



Legislation

This covers the major legal considerations that employers and employees need to be aware of

- A brief introduction to the employment law relevant to sheep and beef farming including:
 - Employment relations act
 - Wages protection act
 - Human rights act
 - Holidays act
 - Tenancy act
 - Minimum wages act
 - Equal pay act
 - Parental leave and employment protection act
 - KiwiSaver 2006
 - Privacy act

[Note: for complete legal advice relative to Employment matters please ensure to contact an HR Legal Professional]

1.1 Legal Responsibilities

It's the Law – Your obligations as an employer

Why this is important

The foundation of being a good employer is knowing and adhering to your legal rights and responsibilities. It is your best means of protection if an employment dispute occurs.

This fact sheet will cover:

A brief introduction to the employment law* relevant to sheep and beef farming including:

- Employment Relations Act
- Wages Protection Act
- Human Rights Act
- Holidays Act
- Tenancy Act
- Minimum Wages Act
- Equal Pay Act
- Parental Leave and Employment Protection Act
- KiwiSaver 2006
- Privacy Act

*other acts under employment law are Trade Unions Act 1908, Volunteers Employment Protection Act 1993, Protected Disclosures Act 2000, Accident Compensation Act 2001, Machinery Act 1950, Remuneration Authority Act 1977 and the Worksafe NZ Act 2013.

Please note: This Fact Sheet is a summary only and not an exhaustive legal reference. The law changes frequently and can be complicated. Should you have any employment-related problems, please seek expert advice.

Employment Relations Act 2000 (ERA)

The ERA took effect from 2 October 2000, replacing the Employment Contracts Act 1991. Any new or renegotiated employment agreements need to comply with the ERA's requirements. These agreements need to be negotiated and agreed upon by the employee and the employer before the employee commences work otherwise they are not valid. The main requirements are:

Dealing in "good faith"

The ultimate goal of the ERA is to build productive employment relationships by dealing with one another in good faith. At the most basic level, good faith is about telling the truth and each party being able to have trust and confidence in the other. The requirements of good faith recognise that both the employer and the employee have a role in making the employment relationship work.

Good faith is not about always saying yes and it does not mean the two sides have to agree, but both sides should get a fair hearing

Written employment agreements (see Employment Agreements Fact Sheet 1.2)

All new employees must have a written employment agreement. This includes all casual staff employed on farms, such as for lambing. All agreements are required to contain:

- The name of the employer and employee
- A description of the work to be performed
- An indication of where the work is to be performed
- An indication of the hours of work
- Wages or salary to be paid
- A plain language explanation of how employment problems will be resolved and the 90-day opportunity the employee has for raising those grievances once they have become aware of the grievance.
- An employment protection clause

If the employee is starting under a casual agreement, it is essential to discuss the nature of casual working conditions. This is not to be confused with a part-time worker. The conditions a casual worker must be aware of are as follows:

- There is no guarantee of work on a specific day
- The amount of work they will receive will fluctuate
- How they will be contacted regarding their working hours
- The casual employee is not obliged to make themselves available for work if asked
- Casual employees are entitled to holidays which are paid on top of their wage, in a "pay-as-you-go" fashion
- Casual employees are entitled to sick leave and bereavement leave after six months of starting work

For more information regarding casual employment agreements, see here:

<https://www.employment.govt.nz/starting-employment/who-is-an-employee/types-of-employee/>

Fixed term agreements

It is assumed that all agreements will run indefinitely unless there is a valid reason for them to be of a fixed term nature. Such reasons may be where project work finishes, where a temporary worker is filling in for a permanent employee on leave or where work is seasonal, e.g. lambing. An employer must be able to prove there is no longer a need for this role before dismissal. For example, another employee is not hired to do a similar role six weeks after the duration of the fixed term employment agreement.

A fixed term agreement may be for a fixed period (e.g. 6 weeks) or until a specific event happens (completion of docking). Either way the employer must put it in writing and make clear to the employee at the commencement of the agreement when and how the agreement will be terminated.

Opportunity to seek advice

Prior to employment, employees should be presented with a copy of the proposed agreement and allowed a fair and reasonable time to take the agreement away, study it and to seek advice. They should also be given the opportunity to negotiate the terms of the agreement. This must be completed before the employment agreement commences.

