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LH News

THE NEWSLETTER OF LANGTONHUDSON

Fuel Crisis – Keeping Your Business Moving

We are currently still at Phase 1, "Watchful", of the Government's Fuel Response Plan. However, both businesses and their staff are being widely impacted by the high fuel costs due to the ongoing conflict in the Middle East. This article covers issues for employers to watch out for and suggests some ways to support employees through the crisis.

Issues to watch out for

RESTRUCTURES

Restructures will be on the rise to cut operational costs in businesses hit hard by the fuel crisis. These could range from disestablishing roles, reducing hours/pay, vacating leases and changing locations of work, to removing benefits.

Any material changes to a role or to terms and conditions of employment must be supported by

a genuine business reason and follow a fair and reasonable consultation process, in accordance with the duty of good faith. External pressures such as the fuel crisis do not displace these obligations.

ABUSE OF FUEL-RELATED BENEFITS

With rising fuel costs, employees may feel more tempted to misuse company vehicles and fuel cards. Where limits on personal use exist, consider monitoring employees' compliance with those limits. If any misuse is identified, this can be addressed through a disciplinary process and/or recovering from the employee monies they have misspent on personal expenses.

Similarly, employees might submit more enthusiastically claims for mileage and reimbursement of other work-related expenses as the crisis continues. Consider monitoring these claims more carefully to ensure they are genuine and consistent with any existing policy, particularly as cost pressures may lead to illegitimate and/or inflated claims.

EMPLOYEES WHO CANNOT AFFORD TO TRAVEL

Situations may arise where an employee who cannot work remotely advises they cannot afford to travel to work. In these instances, employers might explore whether any reasonable alternatives can be accommodated (including some of the options outlined below). If not, then the question will arise whether the employer can safely choose not to pay the employee because they are not ready, willing, and able to work.

Where employees cannot afford to travel to work, and do not want to risk not being paid for their non-attendance, they might claim they are sick or bereaved so that they can access paid leave. Again, consider monitoring these requests and, if in doubt of their genuineness, request proof.

What can employers do to support employees?

FLEXIBLE WORKING

Whilst few of us wish to return to the Covid-19 lockdown days, shifting to a work from home ("WFH") or hybrid model during the fuel-crisis will alleviate financial pressure for employees by removing the cost of commuting.

Employees may make formal flexible working requests under Part 6AA of the Employment Relations Act 2000, which must be responded to in accordance with the statutory framework. However, employers who wish to proactively (re)introduce flexible working arrangements should:

- review employment agreements to see what they say about location of work, and determine whether a WFH arrangement would require variation agreements;
- ensure an appropriate WFH policy is in place which addresses (i) safeguards for information security; (ii) employee and employer health and safety obligations; and (iii) a mechanism for a smooth reversion to standard working arrangements; and
- consult with employees before making any changes to existing flexible working policies.

TAX-EFFICIENT TRANSPORT SCHEMES

Employers can support employees by facilitating alternative transport options. Several providers across New Zealand are offering schemes that help subsidise employee public transport and pay for vehicle share services. Employers can also consider the IRD exemption from fringe benefit tax for employer-provided bikes, e-bikes, scooters and e-scooters.

Some of these benefits can be implemented with salary sacrifice arrangements, which would allow staff to "sacrifice" part of their salary, pre-tax, in exchange for the benefit.

Tax advice is recommended on how to set up these schemes. Employers should also consider eligibility criteria, usage expectations, and how to document salary sacrifice arrangements alongside employment agreements, when designing and implementing these benefits.

ANNUAL LEAVE CASH-UPS

Employers may see an increase in requests to cash up annual leave as household budgets come under strain. Under section 28A of the Holidays Act 2003, employees may request to cash up to one week of annual holidays per entitlement year, but approval is at the employer's discretion. Cash-up requests can only be initiated and requested by an employee, not the employer.

If you would like further advice on any of the above issues or any other questions relating to the fuel crisis, please contact a member of our team.

Case Notes

MORE HASTE, LESS SPEED: MEDICAL INCAPACITY

In *Sheridan v Pact Group* [2026] NZEmpC 51, the Employment Court overturned a determination of the Employment Relations Authority, finding that Pact Group had acted unjustifiably in terminating Ms Sheridan's employment on the grounds of medical incapacity.

Ms Sheridan was employed in a community home providing care services to vulnerable clients. During a serious incident, one of the residents threatened Ms Sheridan, and she developed post-traumatic stress disorder ("PTSD") as a result. She went on medical leave and informed Pact Group that an ACC claim had been lodged. Approximately six weeks later, Pact Group initiated a medical incapacity process, advising Ms Sheridan that it might not be able to hold her role open.

