; and
  - (b) must not contain anything—
    - (i) contrary to law; or
    - (ii) inconsistent with this Act.
- (3) [Repealed]
- (4) An employer who fails to comply with this section is liable, in an action brought by a Labour Inspector or the employee concerned, to a penalty imposed by the Authority.

*69OJ Collective agreements and individual employment agreements must contain employee protection provision*

Every collective agreement and every individual employment agreement must contain an employee protection provision to the extent that the agreement binds employees to whom this subpart applies.

*Part 6D Rest breaks and meal breaks*

In this Part, unless the context otherwise requires,—

**compensatory measure—**

- (a) means a measure that is designed to compensate an employee for a failure to provide rest breaks or meal breaks in accordance with section 69ZD(1); and
- (b) includes (without limitation) a measure that provides the employee with time off work at an alternative time during the employee's work period, for example, by allowing a later start time, an earlier finish time, or an accumulation of time off work that may be taken on 1 or more occasions work period—
  - (a) means the period—
    - (i) beginning with the time when, in accordance with an employee's terms and conditions of employment, an employee starts work; and
    - (ii) ending with the time when, in accordance with an employee's terms and conditions of employment, an employee finishes work; and

(b) to avoid doubt, includes all authorised breaks (whether paid or not) provided to an employee or to which an employee is entitled during the period specified in paragraph (a).

### *Part 9. Personal grievances, disputes, and enforcement*

#### *101 Object of this Part*

- (a) to recognise that, in resolving employment relationship problems, access to both information and mediation services is more important than adherence to rigid formal procedures; and
- (ab) to recognise that employment relationship problems are more likely to be resolved quickly and successfully if the problems are first raised and discussed directly between the parties to the relationship; and
- (b) to continue to give special attention to personal grievances, and to facilitate the raising of personal grievances with employers; and
- (c) [Repealed]
- (d) to ensure that the role of the Authority and the court in resolving employment relationship problems is to determine the rights and obligations of the parties rather than to fix terms and conditions of employment.

#### Personal grievances

#### *102 Employee may pursue personal grievance under this Act*

An employee who believes that he or she has a personal grievance may pursue that grievance under this Act.

#### *103 Personal grievance*

- (1) For the purposes of this Act, personal grievance means any grievance that an employee may have against the employee's employer or former employer because of a claim—
- (a) that the employee has been unjustifiably dismissed; or
  - (b) that the employee's employment, or 1 or more conditions of the employee's employment (including any condition that survives termination of the employment), is or are or was (during employment that has since been terminated) affected to the employee's disadvantage by some unjustifiable action by the employer; or
  - (c) that the employee has been discriminated against in the employee's employment; or
  - (d) that the employee has been sexually harassed in the employee's employment; or
  - (e) that the employee has been racially harassed in the employee's employment; or
  - (f) that the employee has been subject to duress in the employee's employment in relation to membership or non-membership of a union or employees organisation; or
  - (g) that the employee's employer has failed to comply with a requirement of Part 6A; or
  - (h) that the employee has been disadvantaged by the employee's employment agreement not being in accordance with section 67C, 67D, 67G, or 67H; or
  - (i) that the employee's employer has contravened section 67F or 67G(4).
- (j) that the employee's employer has, in relation to the employee,—
- (i) engaged in adverse conduct for a prohibited health and safety reason; or
  - (ii) contravened section 92 of the Health and Safety at Work Act 2015 (which prohibits coercion or inducement).
- (2) For the purposes of this Part, a representative, in relation to an employer and in relation to an alleged personal grievance, means a person—
- (a) who is employed by that employer; and

(b) who either—

(i) has authority over the employee alleging the grievance; or

(ii) is in a position of authority over other employees in the workplace of the employee alleging the grievance.

(3) In subsection (1)(b), unjustifiable action by the employer does not include an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement.

#### *114 Raising personal grievance*

(1) Every employee who wishes to raise a personal grievance must, subject to subsections (3) and (4), raise the grievance with his or her employer within the period of 90 days beginning with the date on which the action alleged to amount to a personal grievance occurred or came to the notice of the employee, whichever is the later, unless the employer consents to the personal grievance being raised after the expiration of that period.

(2) For the purposes of subsection (1), a grievance is raised with an employer as soon as the employee has made, or has taken reasonable steps to make, the employer or a representative of the employer aware that the employee alleges a personal grievance that the employee wants the employer to address.

(3) Where the employer does not consent to the personal grievance being raised after the expiration of the 90-day period, the employee may apply to the Authority for leave to raise the personal grievance after the expiration of that period.

