



Position Statement - Work In A Business Operation Without Payment of Wages

It is important for business operators that they correctly classify the legal status of their workers.

Following guidance, established by the courts*, some indicators that a worker should not be classified as a volunteer, and is potentially an employee include:

- the worker is being paid for their work – including rewards such as free accommodation or food
- the worker expected to be rewarded for their work
- there is an economic gain made to the business from the work performed by the worker
- the work is integral to a business and it is work an employee would normally perform
- the workers' hours of work are controlled.

The Labour Inspectorate often encounters persons working informally within a business operation in exchange for 'reward' such as accommodation or food, or one-off or irregular payments rather than receiving payment for their work in the form of regular wages in money. The business may have labelled such workers as 'volunteers'.

The Labour Inspectorate's starting position is that such persons will be considered to be employees in an employment relationship. It flows from this that **minimum employment standards will apply, and employers of such employees must meet their obligations which include:**

- having employment agreements in writing
- ensuring they are fulfilling the contractual arrangements as specified in their employment agreement
- paying their employees at least the relevant minimum wage in money
- keeping a record of hours worked, wages paid and leave taken
- providing at least the minimum holiday entitlements
- ensuring employees have a valid right to work in New Zealand
- complying with other legislative requirements, including accounting for PAYE and ACC.

If the Labour Inspectorate determines that a business operation has failed to properly treat workers as employees, it is highly likely that enforcement action will be taken in response.

Providing employees accommodation related to their employment

- Employers and employees may agree that the employer will provide accommodation to an employee, and also that the cost of that accommodation will be deducted from the employee's wages before they are paid.
- The agreed value of accommodation deducted before payment of wages will be included as 'wages' for Minimum Wage Act calculation purposes.
- Any agreement relating to accommodation should clearly detail the accommodation arrangement and its cost to the employee, which should be reasonable. The wage records should include the wages payable before any deduction is made for the agreed value of accommodation.
- Where there is no specific agreement as to the cost of accommodation an employer can deduct 15 per cent of the employee's wages calculated at the relevant minimum wage rate for board or 5 per cent for lodging.

- For Minimum Wage Act purposes, board is considered to mean the provision of both accommodation and meals while lodging means the provision of accommodation only.
- The rental or accommodation agreement should be either separate from the employment agreement or able to be separated.

Providing other goods or services related to an employee's employment

- Employers and employees can also agree that other goods or services may be provided related to the employment.
- If provided as non-cash benefits, they **cannot** be considered as part of the employee's wages when determining whether the minimum wage is being paid.
- However, where expressly authorised by the employee, the employer may deduct the agreed cost of those goods and services, from wages payable before they are paid in which case the deducted amount will be included as "wages" for Minimum Wage Act calculation purposes.
- The wages records should include the wages payable before any deduction is made for the agreed value of the goods or services.
- Any such agreements and deduction authorisations should be recorded outside of the employment agreement.

Employers and employees should take their own advice as to the tax implications of arrangements for deducting accommodation costs or other agreed costs from wages. They should also consider the need to comply with the Residential Tenancies Act 1986 for any accommodation provided.

* *Kirby v New Zealand China Friendship Society* [2015] NZEmpC 189.

Brook v Macown [2014] ERNZ 639.

Salad Bowl Ltd v Howe-Thornley [2013] NZEmpC 152.