Over the following months, Pact Group repeatedly requested information about Ms Sheridan's medical condition and return to work. Ms Sheridan consistently advised that she was awaiting specialist assessment through ACC and was unable to provide requested information until that process was complete. Despite this, Pact Group declined to defer its process until the information was available and moved to dismissal approximately six months after the triggering incident.

The Court found that Pact Group did not give Ms Sheridan a reasonable opportunity to recover before terminating her employment. By not waiting for the ACC specialist report, or requesting its own specialist report (at its expense), it had failed to undertake a proper inquiry into her prognosis. The Court considered the fact that the PTSD arose from a workplace incident as relevant context when assessing what could reasonably be expected of Pact Group.

The Court also found that Pact Group relied too heavily on operational pressure as a reason not to hold Ms Sheridan's role open for her and failed to explore practical alternatives in light of its resources, including replacement cover. Its failure to support rehabilitation, as required by its own health and safety manual, further undermined the reasonableness of its decision to terminate.

OUR VIEW

This decision is a reminder of the importance of taking care with process before terminating for medical incapacity, particularly where the incapacity arises from a workplace incident. Pressing ahead in the absence of medical clarity or any genuine inquiry into prognosis, and/or relying on operational pressure without exploring alternatives, will likely expose employers to risk.

You can read the Employment Court decision here.

COURT OF APPEAL CONFIRMS NARROW BAR FOR PERSONAL GRIEVANCES

In *Breen v Prime Resources Company Ltd* [2026] NZCA 33, the Court of Appeal clarified the scope of the "jurisdictional bar" in section 103(3) of the Employment Relations Act 2000, confirming that a personal grievance will only be excluded where the employer's action derives solely from the interpretation, application or operation of the employment agreement.

During the COVID-19 lockdown, Prime Resources reduced Mr Breen's salary, relying on a clause in his employment agreement permitting deductions for hours not worked. Mr Breen maintained he had continued working and challenged the unilateral deduction.

The Employment Relations Authority upheld his disadvantage grievance and awarded compensation. However, the Employment Court set that aside, finding the personal grievance was barred because it arose solely from Prime Resources' interpretation of the agreement and should instead have proceeded as a dispute.

The Court of Appeal disagreed, finding that the Employment Court failed to give proper effect to the word "solely" in section 103(3). The Court held that the correct approach is to ask whether the claim turns entirely on the correctness of the employer's interpretation of the agreement. If there is anything more, including factual disputes, process issues, or a dispute regarding the way the contractual power was exercised, the personal grievance jurisdiction remains available.

In this case, Mr Breen's wage reduction did not derive solely from contractual interpretation. It also arose from Prime Resources' unilateral method of estimating hours worked, the absence of consultation, and a factual dispute about whether Mr Breen had in fact worked the required hours. Those matters were capable of supporting a finding of unjustifiable disadvantage.

OUR VIEW

This decision reinforces a narrow application of section 103(3) of the Employment Relations Act 2000. Employers cannot avoid personal grievances simply by framing the action complained about as being based on contractual interpretation. Where the issue also relates to how the employer's action or decision was implemented or whether it was reasonable in the circumstances, the employee can choose to pursue the claim as a personal grievance and access the personal grievance remedies.

You can read the judgment here.

CULTURAL VALUES BECOME LEGAL OBLIGATIONS

In *Faitala and Vea v The Pacific Island Business Development Trust* [2026] NZEmpC 53, the Employment Court held that an employer's failure to adhere to Pasifika values, expressly incorporated into employment agreements, contributed to the employees' claims for unjustified dismissal and unjustified disadvantage.

Mr Faitala and Mrs Vea were employees of the Pacific Island Business Development Trust ("Trust"), a not-for-profit organisation operating within and for Pasifika communities. Their roles required cultural capability and alignment with Pasifika values, reflecting the Trust's principles of respect, family, community, reciprocity, and spirituality.

In 2023, the Trust commenced a restructuring process involving several roles, which impacted Mr Faitala's and Mrs Vea's employment.

Both employees engaged with the consultation process and sought further information. Mr Faitala raised concerns about the absence of supporting material, including an external report, and asked how staff would be supported. Mrs Vea requested additional time, reasons for the proposed changes to her role, and clarification about redeployment opportunities.