(4) On an application under subsection (3), the Authority, after giving the employer an opportunity to be heard, may grant leave accordingly, subject to such conditions (if any) as it thinks fit, if the Authority—

(a) is satisfied that the delay in raising the personal grievance was occasioned by exceptional circumstances (which may include any 1 or more of the circumstances set out in section 115); and

(b) considers it just to do so.

(5) In any case where the Authority grants leave under subsection (4), the Authority must direct the employer and employee to use mediation to seek to mutually resolve the grievance.

(6) No action may be commenced in the Authority or the court in relation to a personal grievance more than 3 years after the date on which the personal grievance was raised in accordance with this section.

#### *Recovery of wages*

##### *130 Wages and time record*

(1) Every employer must at all times keep a record (called the wages and time record) showing, in the case of each employee employed by that employer,—

(a) the name of the employee:

(b) the employee's age, if under 20 years of age:

(c) the employee's postal address:

(d) the kind of work on which the employee is usually employed:

(e) whether the employee is employed under an individual employment agreement or a collective agreement:

(f) in the case of an employee employed under a collective agreement, the title and expiry date of the agreement, and the employee's classification under it:

(g) the number of hours worked each day in a pay period and the pay for those hours:

- (h) the wages paid to the employee each pay period and the method of calculation;
  - (i) details of any employment relations education leave taken under Part 7;
  - (j) such other particulars as may be prescribed.
- (1A) The wages and time record must be kept—
- (a) in written form; or
  - (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (1B) if an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the usual hours), it is sufficient compliance with subsection (1)(g) if those usual hours and pay are stated in—
- (a) the wages and time record; or
  - (b) the employment agreement; or
  - (c) a roster or any other document or record used in the normal course of the employee's employment.
- (1C) In subsection (1B), the usual hours of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.
- (1D) Despite subsection (1C), the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1).
- (2) Every employer must, upon request by an employee or by a person authorised under section 236 to represent an employee, provide that employee or person immediately with access to or a copy of or an extract from any part or all of the wages and time record relating to the employment of the employee by the employer at any time in the preceding 6 years at which the employer was obliged to keep such a record.
- (3) [Repealed]
- (4) Every employer who fails to comply with any requirement of this section is liable to a penalty imposed by the Authority.
- (5) An action to recover a penalty under subsection (4) may also be brought by a Labour Inspector.

*Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.*

## **Subpart 2—Work groups**

### **6 Default ratio of health and safety representatives to workers in work group**

- (1) The prescribed minimum ratio of health and safety representatives for a work group referred to in [section 65\(1\)](#) of the Act (relating to a work group that comprises all the workers in the business or undertaking) is 1 representative for every 19 workers.
- (2) For the purposes of applying subclause (1), if the number of workers divided by 19 does not equal a whole number, the number of health and safety representatives to be elected is increased to the next whole number.



### **Part 3 Worker engagement, participation, and representation requires a PCBU to engage with workers**

#### Subpart 1—Engagement with workers and worker participation practices

##### Engagement with workers

##### Section 58 Duty to engage with workers

- (1) A PCBU (person conducting a business or undertaking) must, so far as is reasonably practicable, engage with workers—
  - (a) who carry out work for the business or undertaking; and
  - (b) who are, or are likely to be, directly affected by a matter relating to work health or safety.
- (2) If the PCBU and the workers have agreed to procedures for engagement, the engagement must be in accordance with those procedure
- (3) The agreed procedures must not be inconsistent with section 59.
- (4) A person who contravenes this section commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$20,000;
  - (b) for any other person, to a fine not exceeding \$100,000.

##### Section 59 Nature of engagement

- (1) Engagement with workers under this subpart requires—
  - (a) that relevant information about the matter be shared with workers in a timely manner; and
  - (b) that workers be given a reasonable opportunity—
    - (i) to express their views and to raise work health or safety issues in relation to the matter; and
    - (ii) to contribute to the decision-making process relating to the matter; and
  - (c) that the views of workers be taken into account by the PCBU; and
  - (d) that the workers be advised of the outcome of the engagement in a timely manner.
- (2) If the workers are represented by a health and safety representative, the engagement must involve that representative

##### When engagement is required

Engagement with workers under this subpart is required in relation to work health and safety matters in the following circumstances:

- (a) when identifying hazards and assessing risks to work health and safety arising from the work carried out or to be carried out as part of the conduct of the business or undertaking;
- (b) when making decisions about ways to eliminate or minimise those risks;
- (c) when making decisions about the adequacy of facilities for the welfare of workers;
- (d) when proposing changes that may affect the health or safety of workers;
- (e) when making decisions about the procedures for the following:
  - (i) engaging with workers;
  - (ii) monitoring the health of workers;
  - (iii) monitoring the conditions at any workplace under the management or control of the PCBU;
  - (iv) providing information and training for workers;
- (f) when making decisions about the procedures (if any) for resolving work health or safety issues at the workplace;
- (g) when developing worker participation practices, including when determining work groups;
- (h) when carrying out any other activity prescribed by regulations for the purposes of this section.