Trial Periods

New employees can enter a trial period of up to 90 of their first calendar days of employment. This allows employees to prove their suitability for the position to the employer whilst still being offered the minimum rights and entitlements of those employees not on a trial period. The conditions of the trial period are as follows:

- Needs to be agreed upon and signed before the employee's work commences. Failure to reach this will lead to an invalid trial period.
- To be agreed upon by both parties in good faith
- Employers must give the notice of dismissal according to the decided time frame within the employment agreement. Failure to adhere to this notice period will amount to an invalid dismissal and therefore the employment will continue
- The employee cannot bring a personal grievance for unjustified dismissal if the employer has given the correct amount of notice before dismissal. In the event that an employee is mistreated throughout the course of their employment, this can be brought forward as a personal grievance
- The employer is under no obligation to provide reasoning for dismissal if it is within the trial period but it is good practice to do so
- If no dismissal notice is given at the end of the trial period, the employment will continue

Useful Links

- https://www.hrinz.org.nz/Site/Resources/Knowledge_Base/Q-Z/Probationary_Periods.aspx
- <http://www.cab.org.nz/vat/eb/ea/Pages/Trialperiods.aspx>
- <https://www.employment.govt.nz/starting-employment/trial-and-probationary-periods/trial-periods/>

Minimum Wages Act 1983 (MWA)

The MWA stipulates minimum hourly wage rates for all employees. These rates are regularly updated by the government and can be found by calling:

- The Employment NZ phone line- 0800 20 90 20
- Federated Farmers of New Zealand (members only)- 0800 327 646

Note that there is no longer a minimum wage for youth and that there are provisions for a training wage to be paid to people who are in recognized industry training.

Employees must be paid at least this minimum rate for every hour they work. If employees are provided with board or lodging, a deduction can be made to a point where the effective hourly rate is up to 15% for board or 5% for lodging below the minimum.

Wages Protection Act 1983

An employer is required to pay wages in cash unless:

- The employee has provided written consent to be paid in another way
- The employee is absent from work at the time wages are normally paid.

The frequency of pay should be by agreement between employer and employee and at regular intervals. A midweek pay-day is recommended to ensure that direct credits are less likely to be affected by public holiday bank closures.

Unless a deduction is ordered by a court or for statutory purposes (such as income tax, child support or student loan payment) an employer can only make deductions from an employee's wages with their written consent. Typical deductions include rent, telephone and power.

Equal Pay Act 1972

An employer cannot differentiate in pay rates where the only difference between employees is their gender.

Human Rights Act 1993

An employer must not discriminate between people in hiring and firing or training and promotion based on race, colour, national or ethnic origin, gender or sexual orientation, marital or family status, employment status, age, religious belief, political opinion or if the employee has a disability.

Parental Leave and Employment Protection Act 1987

It is illegal to either dismiss or discriminate against an employee on grounds of pregnancy or for taking parental leave under the Act, although there are limited grounds for dismissal where it is unreasonable to hold the job open. This act is subject to change under the new government and is expected to update in April 2018. See here for updates and more information of rights and entitlements under this act: <https://www.employment.govt.nz/leave-and-holidays/parental-leave/>

Holidays Act 2003

Annual leave

At the end of each 12 months of employment with any one employer, the employee is entitled to four weeks of annual leave. While on leave the employee is paid for the time that they would normally be at work.

Two of those weeks must be allowed as uninterrupted leave if required. Technically the employer is not required to allow holidays until such time as the 12 months is up, however leave is accumulated on a daily basis and may be taken in advance if the employer allows. Where possible, the timing of holidays should be by negotiation but the employer has the final say.

Holiday allowances are accrued on a pro-rata basis throughout the year. At the end of the employment agreement the employer must pay the employee for any holidays owed to them.

Different workplaces will have different policies surrounding their annual leave entitlements. Ensure that your policies remain consistent to avoid confusion and to reinforce equal treatment of employees.

Defining the working week and leave entitlements

The working week varies for different staff depending on their rostered time off. The amount of paid annual leave they are entitled to is calculated on the average working week of the employee, multiplied by four weeks.

To calculate annual holiday entitlements for staff who work rostered time off use the following process:

Process	Example 1	Example 2
1. Take the employee's total scheduled leave (weekends off) for the year and divide this number by 52 (weeks in a year)	Roster of 6 days on and 2 days off = 90 days' scheduled leave 90 days divided by 52 weeks = 1.73	Roster every 2nd weekend off = 52 days' scheduled leave 52 days divided by 52 weeks = 1
2. Subtract the above result from 7 days in a week to find the average number of paid days per week	7 days in a week minus 1.73 = 5.27 days in an average working week	7 days minus 1 = 6 days in an average working week
3. Multiply this number by 4 (4 weeks leave entitlement) to get the number of paid annual leave days per year the employee is entitled to	5.27 x 4 weeks = 21.08 (or 21) days of paid annual leave entitlement per year	6 x 4 weeks = 24 days of paid annual leave entitlement per year

Note: This formula is only for use with salaried staff on set rosters. Casual employees can receive their holiday entitlement pay on a 'pay as you go' basis. This should be explicitly detailed in their employment agreement and the amount to be paid must be at least 8% of the employee's gross earnings and must be shown separately on the employee's pay slip.

