



trendz keeping you up with the play

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The KiwiSaver scheme commences on 1 July 2007 - how will it affect you?

What is KiwiSaver?

KiwiSaver is a voluntary work-based retirement savings scheme. The scheme commences on 1 July 2007.

How will KiwiSaver work?

KiwiSaver contributions will be deducted from the earnings of contributors and forwarded to IRD. IRD will then transfer each person's contribution to their scheme provider for investment in their savings scheme.

There is a range of membership benefits to encourage people to join KiwiSaver, including a \$1,000 tax-free kick-start and subsidised scheme fees. Some people may also be eligible for help with the deposit on their first home.

Who can become a KiwiSaver?

All New Zealand residents and people entitled to live here permanently, aged up to 65 can become a KiwiSaver member.

How will people join KiwiSaver?

Although KiwiSaver is a voluntary scheme employers will have to automatically enrol all new employees (subject to the exemptions discussed later) as a KiwiSaver member.

An employee won't be automatically enrolled if they:

- are a casual agricultural worker, election day worker or private domestic worker

- are employed on a temporary employment contract of 28 days or less
- are on paid parental leave
- stay on the same payroll (i.e. when a business is taken over or amalgamated, or for relocation with the same employer)
- receive payments subject to withholding tax
- are not a New Zealand resident
- don't normally live here (except government employees working overseas)
- are not required to have tax deductions made from their salary or wages under the PAYE rules.

All existing employees can join KiwiSaver by contacting a KiwiSaver scheme provider directly. They will then need to ask their employer to start deductions at their chosen contribution rate. An employer will be obliged to make this deduction.

Opting out

New employees who have been automatically enrolled as a KiwiSaver member will have eight weeks to decide whether to continue their membership. A form for this will be included in a pack that employers will be required to provide new employees or this can be done online.

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Spam law passed

The Unsolicited Electronic Messages Bill 2007 has now passed into law and will take effect in 6 months time. This Act prohibits address-harvesting through software or a harvested-address list to send unsolicited commercial electronic messages. It applies to all emails, texts and instant messages that

market or promote goods, services, and other schemes of a commercial or dishonest nature. People can only receive these if they have opted in and a clear opt-out function must be incorporated. This Act can only apply domestically but it may be extended internationally once agreement is made with other countries.

The KiwiSaver scheme commences on 1 July 2007 - how will it affect you? (continued)

Exemption from automatic enrolment requirements

An employer can apply to the Government Actuary for an exemption from the automatic enrolment requirements of KiwiSaver. To qualify as an exempt employer and employer must operate a retirement savings scheme which is:

- a registered superannuation scheme
- portable (members can transfer their balance to the scheme when they join and to other schemes when they leave your employment)
- open to all new permanent (including part-time) employees
- has a total contribution rate (employer plus employee) of at least 4% of the employee's gross base salary or wages
- has employer contributions that count towards the employee's minimum contribution of 4% vesting fully in the employee on or within five years of the employee becoming a member of the scheme.
- Employers may also be eligible for an exemption if they provide access to a defined benefit scheme which meets the first 3 bullet points above, and accrues benefits at a minimum rate of 4% of the employee's before-tax gross base salary or wages.

Employees enrolled in existing work-based schemes that exempt the employer from the automatic enrolment provisions will still be able to apply for a first home deposit subsidy if they meet the eligibility criteria. They won't, however, get the government-funded \$1,000 savings kick-start, or subsidised scheme fees.

KiwiSaver schemes

KiwiSaver members will be able to choose their own savings scheme product that is provided by either a 'default provider' or 'other qualifying provider'. Companies such as AXA, Tower and AMP have been awarded default provider status.

Employer responsibilities

From 1 July 2007 the Act requires employers to be responsible for:

- distributing a KiwiSaver information pack to new employees and employees who opt in *
- enrolling new employees by giving Inland Revenue their name, IRD number and address *
- providing Inland Revenue with the name, IRD number and address of employees who opt in through their employer *
- deducting employees' contributions and forwarding them to Inland Revenue along with PAYE
- accepting opt-out notices from employees, notifying Inland Revenue and refunding any contributions not already passed to Inland Revenue *
- giving employees investment statements from the KiwiSaver scheme provider elected by an employer – employers may elect to specify an initial KiwiSaver scheme if an employee does not choose one
- recording which employees are KiwiSaver members, their contribution rate and any notification of contributions holidays or opt-outs
- ensuring PAYE records show the KiwiSaver amounts deducted and passed on to IRD.

[* does not apply if exempt from the automatic enrolment requirements]

Employers will need to deduct employees' KiwiSaver contributions from their before-tax pay and forward them to Inland Revenue through the PAYE system. Employers will also need to ensure that new employees' KiwiSaver contributions start from their first pay.

Savings amount

The level of savings for KiwiSaver members will be 4% of before-tax salary or wages (that means total salary, including bonuses, commission, extra salary and overtime). An employee can elect to contribute 8%.

Employer contributions

There is no requirement for employers to contribute to the savings of an employee who joins KiwiSaver, although it is expected that some unions will be making claims for this to happen.

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Employers will need to deduct employees' KiwiSaver contributions from their before-tax pay and forward them to Inland Revenue through the PAYE system



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The KiwiSaver scheme commences on 1 July 2007 - how will it affect you? (continued)

If an employer decides to make contributions the amount paid will be tax-free (exempt from specified superannuation contribution withholding tax), up to a cap of whichever is less of the employee's contribution or 4% of their before-tax pay. This is not a tax benefit for the employer – it simply means the employee gets the full amount contributed by their employer up to the cap allowed.