##### Section 61 Duty to have worker participation practices

- (1) A PCBU must have practices that provide reasonable opportunities for workers who carry out work for the business or undertaking to participate effectively in improving work health and safety in the business or undertaking on an ongoing basis.
- (2) In complying with subsection (1), the PCBU must—
  - (a) comply with prescribed requirements relating to worker participation, including requirements relating to a particular industry, sector, or kind of workplace;
  - (b) take into account any relevant approved code of practice.
- (3) In this section, reasonable opportunities means opportunities that are reasonable in the circumstances, having regard to relevant matters, including—

- (a) the number of workers working in the business or undertaking; and
- (b) the number of different workplaces of the business or undertaking, and the distance between them; and
- (c) the likely risks to work health and safety in the business or undertaking and the level of those risks; and
- (d) the nature of the work that is performed and the way that it is arranged or managed; and
- (e) the nature of the employment arrangements or contracting arrangements, including the extent and regularity of employment or engagement of temporary workers; and
- (f) the willingness of workers and their representatives to develop worker participation practices; and
- (g) in relation to employers and employees, the duty to act in good faith as required by section 4 of the Employment Relations Act 2000.

*Minimum Wage Act 1983*

<http://www.legislation.govt.nz/act/public/1983/0115/latest/DLM74093.html>

**4. Prescribed minimum adult rate of wages**

- (1) The Governor-General may, by Order in Council, prescribe a minimum adult rate of wages payable to workers—
- (a) who are aged 16 years or older; and
  - (b) to whom any other minimum rate of wages prescribed under section 4A or 4B does not apply.
- (2) A rate prescribed under subsection (1) must be prescribed as a monetary amount.

**5 Annual review of minimum wages**

- (1) The Minister of Labour shall, in each year ending on 31 December, review any minimum rate prescribed pursuant to section 4, 4A, or 4B.
- (2) Following a review under subsection (1), the Minister may, whether in that year or subsequently, make recommendations to the Governor-General regarding the adjustments that should be made to that minimum rate.

**6 Payment of minimum wages**

Notwithstanding anything to the contrary in any enactment, award, collective agreement, determination, or contract of service, but subject to sections 7 to 9, every worker who belongs to a class of workers in respect of whom a minimum rate of wages has been prescribed under this Act, shall be entitled to receive from his employer payment for his work at not less than that minimum rate.

*Privacy Act 1993*

<http://www.legislation.govt.nz/act/public/1993/0028/latest/DLM296639.html>

**Principle 5 Storage and security of personal information**

An agency that holds personal information shall ensure—

- (a) that the information is protected, by such security safeguards as it is reasonable in the circumstances to take, against—
  - (i) loss; and
  - (ii) access, use, modification, or disclosure, except with the authority of the agency that holds the information; and
  - (iii) other misuse; and
- (b) that if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or unauthorised disclosure of the information.

*Holidays Act 2003*

<http://legislation.govt.nz/act/public/2003/0129/latest/DLM236387.html>

### **3 Purpose**

The purpose of this Act is to promote balance between work and other aspects of employees' lives and, to that end, to provide employees with minimum entitlements to—

- (a) annual holidays to provide the opportunity for rest and recreation:
- (b) public holidays for the observance of days of national, religious, or cultural significance:
- (c) sick leave to assist employees who are unable to attend work because they are sick or injured, or because someone who depends on the employee for care is sick or injured:
- (d) bereavement leave to assist employees who are unable to attend work because they have suffered a bereavement.

## **Part 2 Holiday and leave entitlements**

### **Subpart 1—Annual holidays**

#### **15 Purpose of this subpart**

The purpose of this subpart is to—

- (a) provide all employees with a minimum of 4 weeks' annual holidays to be paid at the time the holidays are taken; and
- (b) enable an employee to request that up to 1 week of his or her annual holidays entitlement be paid out; and
- (c) require employers to pay employees at the end of their employment for annual holidays not taken or paid out; and
- (d) enable employers to manage their businesses, taking into account the annual holiday entitlements of their employees.