Holiday records must be kept for six (6) years.

Public holidays

Employees are also entitled to 11 paid public holidays on pay if they fall on days the employee would normally work. Those days are:

- New Year's Day
- January 2nd
- Provincial Anniversary Day
- Waitangi Day
- Good Friday
- Easter Monday
- ANZAC Day
- Queen's Birthday
- Labour Day
- Christmas Day
- Boxing Day.

On a public holiday an employee must receive a full day off, not just the time after feeding out. If an employee is required to work on any public holiday they are entitled to an alternative day off, which is a full day off at another mutually agreed time. They are also entitled to payment at time-and-a-half for the hours actually worked on the public holiday. Any casual staff employed on a statutory holiday must be paid at time-and-a-half for all the hours they work. An employer and employee cannot agree to transfer a public holiday from the day listed in the Act to another day, for example, you cannot agree to attach public holidays to weekends.

Sick leave

After six months with an employer, an employee is entitled to five days' sick leave on pay and a subsequent five days per 12-month period thereafter. An employee can also take sick leave when they are required to stay at home to care for a spouse or another dependent person. This group includes the employee's spouse, parent, child, sibling, grandparent, grandchild or the spouse's parent and any other person agreed to be a dependant. Unused sick leave under the Holidays Act 2003 is carried over with a maximum accumulation of 20 days including the current entitlement. Sick leave in advance can be offered to employees that have not completed 6 months of employment if agreed upon by both the employer and the employee.

Bereavement leave

After six months with an employer, the Holidays Act 2003 allows employees up to three days' paid leave for the death of an immediate family member. In the case of a multiple fatality, the employee is entitled to three days' bereavement leave in respect to each death. Bereavement leave does not have to be taken immediately, nor on consecutive days.

In the event of a death outside the immediate family that causes a person to suffer a bereavement, an employee is entitled to one day of paid leave if the employer accepts that the employee has suffered a bereavement.

Tenancy Act 1986

Where a farm owner or leaseholder provides housing for their staff they also have a dual role as landlord through a service tenancy (see Accommodation Fact Sheet 1.4). A service tenancy differs from a standard tenancy arrangement, in that where an employment agreement ends, 14 days' notice of eviction can be given rather than 90 days. Where an employment agreement is terminated notice should also be given terminating the rental agreement. They are not one and the same!

As a landlord an employer must ensure that the dwelling is of a liveable standard and meets the requirements of the Residential Tenancy Act and the Health and Safety Act. In the case of a lease agreement, it is the leaseholder who is responsible for meeting the required standards for their employee. Any costs incurred by the leaseholder in doing so must then be sought from the owner of the dwelling in accordance with their lease agreement, as the owner has the same obligations to the leaseholder.

Legal Responsibilities and IRD

The IRD has a wide-ranging interest in employment agreements and especially in the way in which staff are remunerated. Some of the duties of an employer include:

- Registration as an employer
- Recognition of employee v.s. contractor and ensuring the correct relationship is applied- see <https://www.employment.govt.nz/starting-employment/who-is-an-employee/difference-between-a-self-employed-contractor-and-an-employee/> for an in-depth explanation of the differences
- Levying of PAYE, child support and student loan payments
- Payment of Fringe Benefit Tax on any "perks" to employees
- Charging staff a fair market rental for accommodation.

For further information or assistance contact the IRD via www.ird.govt.nz or 0800 775 247.

KiwiSaver Act 2006

Your main roles in KiwiSaver are to:

- Check whether new employees are eligible to join KiwiSaver
- Check whether new employees should be automatically enrolled.
- Give the KiwiSaver employee information pack (KS3) to:
 - new employees who qualify for automatic enrolment, and
 - existing employees who want to opt in
- Provide information to the IRD about:
 - all new employees who qualify for automatic enrolment, and
 - eligible employees who want to opt in to KiwiSaver
- Deduct KiwiSaver contributions and make compulsory employer contributions at the correct rate and forward them to the IRD by the due date along with your PAYE payments
- Once KiwiSaver deductions are subtracted from a worker's pay, ensure the employee is not learning less than minimum wage
- Act on opt-out and contributions holiday requests
- Stop or start deductions when the IRD advise you to
- Contact the IRD when you require more KiwiSaver employee information packs (KS3).

