

Employing a person (in a non-profit organisation)

Part 1 – Pre employment

Over time your organisation may grow to a point where it is necessary to employ someone for certain activities and responsibilities. Before you do this though there will be several things that you'll need to consider first, and once you decide to employ someone there are certain procedures and legalities that you need to follow and understand.

PLEASE NOTE - this sheet is designed as a guide only – for more detailed information go to www.keepingitlegal.govt.nz, www.dol.govt.nz (Department of Labour website), and www.ird.govt.nz.

CONSIDERATIONS

Before you decide to go ahead with employing someone you need to consider the following:

- What do you need them to do? Can this be done by a person/people already volunteering within the organisation?
- Do you have the funding or budget to employ someone? Consider ongoing costs as well as salary or wages (e.g. transport, rent/phone/power).
- How will a paid employee affect the running and dynamics of your organisation?
- Where will they work and what equipment will they require?
- Do you know what your legal and tax obligations will be as an employer? For more information on PAYE, & "registering to be an employer" go to www.ird.govt.nz.
- Are there members of your group that can provide training, support and supervision to an employee?
- Do you have good administration and financial systems in place?
- Do you have organisation policies & procedures (e.g. Health & Safety, leave procedure, expense reimbursement procedure) in place? *See sheet 15 for more information on Policies and Procedures.*
- How will you evaluate and monitor their work/outcomes?

EMPLOYMENT RELATIONS ACT 2000

This Act applies to all employers and employees, where an employer may be an individual, company, partnership, trust or incorporated society. An employee is any person employed by an employer to do any work for hire or reward (wages, salary, commission). Volunteers and independent contractors are **not** employees under the Act. The Employment Relations Act requires that all employment agreements must be in writing – there must be a written offer of employment by the employer and a written acceptance by the employee. *See sheet 14c for more information on employment agreements.*

The other main requirement of the Act is that it states that employers and employees must act in "good faith" meaning that they must deal with each other with mutual respect and honesty.

For more detailed information on the Employment Relations Act 2000 please go to www.employmentrelations.co.nz or the Department of Labour information page (www.dol.govt.nz/er/). Please also see the table following which details all the relevant Acts to New Zealand employment Law.

WHAT IS THE DIFFERENCE BETWEEN AN EMPLOYEE AND AN INDEPENDENT CONTRACTOR?

Employee – anyone who has agreed under contract of service to work for some form of payment (e.g. wages, salary, commission). Employees have the right to paid, statutory holiday, annual and sick leave. Other leave options (e.g. family leave to take care of a dependant who is ill) may be included in their contract.

Independent Contractor – an independent contractor is considered self-employed and is only paid for the hours that they work. They are not paid for voluntary or involuntary leave or holidays. They usually submit an invoice at the end of each month for the hours worked, and are usually responsible for their own income tax, GST, and health insurance etc.

Remember as an employer it is very important you are sure whether the people who work for you are employees or self-employed. If your organisation has control over the work done, and how and where it is done, the worker is almost certainly an employee and is liable to have PAYE deducted.

For more help:

Contact the IRD website (www.ird.govt.nz) to check whether a worker is a true employee - there are some good checklists on their site.

ACTS RELEVANT TO NEW ZEALAND EMPLOYMENT LAW

ACT NAME	ACT APPLIES TO	DETAILS
Criminal Records (Clean Slate) Act 2004	<ul style="list-style-type: none"> employees¹ volunteers contractors job applicants 	Under this Act, an individual who has a minor conviction and has not re-offended for 7 years, does not have to declare this information in most circumstances.
Employment Relations Act 2000	<ul style="list-style-type: none"> employees 	This Act requires employees and employers to deal with each other in good faith and not to do anything that would, or would be likely to, mislead or deceive each other, whether directly or indirectly.
Equal Pay Act 1972	<ul style="list-style-type: none"> employees 	This Act prohibits employers from differentiating between employees solely on the basis of sex in areas such as conditions of work, fringe benefits and training opportunities, promotion and transfer.
Health and Safety in Employment Act 1992	<ul style="list-style-type: none"> employees volunteers who work on an ongoing and regular basis as an integral part of the business 	The main aim of this Act is to "provide for the preventions of harm to employees at work".
Holidays Act 2003	<ul style="list-style-type: none"> employees 	This Act sets out employees' entitlements to holidays and holiday pay. The Act also covers employers' obligations in relation to the timing of annual leave and calculating holiday pay.
Human Rights Act 1993	<ul style="list-style-type: none"> employees volunteers contractors job applicants 	This Act prohibits discrimination on certain grounds.
Immigration Act 1987	<ul style="list-style-type: none"> employees 	Under this Act, all employers must ensure that tax code forms completed by employees include a signed declaration that the employee is entitled to work for the employer. Non-residents require a work permit to work in New Zealand.
Minimum Wage Act 1983	<ul style="list-style-type: none"> employees trainees (in part) 	This Act sets minimum wages for employees, the rate depending on the employee's age. The youth minimum wage also applies to trainees enrolled in industry training programmes.
Parental Leave and Employment Protection Act 1987	<ul style="list-style-type: none"> employees 	This Act contains the leave entitlements of male and female employees when a child is born or adopted under the age of 6, provided the employees have worked for the same employer for the period prescribed in the Act.
Privacy Act 1993	<ul style="list-style-type: none"> employees volunteers contractors 	This Act contains rules for the collection, storage, disclosure and use of personal information about employees, volunteers and contractors.
Wages Protection Act 1983	<ul style="list-style-type: none"> employees 	This Act requires employers to pay the employee the entire amount of wages payable unless the employer is entitled to make certain authorised deductions.

¹ "Employee" in the table means a paid employee as opposed to an unpaid volunteer or independent contractor.

(Taken from the Community Resource Kit, Family & Community Services – Ministry of Social Development – Crown Copyright 2006)

POLICIES & PROCEDURES

Before employing someone it is a good idea to ensure that you have human resource policies and procedures in place. That way you'll be clear on what is expected of you as an employer and your employee will also be well informed of the way your organisation works. There are a few essential areas that you should cover:

- health & safety
- recruitment and staffing
- complaints
- volunteers
- provision of services (e.g. vehicles, phone usage etc)
- financial management

For more detailed information on Policies and Procedures see sheet 15.

Information prepared by



LINKS / WHERE TO GO FOR MORE INFORMATION:

www.community.net.nz/how-toguides/crk/
www.employmentrelations.co.nz
www.keepingitlegal.govt.nz
www.dol.govt.nz/er/ (Dept of Labour)
www.ird.govt.nz

For more information or help you can also contact your local Community Development Planner at Venture Southland:
 143 Spey Street, Invercargill
 Ph: 03 211 1400
enquiry@venturesouthland.co.nz
www.southlandnz.com