#### **Entitlement to annual holidays**

#### **16 Entitlement to annual holidays**

- (1) After the end of each completed 12 months of continuous employment, an employee is entitled to not less than 4 weeks' paid annual holidays.
- (2) For the purposes of subsection (1), the 12 months of continuous employment—
  - (a) includes any period during which the employee was—
    - (i) on paid holidays or leave under this Act; or
    - (ii) on parental leave under the Parental Leave and Employment Protection Act 1987; or
    - (iii) on volunteers leave within the meaning of the Volunteers Employment Protection Act 1973; or
    - (iv) receiving weekly compensation under the Injury Prevention, Rehabilitation, and Compensation Act 2001 or former Act as well as, or instead of, payment from the employer; or
    - (v) on unpaid sick leave or unpaid bereavement leave; or
    - (vi) on unpaid leave for any other reason for a period of no more than 1 week; but
  - (b) unless otherwise agreed, does not include any other unpaid leave, being leave other than that referred to in paragraph (a)(v) and (vi).
- (3) If, for the purposes of subsection (2)(b), an employer and employee agree that any period of unpaid leave of more than 1 week is to be included in the employee's 12 months of continuous employment, the divisor of 52 to be used for the purposes of calculating the employee's average weekly earnings must be reduced by the number of whole or part weeks greater than 1 week that the employee was on the unpaid leave.
- (4) An employee's entitlement to annual holidays remains in force until the employee has—
  - (a) taken all of the entitlement as paid holidays; or
  - (b) been paid out under section 28B for the entitlement in the entitlement year.

#### **17 How employee's entitlement to annual holidays may be met**

- (1) An employer and employee may agree on how an employee's entitlement to 4 weeks' annual holidays is to be met based on what genuinely constitutes a working week for the employee.
- (2) If an employer and employee cannot agree on how an employee's entitlement to 4 weeks' annual holidays is to be met, a Labour Inspector may determine the matter for them.

(3) In making a determination, the Labour Inspector may take into account any matters that the Labour Inspector thinks fit, including the matters specified in section 12(3).

### **Subpart 3—Public holidays**

#### **43 Purpose of this subpart**

The purpose of this subpart is—

- (a) to provide employees with an entitlement to 11 public holidays if the holidays fall on days that would otherwise be working days for the employee;
- (b) to provide for the transfer of public holidays (whether in whole or in part);
- (c) to specify the entitlements of employees in relation to public holidays.

#### **44 Days that are public holidays**

(1) The following days are public holidays:

- (a) Christmas Day;
- (b) Boxing Day;
- (c) New Year's Day;
- (d) 2 January;
- (e) Waitangi Day;
- (f) Good Friday;
- (g) Easter Monday;
- (h) ANZAC Day;
- (i) the birthday of the reigning Sovereign (observed on the first Monday in June);
- (j) Labour Day (being the fourth Monday in October);
- (k) the day of the anniversary of a province or the day locally observed as that day.

#### **50 Employer must pay employee at least time and a half for working on public holiday**

(1) If an employee works (in accordance with his or her employment agreement) on any part of a public holiday, the employer must pay the employee the greater of—

- (a) the portion of the employee's relevant daily pay or average daily pay (less any penal rates) that relates to the time actually worked on the day plus half that amount again; or
- (b) the portion of the employee's relevant daily pay that relates to the time actually worked on the day.

(2) In subsection (1)(a), penal rates—

- (a) means an identifiable additional amount that is payable to compensate the employee for working on a particular day of the week or a public holiday; but
- (b) does not include, for example, any additional payment for a sixth or seventh day of work.

#### **52 New employment agreements must include provision that complies with section 50**

(1) This section applies to an employment agreement that is entered into after 1 April 2004.

(2) The employment agreement must include a provision that confirms the right of the employee to be paid in accordance with section 50 for working on a public holiday.

(3) To avoid doubt, the employment agreement may not state that the relevant daily pay or average daily pay of the employee already includes an amount that is calculated to comply with section 50.