The Court accepted that the Trust's restructure rationale was substantively justified. However, it found the process was deficient because the Trust

failed to provide relevant information, did not meaningfully respond to the plaintiffs' questions, and did not properly consider redeployment as an alternative to dismissal.

It was relevant to the procedural flaws that the Trust's conduct did not adhere to the Pasifika values it had expressly incorporated into the employment relationship. Its failure to respond to Mr Faitala's queries, and its handling of Mrs Vea's interest in alternative roles before proceeding to termination, were inconsistent with the Pasifika values of reciprocity and respect.

The Court emphasised that, in a Pasifika workplace, those values should have been integral to the restructuring process itself.

OUR VIEW

This decision reinforces that where cultural values are expressly incorporated into employment agreements and/or policy, employers will be expected to adhere to them in practice. Those values may inform what a fair and reasonable process looks like, particularly in restructuring situations.

This case sits within an emerging line of case law recognising that tikanga or cultural frameworks can shape employer obligations. It is the first case that considers cultural values in a private sector context, suggesting these expectations are not limited to public or quasi-public employers.

You can read the judgment here.

Laws, Laws, Laws – an Employment Legislation Round-up

RECENTLY PASSED

LEGISLATION	DESCRIPTION	STATUS
Information Privacy Principle ("IPP") 3A	On 1 May 2026, a new IPP came into force, which requires all agencies which indirectly collect personal information to notify the individual that it is doing so, unless one of the listed exceptions apply. Indirect collection is when personal information is collected from someone other than the individual themselves.	The new IPP came into force on 1 May 2026, pursuant to the Privacy Amendment Act 2025.
KiwiSaver contribution update	The Taxation (Budget Measures) Act (No 2) 2025 introduced amendments to the KiwiSaver Act 2006 specifically increasing the default employee and employer contribution rate from 3% to 3.5% from 1 April 2026, and to 4% by 1 April 2028. Employees have the temporary option to remain on 3% contribution rates and remain matched at that rate by their employer.	The Taxation (Budget Measures) Act (No 2) 2025 received its royal assent on 29 May 2025, and the first rate increase (to 3.5%) took effect on 1 April 2026.

Employment Relations Amendment Act 2026	The Amendment Act introduced significant changes to the Employment Relations Act 2000, including: • providing greater certainty for contracting parties with the introduction of a "gateway" test; • strengthening the consideration of and accountability for the employee's behaviour in the personal grievance process; • introducing a threshold for unjustified dismissal personal grievances; and • removing the "30-day rule" for new employees where their role is covered by a collective agreement.	The Act came into force on 21 February 2026. More information can be found in our February 2026 StopPress.
Use of Biometric Information in New Zealand	The Privacy Commissioner sought public submissions on whether further regulations are necessary in respect of the use of biometric information in New Zealand, such as verifying people's identities online, border control, security, and policing and law enforcement. The Privacy Commissioner has now issued the Biometric Processing Privacy Code 2025, which was updated on 1 May 2026 to reflect the amendments to the Privacy Act 2020 (such as IPP3A).	The Code came into force on 3 November 2025, and employers already utilising biometrics have until 3 August 2026 to comply.

COMING UP

LEGISLATION	DESCRIPTION	STATUS
Employment Leave Bill	The Employment Leave Bill proposes to replace the Holidays Act 2003, introducing a new system for leave entitlements and payments. Key changes proposed to the leave regime include: • leave be accrued hourly, rather than in days or weeks; • the availability of sick, family violence, and bereavement leave from day one of employment; • the introduction of a "Leave Compensation Payment", which will 12.5% on each casual or overtime hour worked; • a new objective test to determine whether a public holiday is an otherwise working day, which considers whether an employee worked on that day in 7 of the last 13 weeks; and • a shift to pro-rata sick leave.	The Bill was introduced to Parliament on 9 March 2026, and passed its first reading on 12 March 2026. The Select Committee report is due on 13 July 2026. The intention is for the Bill to be passed by the end of 2026, following which there would be a two-year transition period before it would take effect. More information on the changes can be found in our March 2026 StopPress and on MBIE's website: here.