More information

The KiwiSaver and IRD websites contain all the information you need to know about your obligations as an employer and how to go about making payments.

Useful links

www.ird.govt.nz/kiwisaver/employers/

www.kiwisaver.govt.nz

The Privacy Act 1993

Personal information is, by its nature, personal and often sensitive. The Privacy Act sets out principles surrounding the handling and management of personal information, to avoid upsetting and damaging misuse.

The Privacy Act became law in 1993. It is concerned with the handling and management of personal information and aims to encourage the development of good practice. Every employer must have a 'privacy officer' who is familiar with the main requirements of the act. On-farm, this would likely be the owner or manager.

Meeting the requirements of the Privacy Act

The Privacy Act contains a number of principles which should be followed at all times when dealing with personal information. In summary, these are:

1.	Only collect information you need, ensuring that the information you are requiring is relevant to the proper and safe performance of the job.
2.	Collect information from the person concerned unless it is available publicly
3.	Tell the person what information is being collected about them and why and ensure you have their written consent to do so. An easy way to do this is to include a request in the application form.
4.	Don't put pressure on people to provide you with personal information. For example, it is against the law to make an employee reveal their full criminal record unless the nature of the work specifically requires it
5.	Store all personal information securely
6.	Give people access to their personal information and allow them to correct it if necessary. If you refuse to show someone their personal information, tell them why
7.	Make sure that personal information is accurate before using it
8.	Don't keep information for longer than you realistically need it
9.	Don't use information collected for one purpose for anything else, unless absolutely necessary
10.	Don't disclose other people's personal information without good reason. You wouldn't want it to happen to you.

Useful websites

- www.ema.co.nz (information for employers - membership required)
- www.privacy.org.nz (Office of the Privacy Commissioner)
- <https://www.privacy.org.nz/the-privacy-act-and-codes/privacy-act-and-codes-introduction> (on-line version of the Privacy Act 1993).
- <https://www.employment.govt.nz/starting-employment/hiring/selecting-and-appointing/>

Legal Responsibilities and ACC

Under the Accident Compensation Act employers must pay a levy from their business to fund ACC for work-related accidents. In addition, they must also pay a levy for each employee based on their earnings to cover the employee for non-work related accidents.

What are the benefits to me?

- Abiding by the law surrounding the employment relationship means that you will limit your exposure to a potentially costly action surrounding breach of agreement or a personal grievance.
- The sheep and beef farm labour market is very competitive and compliance will provide an advantage in attracting staff by demonstrating that you are a professional employer and provide a safe and healthy work environment.
- Discussing these issues with an employee before they start work with you will help to clarify expectations around the job, increasing the likelihood that you employ the right person for the role.

What do I do next?

- If you need to know more contact the appropriate group as listed below
- Ensure that all practices on your farm are compliant
- Review compliance annually as the law changes on a regular basis
- Seek legal advice if required.

Useful references

Further information can be obtained from the following sources:

Employment New Zealand 0800 20 90 20 (www.government.govt.nz)

Employment NZ is part the Ministry of Business, Innovation and Employment which offers information that helps understand the rights and entitlements of employees and employers. There is a freephone help line available.

Inland Revenue, 0800 775 247 (www.ird.govt.nz)

The IRD website contains information on compliance with taxation law including access to a wide range of information in the "library" section. The freephone help line also offers phone-based advice.

Federated Farmers of New Zealand, (members only) 0800 327 646 (www.fedfarm.org.nz)

Federated Farmers provides a range of employment-related services to members, including legal and practical employment advice and agreements.

- Accident Compensation Corporation (ACC) (www.acc.co.nz)
The ACC website provides contacts and information for employers and employees.
- **New Zealand Employment Law Guide**, Rudman, R., (2007), CCH New Zealand Ltd, pp408, ISBN: 978- 0-86475-698-5.

Useful links

Ministry of Business, Innovation and Employment:

Minimum Employment Rights:

<https://www.employment.govt.nz/search/SearchForm?Search=minimum+employment+rights>

Pay: <https://www.employment.govt.nz/search//SearchForm?Search=pay>

Holidays and Leave:

<https://www.employment.govt.nz/search//SearchForm?Search=Holidays+and+leave>

Online tool to calculate entitlement and pay for public holidays:

<https://www.employment.govt.nz/leave-and-holidays/calculating-payments-for-leave-and-holidays/>

Parental Leave: <https://www.employment.govt.nz/search//SearchForm?Search=parental+leave>



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