

The minimum you can do

The New Zealand Government announced the minimum wage rate is to increase from 1 April 2017. The new rate for all adult employees will rise by \$0.50 to \$15.75 per hour.

The starting-out rate and training minimum wage rate is to increase from \$12.20 to \$12.60 per hour. These rates only apply to workers aged between 16 and 19 years of age who are under a contract of training, instruction or examination for the purpose of becoming qualified in the occupation to which their training relates, or who have been paid a social security benefit for a certain period of time. The starting-out rate only applies for a period of up to six months, after which employees must be paid the minimum adult wage rate.

The increase in minimum wage rate will have implications for employers who currently pay employees the minimum rate or close to it.

Effect on KiwiSaver employer contributions

An Employment Court decision in 2013 made clear that an employer can only deduct the employer's compulsory KiwiSaver contribution from an employee's gross wages when such a deduction will not take the employee's pay below the minimum wage¹. Even if an employment agreement states the employee and employer agree the employer's KiwiSaver contributions are included in an employees' gross pay, if this breaches the Minimum Wage Act 1983, that contractual term will be unenforceable and the employer will be liable to the employee for a shortfall in wages, as well as facing potential penalties.

Salaried employees and piece-rates

Employers should be aware the Minimum Wage Act 1983 applies to salaried workers. If a salaried employee divides their pay by the number of hours in a pay period and this rate works out to be lower than the minimum wage rate, the employer is in breach of the Act.

The same applies to employees on piece-rates; the amount paid for each unit of work must meet the minimum wage when the hours actually worked by the employee are accounted for.

Employment benefits

Employees must be paid the minimum wage rate in money. It cannot be adjusted to factor non-cash benefits and allowances, such as the provision of accommodation or goods and services related to employment.

However, an employer and employee may agree a value of accommodation provided by an employer is to be deducted from an employees' pay. This should be set out in writing in a separate accommodation agreement and agreed by the parties in advance of any deductions

¹ *Faitala v Terranova Homes & Care Ltd.*
25 January 2017

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being made from an employee's pay. Any accommodation related to employment must comply with the Residential Tenancies Act 1986.

Similarly, the parties may agree the provision of non-cash benefits in the form of goods and services can be deducted from an employee's wages. Such agreements should always be in writing.

Employment obligations – time for a warrant of fitness?

The Government is required to review the minimum wage annually. Employers should take this opportunity to review their own obligations in relation to their employees' remuneration and any contractual obligations to review an employee's performance.

1 April 2017 is also the [deadline for employers to ensure they have compliant employment agreements in place](#) as a result of the minimum standards legislation that came into force on 1 April last year.

If your employment agreements could do with an annual inspection, and for all employment related queries, please get in touch with a member of our [employment team](#).