

Best practice employment guidance for farm employers

Employment agreements, minimum wage and accommodation

It can be challenging understanding what you can and cannot do when it comes to complying with the relevant legislation when employing staff on farm.

DairyNZ and Federated Farmers have developed this best practice guideline to help you get it right.

This guideline answers the following questions:

- Why do my employees' need an employment agreement and what should it include?
- What are the key components of a remuneration package?
- What is the best way to pay employees if you provide an accommodation option as part of their employment?
- How do you ensure your employees are receiving at least the minimum wage for every hour they work?
- Can non-cash benefits be included in an employee's remuneration for the purposes of calculating the minimum wage?
- Can the accommodation you provide to your employee be included in their remuneration for the purposes of calculating the minimum wage?
- What do you do if you provide accommodation to an employee as part of their employment?
- How do you calculate holiday pay?

This guideline sits alongside the Ministry of Business, Innovation and Employment (MBIE) Labour Inspectorate's *Position Statement – the Minimum Wage and Employment Agreements in the Agricultural Industry*.



EMPLOYMENT AGREEMENTS

It is a legal requirement to have written employment agreements in place for all your employees – including casual, fixed term, permanent part time and permanent full time. It is important that both you and your employee sign the agreement.

What does an employment agreement need to include?

It is mandatory for individual employment agreements to include:

- the parties involved in the agreement, 'the Employer' and 'the Employee'
- the position title
- the position job description
- place of work - if the employee will be working on multiple farms then each of these farms need to be specified
- working hours - you will need to specify if your farm operates on a roster system or if your farm operates on a fixed number of hours per week
- type of pay - wages or annual salary
- pay period - daily, weekly, fortnightly, or monthly
- payment method - bank account number/cheque/cash
- payment for work on public holidays
- rights in contracting out situations
- restructuring due to transfer
- negotiations with new employer
- no transfer or employment
- resolving employment relationships problems.

When drawing up an employment agreement it is a good idea to seek legal advice. If you have an employment related question Federated Farmers offers its members free legal advice via its 0800 line (0800 327 646).



TIP: DairyNZ and Federated Farmers have a range of employment resources available:

- DairyNZ's Quickstart Recruitment kit
- DairyNZ's HR Toolkit
- DairyNZ's Training and Development Resources
- Federated Farmers' New Employer's Pack
- Federated Farmers' Individual Employment Agreements
- Federated Farmers' Remuneration Report



REMUNERATION

What are the key components of a remuneration package?

The gross remuneration is a monetary value for agreed hours worked. Employers and employees may agree to additions to their base salary/wages in the form of incentives and bonuses. Employers may also choose to offer other benefits as part of the total employment package (also known as total package value).

The total employment package can also include non-cash benefits.

Accommodation should be treated as a deduction from the total gross remuneration after PAYE, rather than a non-cash benefit which forms part of the total employment package. Refer to the section below on how to do this.

Non-cash benefits can include:

- power
- phone
- meat / food
- firewood
- vehicle / transport private use
- training / education.

For each non-cash benefit you need to assign a value – usually this involves investigating what's fair and then using your discretion. You must pay tax on non-cash benefits. This is called Fringe Benefit Tax (FBT).

Talk to your accountant about how to do this or visit Inland Revenue's website.

What is the best way to pay employees if you provide an accommodation option as part of their employment?

In a lot of situations farmers provide their employees with accommodation as part of their employment. The value of the accommodation (rent) should form part of the employee's gross salary or wages. This means:

- you and your employee need to agree on their gross salary/wages, this includes the value of the accommodation
- the agreed gross salary/wages needs to be recorded in the employment agreement
- you and your employee need to agree on the rent that will be paid
- the agreed rent needs to be recorded in a tenancy agreement (as an attachment to the employment agreement or outside the employment agreement)
- both parties need to agree in writing (you must have your employees signed consent) to the rent being deducted from the employee's salary after the deduction of PAYE
- rent will be deducted out of the employee's salary or wages after PAYE

DairyNZ and Federated Farmers have developed a calculator to help you do this.



MINIMUM WAGE

All employees must be paid at least the minimum wage for every hour they work. This applies to employees who are paid by the hour and employees who receive an annual salary. You cannot average an employee's salary or wages over a season, averaging is capped at a fortnight. You therefore must ensure that your employees' receive at least the minimum wage for every hour they work within each pay period but capped at a fortnight.

For example if an employee is working 80 hours in a fortnight their gross salary must be at least:

- 80x the minimum hourly wage.

How do you ensure employees are receiving at least the minimum wage for every hour they work?

It is a legal requirement to keep time, wage and holiday records for all employees, regardless of how much they earn.

The time and wage records must include:

- the employee's name
- the employee's age, if under 20 years
- the employee's postal address
- the type of work the employee undertakes
- the type of employment agreement – individual or collective (a collective agreement applies if the employee has union representation)
- the title, expiry date and employee classification if a collective agreement is in place
- the hours worked each day, including start time, finish time and any non-paid breaks taken, and days of employment in each pay period
- the wages (by the hour or via a salary) paid each pay day and the method of calculation
- details of employment relations leave taken.

The simplest way to do this is to keep a time sheet.

