

## Employment law workshop: supplementary information

Below is supplementary information following on from the Employment Law Workshop held in Cambridge on 8 September, relating to paid rest breaks and piece rates, zero-hours contracts, and payment of public/statutory holidays for casual staff & how to calculate them.

### 1. Paid Rest Breaks and Piece Rates

There is no easy way around these issues.

The Labour Inspectorate is continuing to visit and inspect horticulture businesses, and employers therefore need to put themselves in the best possible position to ensure they do not get problems from the Inspectorate.

One possible way around the issues is to set a rate of pay above the minimum wage for all work undertaken, pay that rate, and pay a bonus for speedy, effective work. The amount of that bonus can be included in the employment agreement, or made known to workers as an incentive. This is very similar to piece rates, but without the need to top up to the minimum wage and pay for rest breaks.

If piece rates are paid, then it becomes more complicated. Rest breaks have to be separately paid on a time basis, but based on what the worker is being paid as a piece rate; this is complicated. When the Labour Inspectorate visits, you will need to establish that you have paid this correctly. This is because piece rate workers do not earn when they take their paid breaks, and so their pay slips must show that they are paid for these rest breaks. This payment cannot be less than the contracted rate the employee earns, and can be an average of what the employee has earned during the current pay period.

### 2. Zero Hour Contracts

Zero hour contracts are no longer permitted. HortNZ has developed a standard casual worker contract that deals with the zero hour issue. It is free to use, and can be downloaded from the HortNZ [website](#).

**The following wording could be used in your employment agreement:**

#### HOURS OF WORK

The hours of work are based on the availability of work for the employer's horticulture operation and are up to 40 hours per week and up to 10 hours per day worked over no more than 6 days per week Monday to Sunday inclusive. Hours in excess of these will be by agreement between the employer and employee.

The employer will notify the employee before the commencement of each week the days that the employee is to work for the next week. The minimum hours of employment will not be less than 2 hours work per day for those notified days of work. The employer will give the employee as much notice as possible if due to weather conditions the day's work is delayed, finishes early or the day's work has to be cancelled and pay the employee for a minimum of 2 hours work whether or not the employee has worked for 2 hours that day.

If the employer cancels the day's work without telling the employee before the start of the day's work the employee will be paid as if they had worked a normal day.

## BREAKS

The employee is entitled to paid rest breaks of 10 minutes duration and unpaid meal breaks. Breaks will be taken at suitable times during the employee's work. The employer will offer reasonable compensation if breaks cannot reasonably be given or where the employee is employed on a piece work basis.

### **3. Payment of public/ statutory holidays for casual staff & how to calculate:**

Payment of public and statutory holidays for casual staff must be calculated using average daily pay.

Average daily pay is a daily average of the employee's gross earnings over the past 52 weeks. This is worked out by:

- adding up the employee's gross earnings for the period, and
- dividing this by the number of whole or part days the employee either worked or was on paid leave or holidays during that period.

If the worker has only just started work and the public holiday is a day that would normally be worked, then payment **must** be made, and be made on what the expected average wages will be. If you elect not to pay the worker and you are subsequently investigated by the Labour Inspectorate, the Inspectorate will use all the weeks that the worker has worked at the time of the investigation to work out whether you are in breach of the law. A cautious approach is therefore strongly recommended.

If the employee is working on the public holiday, an employer should always be able to work out their relevant daily pay and should never have to use average daily pay.

You can see more detail of public/statutory holiday explanations at the link below.

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

If you have any further questions please contact [Jerf van Beek](#).

To register your interest in future workshops please email [Eve Williams](#).