#### **81 Holiday and leave record**

(1)[Repealed]

(2) An employer must at all times keep a holiday and leave record showing, in the case of each employee employed by the employer, the following information:

- (a) the name of the employee;
- (b) the date on which the employee's employment commenced;
- (c) the number of hours worked each day in a pay period and the pay for those hours;
- (d) the employee's current entitlement to annual holidays;
- (e) the date on which the employee last became entitled to annual holidays;
- (f) the employee's current entitlement to sick leave;
- (g) the dates on which any annual holiday, sick leave, or bereavement leave has been taken:

- (h) the amount of payment for any annual holiday, sick leave, or bereavement leave that has been taken:
  - (ha) the portion of any annual holidays that have been paid out in each entitlement year (if applicable):
  - (hb) the date and amount of payment, in each entitlement year, for any annual holidays paid out under section 28B (if applicable):
  - (i) the dates of, and payments for, any public holiday on which the employee worked:
  - (j) the number of hours that the employee worked on any public holiday:
  - (ja) the day or part of any public holiday specified in section 44(1) agreed to be transferred under section 44A or 44B and the calendar day or period of 24 hours to which it has been transferred (if applicable):
  - (k) the date on which the employee became entitled to any alternative holiday:
  - (l) the details of the dates of, and payments for, any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to holiday pay:
  - (m) the cash value of any board or lodgings, as agreed or determined under section 10:
  - (n) the details of any payment to which the employee is entitled under section 61(3) (which relates to payment in exchange for an alternative holiday):
  - (o) the date of the termination of the employee's employment (if applicable):
  - (p) the amount paid to the employee as holiday pay upon the termination of the employee's employment (if applicable):
  - (q) any other particulars that may be prescribed.
- (3) The holiday and leave record must be kept—
- (a) in written form; or
  - (b) in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.
- (3A) If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the usual hours), it is sufficient compliance with subsection (2)(c) if those usual hours and pay are stated in—
- (a) the employee's wages and time record kept under section 130 of the Employment Relations Act 2000; or
  - (b) the employee's employment agreement; or
  - (c) a roster or any other document or record used in the normal course of the employee's employment.
- (3B) In subsection (3A), the usual hours of an employee who is remunerated by way of salary include any additional hours worked by the employee in accordance with the employee's employment agreement.
- (3C) Despite subsection (3B), the employer must record any additional hours worked that need to be recorded to enable the employer to comply with the employer's general obligation under section 4B(1) of the Employment Relations Act 2000.
- (4) Information entered in the holiday and leave record must be kept for not less than 6 years after the date on which the information is entered.
- (5) The holiday and leave record may be kept so as to form part of the wages and time record required to be kept under section 130 of the Employment Relations Act 2000.

*Human Rights Act 1993*

<http://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304483.html>

Discrimination in employment matters

## **22Employment**

(1)

Where an applicant for employment or an employee is qualified for work of any description, it shall be unlawful for an employer, or any person acting or purporting to act on behalf of an employer,—

(a)

to refuse or omit to employ the applicant on work of that description which is available; or

(b)

to offer or afford the applicant or the employee less favourable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description; or

(c)

to terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or

(d)

to retire the employee, or to require or cause the employee to retire or resign,—

by reason of any of the prohibited grounds of discrimination.

(2)

It shall be unlawful for any person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment differently from other persons in the same or substantially similar circumstances by reason of any of the prohibited grounds of discrimination

*Education Act 1989*

<http://www.legislation.govt.nz/act/public/1989/0080/latest/DLM178256.html>

### **30 Employment of school-age children**

(1)

No person shall employ any person who has not turned 16 at any time—

(a)

within school hours; or

(ab) in the case of a person who is a student participating in a secondary-tertiary programme, when the employment interferes with the person's ability to undertake the secondary-tertiary programme; or

(b) in the case of a person enrolled at a correspondence school, when the employment interferes with the person's ability to do the work of the course in which the student is enrolled; or

(c) in the case of a person who has been granted a certificate of exemption under [section 21](#), when the employment interferes with the person's ability to be taught as well and regularly as in a registered school; or

(d) if the employment then—

(i) prevents or interferes with the person's attendance at school; or

(ia)

in the case of a person who is a participating student, interferes with the person's ability to undertake his or her secondary-tertiary programme; or

(ii)

in the case of a person enrolled at a correspondence school, interferes with the person's ability to do the work of the course in which the person is enrolled,—  
unless there has been produced to the employer a certificate of exemption, or other satisfactory evidence that the person is exempted (otherwise than under [section 21\(1\)](#)) from enrolment at any school.

(2)

Every person who—

(a)

being a parent of any other person, permits the other person to be employed contrary to subsection (1); or

(b)

employs any other person in contravention of the subsection,—  
commits an offence, and is liable on conviction to a fine not exceeding \$1,000.