Modern Slavery Bill	On 10 February 2026, the National and Labour parties introduced the Modern Slavery Bill which requires certain organisations to report on the identification, mitigation, and remediation of modern slavery within operations and supply chains. Large public and private organisations (those with significant annual revenue) would be required to publish annual modern slavery statements, to be published on a register. The Bill also includes civil and criminal penalties for non-compliance or the provision of false information (including fines and liability for directors).	As the Bill has cross-party support, it bypassed the ballot process and passed its first reading on 29 April 2026. The Select Committee's report is due on 31 August 2026.
Health and Safety at Work Amendment Bill	On 9 February 2026, the Health and Safety at Work Amendment Bill was introduced to Parliament. The Bill intends to: • reduce unnecessary compliance costs; • increase certainty for businesses and organisations about their obligations; and • continue to reduce the incidence of workplace fatalities, injuries, and illnesses. The proposed amendments include the introduction of the following new defined terms: • "Small PCBU", being a business with under 20 workers; • "critical risks", being hazards that are likely to result in death, notifiable injury, incident, or illness, or an occupational disease, and which PCBUs are required to prioritise (listed in Schedule 1A); and • "scopes of duties" of Small PCBUs, whereby Small PCBUs only need to comply with particular provisions in relation to critical risks (including the primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers). The Bill also specifies that where an officer is also a worker, due diligence requirements only apply to their role as an officer.	The Bill passed its first reading on 12 February 2026. The Education and Workforce Select Committee report is due on 13 June 2026.
Crimes (Increased Penalties for Slavery Offences) Amendment Bill	The Crimes (Increased Penalties for Slavery Offences) Amendment Bill proposes to amend the Crimes Act 1961 to increase the maximum prison term and fine for slavery offences.	The Crimes (Increased Penalties for Slavery Offences) Amendment Bill passed its first reading on 17 December 2024, and the Select Committee's report was issued on 22 August 2025. The Bill is awaiting its second reading.

Public Service Amendment Bill	The Bill proposes to amend the provisions in the Public Service Act that mandate the sector prioritises diversity and inclusiveness. The Bill seeks to: • remove the Public Service Commissioner's duty to develop a workforce that reflects societal diversity; • repeal section 75 entirely, which mandates promoting diversity and inclusiveness in public service workplaces; and • exclude workforce diversity and inclusiveness from government workforce policy considerations..	The Bill passed its second reading on 10 February 2026, and the Committee of the Whole House reported it to the House on 10 March 2026. It is awaiting its third reading
Crimes (Increased Penalties for Slavery Offences) Amendment Bill	The Crimes (Increased Penalties for Slavery Offences) Amendment Bill proposes to amend the Crimes Act 1961 to increase the maximum prison term and fine for slavery offences.	The Bill passed its first reading on 17 December 2024, and the Select Committee's report was issued on 22 August 2025. The Bill is awaiting its second reading.
Employment Relations (Termination of Employment by Agreement) Amendment Bill	This Bill seeks to protect negotiations between an employer and an employee to terminate the employee's employment, whether or not there is a dispute on foot. The fact an exit offer is made by an employer would not constitute grounds for a personal grievance and evidence of the negotiations would be inadmissible, except in limited circumstances.	The Bill was postponed until further notice while is awaiting its second reading.
Employment Relations (Restraint of Trade) Amendment Bill	This Bill seeks to amend the law on restraint of trade clauses, including by prohibiting restraints of trade for low- and middle-income employees, requiring employers of higher income employees subject to a restraint of trade to compensate for the restraint, and to cap all restraints at 6 months in duration.	The Bill was postponed until further notice while awaiting its second reading.
Human Rights (Prohibition of Discrimination on Groups of Gender Identity or Expression and Variations of Sex Characteristics) Amendment Bill	This Member's Bill aims to uphold Te Tiriti O Waitangi by prohibiting discrimination against takatāpui and rainbow (LGBTIQ+) individuals or expression and variations of sex characteristics under the Human Rights Act 1993. This Bill would ensure that this community has increased human rights protections including the ability to take cases of the above nature to the Human Rights Commission.	The Bill has been postponed until further notice without having its first reading.

WHAT'S NEW

LEGISLATION	DESCRIPTION	STATUS
Employment dispute resolution process	The Government announced it is seeking feedback on the employment dispute resolution system, including experiences with employment advocates, how employment disputes are experienced in practice, and where improvements could be made.	Feedback can be provided until 31 July 2026.
Disability Support Services Bill	The Government has introduced the Disability Support Services Bill, which aims to provide a statutory framework for the operation of Disability Support Services. The Bill reverses the Supreme Court's decision in *Fleming v Attorney-General* [2025] NZSC 188, reported in our February 2026 newsletter, where family carers were found to be Crown employees.	The Bill was introduced on 18 May 2026 and passed its first reading on 21 May 2026. The Select Committee report is due on 13 August 2026.

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If you have any queries or you need advice on any of the matters raised in this Newsletter, please contact us.