Only employer contributions to KiwiSaver schemes will automatically qualify for the SSCWT exemption. Employer contributions, including salary sacrificed by employees for savings that are made to non-KiwiSaver schemes, won't qualify unless the scheme meets prescribed criteria, which include that contributions are locked-in in the same way KiwiSaver contributions are.

More information

This information is based on material published on the IRD website at www.ird.govt.nz.

More information can also be obtained from a range of IRD publications you can download at www.buckettlaw.co.nz/SITE_Default/fyi/trends_library/trends_features/kiwiSaver.asp

New minimum wages to take effect

The minimum wage applies to employees who are 16 and over. New rates apply from 1 April 2007. If you are an employer paying rates less than \$11.25 per hour to adult workers this change will impact on you.

Effective from 1 April 2007 minimum wage rates are:

	Hourly	Daily (8 hr day)	Weekly (40 hrs/5 days)
Adult Rate	\$11.25	\$90.00	\$450.00
Youth Rate/Trainee	\$9.00	\$72.0	\$360.00

Notes:

- The adult rate applies to employees 18 years and over.
- The youth rate applies to employees aged 16 – 17.
- The trainee rate applies to employees aged 16 and over who under their employment agreement are doing 60 credits a year in an industry programme relevant to their job registered on the National Qualifications Framework. Although set at the same level as the youth rate the training minimum wage applies to all trainees regardless of age.
- Additional hours worked beyond the daily or weekly rates must be paid at or above the appropriate minimum hourly rate.
- Holiday pay for annual holidays is not included in the minimum wage and must be added on top. If an employee is being paid pay-as-you-go holiday pay this arrangement must be agreed in the applicable employment agreement and must be a separate identifiable component of the employee's pay. Pay-as-you-go holiday pay arrangements are also only allowed for short fixed term agreements of less than 12 months or for genuinely casual employment where work is so intermittent that is impractical for the employer to provide annual holidays.

Increase to 4 week annual holiday

From 1 April 2007 the Holidays Act 2003 will increase the minimum annual holiday entitlement from three to four weeks. Employees will become eligible for their extra week's holiday on their first anniversary date (the date when they started their job) after 1 April 2007.

Employees already receiving four weeks' annual holidays will not automatically get five weeks of holiday - it will depend on whether their employment agreement makes it clear that their entitlement increases. For example, the Employment Court has confirmed that Stagecoach employees will not be entitled to 5 weeks of annual holiday when the minimum entitlement under the Holidays Act 2003 increases to 4 weeks from 1 April 2007. Unions representing employees argued that a clause entitling employees to an additional week of holiday after a qualifying period of service meant that 5 weeks of leave would be due after 1 April 2007. The applicable collective agreement stated that in addition to 3 weeks of annual holiday provided by the Holidays Act 1981 employees would be entitled to a further holiday of one week, making a total of four weeks leave per year. The Employment Court ruled that the parties had agreed that the total of annual leave would be four weeks which in effect would render the service based entitlement to an additional week of holiday obsolete after 1 April 2007 because the statutory minimum would meet their stated goal.

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If you would like more information or have any questions concerning the topics discussed in this issue of trendz please do not hesitate to contact us

Final warning couldn't be used

A recent Employment Authority case gives employers guidance on how a series of warnings can be used. A caregiver in a private hospital was given a final warning for not following procedures after a patient broke her leg. Later the employee was dismissed after being one hour late for work. The Authority found the dismissal had incorrectly relied on the earlier final warning. The Authority held that the final warning could apply only if the employee was guilty of the same kind of misconduct or other non-performance. The Authority based this view on the wording of the employment agreement which restricted "an employee on a final written warning from being dismissed for an unrelated minor offence which would otherwise justify only a relatively minor reprimand".

The employee was awarded 12 weeks' lost wages of \$4800 and \$2250 as compensation for humiliation, loss of dignity and injury to her feelings.

If you need advice on dealing with disciplinary action you should seek our advice!

Public holiday exchange case goes to supreme court

The Airline Pilots Association has gained leave to appeal the ruling by the Court of Appeal regarding the transfer of public holidays to another day. In *Air NZ Ltd v New Zealand Airline Pilots Association of Industrial Workers Union Inc* the Court of Appeal examined a collective employment agreement provision that transferred all of the 11 public holiday provided by the Holidays Act to 11 general days' leave that were additional to annual leave. As a result when a pilot was rostered to work a public holiday no penal rates were paid. But the Court held that public holidays must be transferred to specified days to comply with minimum statutory requirements under s 44 of the Holidays Act 2003 and therefore the collective agreement provision was in conflict with the Act.

Leave to appeal this ruling has been granted to the pilots union and the Supreme Court will address the following questions:

1. Can an employee's entitlements to a public holiday be transferred by agreement to another day (which the majority in the Court of Appeal called the "exchange day")?
2. If so, does the exchange day have to be identified or capable of identification with certainty in the employment agreement?
3. In light of the answers to the first two questions, did the Collective Employment Agreement which is the subject of the dispute validly transfer the entitlements?

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Online tool calculates holiday and leave entitlements

The Department of Labour have launched an online tool to help calculate entitlements and payments for public holidays, sick and bereavement leave. The tool is designed to determine:

- o Whether an employee is entitled to a paid public holiday, sick or bereavement leave.
- o What an employee should be paid (that is, their "relevant daily pay" for their day off or for working on a public holiday).

More information and links can be found on our website.

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