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## 90 Day Trial Period

Effective from 1 March 2009, the Government has passed legislation granting employers the right to dismiss an employee within the first 90 days of employment with no right to lodge a personal grievance against the employer.

The Government has introduced this legislation in an effort to encourage employers to provide employment opportunities to people, without financial risk to the employer if the employment relationship does not work out. In an announcement on 11 December 2008 the Minister of Labour, Hon. Kate Wilkinson, stated that "By lowering the legal risks employers face, they will be more confident in giving people the opportunity to prove themselves" and that "The 90 day trial will provide real opportunities for people at the margins of the labour market".



As with any legislation, it is not as simple as it sounds. The probation period provisions only apply where the employer employs "fewer than 20 employees"... "at the beginning of the day on which the employment agreement is entered into". However, in some cases the point at which an employment agreement is entered into can be unclear. For example, is the agreement entered into when the offer is made and accepted orally or when the agreement is signed by the first or second party to affix their signature?

In addition, in order for the 90 day period to be in effect the legislation requires a trial period provision to be written into the employee's employment agreement. However, some employers in small businesses still do not enter into written employment agreements with their staff, even

though they have been a legal requirement since 2000. If the agreement and trial provision are not in writing there is no protection under this legislation.

The requirement for an employer to employ fewer than 20 staff for this protection to apply may lead to debate. Small private businesses often include family members as employees, although they might not be actively involved in the business in the same way as other employees. This provision appears to be based on a 'headcount' methodology as opposed to full time equivalent staff. Hence, the cleaner who comes in for 2 hours each day will be included in the headcount, as will job sharing part-time workers.

## Help After a Redundancy

As part of the National Party's election platform, it promised an assistance package to help workers made redundant as a result of the current economic climate. The "ReStart" package has now been put in place and commenced from 1 January 2009. The package was formulated by amending existing assistance mechanisms thereby speeding up implementation and avoiding the need for new legislation.

The package is intended to assist individuals whose employment positions have been eliminated by their employer. It does not apply to individuals who have been fired, or who have completed a fixed term or seasonal contract. The package can also apply to the previously self employed as long as they are now eligible for the unemployment benefit.

On a financial level the package comprises two types of payment (both non-taxable) that an individual can receive for up to 16 weeks:

- "ReCover" - this effectively replaces the in-work tax credit (the working for families credit paid to eligible working parents). The person must have been eligible for the in-work tax credit prior to being made redundant. For parents with one to three dependent children the "ReCover" payment is \$60 per week and a further \$15 for each additional child, and
- "RePlace" - complements the accommodation supplement, and can be up to \$100 per week. People who receive a redundancy payment of more than \$25,000 are not eligible for "RePlace".

The method of counting staff will become critical as once the employer hits the 20 staff threshold, further employees will not be subject to the provisions.

If an employee is not dismissed within the 90 day period the employer will be subject to the normal provisions to justify a dismissal and will have no protection from this section of the Act. This will be strictly applied.

The changes to the Act do not protect the employer from a grievance for unjustified action. That means that if the employer changes the employee's role or reduces their pay, the full procedural requirements still apply.

However, a person whose redundancy payment exceeds \$25,000 may be eligible for the Accommodation Supplement. A person's assets are taken into account when determining eligibility for the accommodation supplement. Only the portion of a redundancy payment in excess of \$25,000 is taken into account for this purpose.



The "ReCover" and "RePlace" payments are only available to one spouse in the family. This means that a person who has been made redundant is not entitled to either of these payments if their spouse or partner is already receiving them.

The "ReStart" package also consists of assistance with finding a new job through support to develop a CV, interview preparation and career planning. This element of the package is referred to as "ReConnect".

In order to be eligible for "ReStart" assistance, the individual must:

- be a New Zealand citizen or permanent resident and usually live in New Zealand
- have been made redundant from a full-time job
- be looking for a full-time job
- have been working for the six months before being made redundant, although not necessarily with the same employer, or
- have been self employed and now entitled to the unemployment benefit.