Guidelines on the use of Casual Labour

The use of casual labour is commonplace among retailers as it provides significant operational and financial flexibility when the demand for goods and services varies widely. Christmas in particular is a time that retailers often require extra staff. It may also be useful to have an employee available to call on in case of illness or unexpected busy periods.

There are several factors that define casual employees as opposed to those on fixed term contracts or permanent employees. They are employed on an "as and when required basis"; they have no obligation to accept work when offered and the employer is under no obligation to offer future work to them. They are generally paid on an hourly rate and an employer can terminate the casual employment at any time without personal grievance issues arising. The question of whether or not a person has been employed as a casual employee depends on the mutuality of the intention at the outset of the employment and the nature of the work including its regularity, its hours and the obligations imposed on the employee.

It is important to be very clear whether the employment relationship is one of casual employment. Where there is a strong degree of continuity and regularity, particularly where there is a roster, this indicates to an employee that employment will be ongoing, which is inconsistent with casual employment. This can lead to misunderstanding when the employer no longer requires the employee to work.

All employees in New Zealand, whether permanent, part-time, casual or those on a fixed term contract are covered by the Employment Relations Act and related legislation. Consequently, casual employees need to sign an employment agreement with their employer and they must also be paid at least minimum wage. The provisions of the Holidays Act 2003 must be adhered to and casual employees are also entitled to holiday pay. This can be paid on a "pay as you go" basis. However, the employee must agree to the arrangement in his or her employment agreement and the holiday pay must be an identifiable component of the pay and not rolled up, indistinguishable in a composite rate. Payment must be made at a rate of not less than 8 percent.

As a casual employee has the same rights as all other employees under the Employment Relations Act and other employment laws, if they become injured they also have the right to compensation from ACC.

An alternative to casual employment is a fixed term contract and this may be a more suitable option if the employer wants to employ someone to work for a fixed period during the busy Christmas period but the hours are regular and rostered. Fixed term contracts end at the close of a specified date or period, on the occurrence of a specified event or at the conclusion of a specified project. The employer must, however, have genuine reasons for the fixed term. An employee cannot have a fixed-term arrangement when the job is really a permanent one. Also, employers have some special obligations when employing employees on a fixed term. They must set out in writing, in the employment agreement, the reasons for the fixed term and how the employment will end. Failure to do so could lead to the employee taking a personal grievance against the employer.

In the event that the fixed term contract is allowed to drift on after the date that it was agreed it would end, the agreement becomes a permanent one and the employee can not be dismissed at a later date without good reason.

As in all employment relationships, the key to success is to maintain good communication and to be familiar with the legislation. An employer can easily be caught out and the consequences can be expensive and disruptive. Seeking professional advice at an early stage can avoid greater cost when things go wrong.