

Are you switched on about new employment law changes?

Changes have been made to the Employment Relations Act 2000 and the Holidays Act 2003.

Key areas of change made to the Employment Relations Act 2000 are:

- Extending trial periods to all employers
- Employer's duties to retain signed copies of individual employment agreements
- The test of justification used by the Employment Relations Authority or the Employment Court to determine if a dismissal or employer's action was unjustified
- The role of Mediators and the Authority in making recommendations on resolving an employment relationship problem
- Penalties for obstructing or delaying Authority investigations
- Filtering out frivolous or vexatious cases
- Reinstatement no longer being the primary remedy for unjustified dismissals
- Union access to workplaces
- Communications between employers and employees during collective bargaining
- Labour inspectors' role and enforcement powers

Key areas of change made to the Holidays Act 2003 are:

- Cashing-up of up to one week of annual holidays entitlement
- A new averaging formula to be used where relevant daily pay for public holidays, alternative holidays, sick leave and bereavement leave is not obvious. The averaging formula may be used when it is not possible or practicable to determine what the employee would have earned or where an employee's daily payment varies within the pay period in which the holiday or leave falls
- Transferring public holidays to another working day
- Rules around taking alternative holidays
- Proof of illness or injury for employees away from work for less than three consecutive calendar days

Most changes for both Acts will come into effect on **1 April, 2011**.

One Employment Relations Act change comes **into effect from 1 July 2011**. This provision requires employers to retain a signed copy of an employee's individual employment agreement or current copy of the terms and conditions, either signed or unsigned. Employees are entitled to a copy of their employment agreement if they request one.

This is a good time to be getting up to speed with how these changes will impact on your business.

Use the myth buster quiz below to test how switched on you really are about the changes. If you score lower than you expected the Department of Labour has guidance to help you along the way.

MYTH BUSTER QUIZ - True or False?

1. On February 2011 I became entitled to four weeks of annual leave - this means that on the 1st of April I can cash out my 4th week.
2. In Feb 2012 I will take three weeks of annual leave and save one week to be cashed out along with my 4th week entitlement from Feb 2013 (allowing me to cash up two weeks in Feb 2013)
3. If an existing staff member takes on a new role in the company on or after the 1st of April they can be provided with a new employment agreement containing a trial period provision.
4. Employers must now keep copies of all employment agreements even if the employee has not signed it.
5. The Authority or the Court must not determine a dismissal or any action unjustifiable **solely** because of minor procedural defects in the process followed by the employer.
6. If parties to a dispute ask mediators or the Authority to make a recommendation about how a problem should be resolved they must accept the recommendation.
7. Parties who were deliberately delaying or obstructing the resolution of a personal grievance in the employment institutions can now be penalised.
8. The Authority has no power to dismiss cases with little or no merit prior to a full investigation.
9. Reinstatement is no longer the primary remedy in personal grievance cases.
10. Unions can enter a workplace at anytime.
11. Parties can agree to transfer the observance of a public holiday to another working day.
12. If an employee is away from work for fewer than three consecutive calendar days, the employer can ask for proof of illness or injury if the employer has *reasonable grounds* to suspect that sick leave was not genuine.

Answers:

1. False.

Only annual leave that you have become entitled to on or after the 1st of April 2011 can be cashed out, subject to the employers agreement. Only the 4th week of your annual holiday entitlement can be cashed out. Note an employer may have a policy that they will not cash up.

2. False.

You can't "bank" your 4th week to cash out the following year. In 2013 you will still only be able to cash out one week of annual leave - the one week that you saved cannot be cashed out.

3. False.

Trial periods can only be offered to new employees not existing employees.

4. True.

An employee can request a copy of the employment agreement and an employer must provide a copy as soon as reasonably practicable. These requirements can be enforced by a Labour Inspector from the Department of Labour.

5. True.

The Employment Relations Act 2000 has been amended to state this. The Act also now states that in deciding whether an employer's actions and how the employer acted were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred, the Authority or the courts **must** consider:

- (a) Whether the employer sufficiently investigated the allegations against the employee; having regard to the resources available to the employer,
- (b) Whether the employer raised concerns with the employee before taking action;
- (c) Whether the employer provided the employee with a reasonable opportunity to respond to these concerns;

(d) Whether the employer genuinely considered the employee's explanation
These minimum requirements are intended to reflect case law and clarify the process expectations on employers.

6. False.

Parties will have time to consider the recommendation and either accept or reject it. If the recommendation is rejected then further mediation may occur or the Authority investigation and determination will take place.

7. True.

The Authority can penalise a person (or his or her representative) who without sufficient cause obstructs or delays an Authority investigation. This includes failing to attend an Authority investigation (if required).

8. False.

The Authority can now dismiss frivolous or vexatious claims or defences of claims (or parts of a claim or a defence). Parties have a right to appeal this decision of the Authority.

9. True.

Reinstatement is now just one possible remedy the Authority or Court may consider where it is practicable and reasonable to do so.

10. False.

Union access to workplaces is now conditional on the consent of the employer, but such consent may not be unreasonably withheld.

11. True.

But remember that the Act sets out a number of criteria that apply to any agreement to transfer public holidays. As with the cashing up of annual holidays, employers may have a policy that the employer will not enter into agreements to transfer public holidays.

12. False.

The Act removes the explicit requirement for an employer to have *reasonable grounds* to suspect that sick leave is not genuine before the employer can request proof of illness or injury. Employers are still required to inform the employee as early as possible that the proof is required, and meet the employee's reasonable expenses in obtaining proof.

Remember there has been no change for situations where the employee is away for more than three consecutive calendar days. The change only relates to situations where the employee has been away for fewer than three consecutive calendar days.

Didn't do as well as you would have liked? [Find out more about the changes](#)

Along with the Employment Relations and Holidays Acts changing the minimum wage is going up. From 1 April 2011, the adult minimum wage will increase to \$13.00 an hour. The new entrants' minimum wage and the training minimum wage will increase to \$10.40 an hour.