DairyNZ and Federated Farmers have time sheets available.

Can non-cash benefits be included in an employee's remuneration for the purposes of calculating the minimum wage?

Non-cash benefits, such as firewood, food, wet weather gear etc. cannot be included in an employee's remuneration for the purposes of calculating the minimum wage.

However, if the benefits are paid as cash (cash-benefits) and then deducted after PAYE, they can be included in the remuneration for the purposes of calculating the minimum wage. Caution should be taken if you are looking at including additional benefits other than accommodation in your employee's cash remuneration. It is important that the majority of your employee's wages or salary is made up of cash.

Can the accommodation you provide to your employee be included in their remuneration for the purposes of calculating the minimum wage?

Accommodation can be included in an employee's remuneration for the purposes of calculating the minimum wage provided. It simply forms part of the employee's gross salary and is therefore included for the purposes of calculating the minimum wage.

Where there is no specific agreement as to the cost of accommodation an employer can deduct a percentage of the employee's wages for board and lodging calculated at the relevant minimum wage rate of 15% for board or 5% for lodging only.

ACCOMMODATION

It is common practice in the agricultural sector for employers to provide their employee's with accommodation.

Some farmers provide accommodation to their employees as a fringe tax benefit, it is better to charge your employee rent and have a tenancy agreement in place, this protects you as the landlord and your employee as the tenant if things turn sour. You must charge the market rent for your area.

The Department of Building and Housing has a market rent tool which provides the average rents charged for different types of accommodation throughout New Zealand.

What do you do if you provide accommodation to an employee as part of their employment?

If you are providing accommodation to your employee as an agreed part of their employment package you need to have a tenancy agreement in place. This type of tenancy arrangement is called a Service Tenancy.

A Service Tenancy is where an employer provides an employee with a property to live in during the period of their employment. The tenancy usually ends when the employment ends and the employer has given the employee two weeks' notice to quit the house.

While legally tenancy agreements can sit within the employment agreement, MBIE's preference is for the two to be separated, so that a tenancy issue is not a term of employment and can be resolved at the Tenancy Tribunal. This enables the employee to make the choice to seek alternative accommodation or opt out of the accommodation deduction agreement without having to amend the employment agreement.

The tenancy agreement can be an appendix or a schedule in the employment agreement.

A Service Tenancy covers all types of tenancy arrangements, including:

- Fixed Term Residential Tenancy - A Fixed Term Residential Tenancy finishes on a specific date set down in the written tenancy agreement.
- Periodic Tenancy - A Periodic tenancy is any tenancy that is not for a specific term. This is the most common form of tenancy. It continues until the landlord or tenant gives the appropriate notice to end it.
- Boarding House Tenancy - A boarding house is a residential premise that contains one or more boarding rooms, with facilities for communal use by the tenants, and is intended to be occupied by at least six tenants at any one time.

Under the Residential Tenancies Act all tenancy agreements must include:

- the names and contact addresses of the landlord and tenant
- the address of the property
- the date the tenancy agreement is signed
- the date the tenancy is to begin
- addresses for service for both the landlord and the tenant.
- whether the tenant is under the age of 18
- the rent amount and frequency of payments
- the amount of any bond
- the place or bank account number where the rent is to be paid
- any fees (letting agent or solicitors) to be paid (if applicable)
- a list of any chattels (like furniture, curtains and other fittings) provided by the landlord
- the type of tenancy and the date the tenancy will end if it is a fixed-term tenancy.



TIP: It is also a good idea to get your employee's to pay bond. This means if something goes wrong and your employee damages the accommodation or leaves unexpectedly you can cover the costs. Bond is usually four weeks rent in advance. You will need to lodge the bond with the Department of Building and Housing via a Bond lodgement form, which you and your employee will need to fill in.

HOLIDAY PAY

It is a legal requirement to keep holiday and wage records for all employees.

How do you calculate holiday pay?

Holiday pay must be calculated on an employee's total remuneration before any deductions have been made.

Holiday and leave records must include:

- the name of the employee
- the date employment commenced
- the days on which an employee works, if the information is relevant to entitlement or payment under the Holidays Act 2003
- the date the employee last became entitled to annual holidays
- the employee's current entitlement to annual holidays
- the employee's current entitlement to sick leave
- the dates any annual holiday, sick or bereavement leave was taken
- the amount of payment for any annual holidays, sick leave and bereavement leave taken
- the portion of any annual holidays that have been paid out in each entitlement year
- the date and amount of payment, in each entitlement year, for any annual holidays paid out
- the dates of and payment for any public holiday worked
- the number of hours worked on any public holiday
- the day or part of any public holiday agreed to be transferred, and the calendar day or period of 24 hours to which it has been transferred
- the date on which the employee became entitled to any alternative holiday for any public holiday worked
- the dates and payment of any public holiday or alternative holiday on which the employee did not work, but for which the employee had an entitlement to payment
- the cash value of board and lodgings provided
- the date of termination
- the amount of pay for holidays on termination.



TIP: The Ministry of Business, Innovation and Employment has a holiday and leave tool. Alternatively DairyNZ provides a factsheet to help you work out your employee's holiday pay entitlements.

FOR MORE INFORMATION CONTACT:

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