

TAX TALK

CONSUMER PROTECTION



**Government Improving Protections for Consumers and Workers when businesses fail**

On Monday 4 November 2019, Minister Kris Faafoi released a statement announcing changes that will favourably affect consumers and workers of failed businesses.

Changes to insolvency law announced by the Government on 4 November will include requirements to honour up to 50 per cent of the value of gift cards or vouchers held by consumers.

"When a business is insolvent, these consumers are often left out of pocket. We are changing the law to require businesses that go into receivership, administration or liquidation but continue to trade, to honour at least 50 percent of the value of the gift card or voucher." Minister Faafoi says.

The Government is also improving protections for other creditors, including employees.

"We're extending the scope of the entitlements for employees of failed companies, so that both payments in lieu of notice and long service leave will be protected in the same way as wages."

Another change involves making insolvency law fairer for businesses that provide goods and services to failed companies in good faith.

"Right now, the law allows liquidators to reverse transactions made by a company up to two years before they are put into liquidation."

Kris Faafoi says this is too long a period for any creditor to be uncertain about whether an amount they received in good faith will have to be recovered, sometimes putting their own financial situation at risk.

"We're going to improve commercial confidence by reducing the 'claw-back' period to six months. However, I've also concluded that two years is not long enough for creditors who have a close connection with a director of the failed company. So we'll be increasing the claw-back period from two years to four years for 'related party' creditors."

Most of these changes were recommended by the Insolvency Working Group in a report published in 2017, and will be included in a future Insolvency Law Reform Bill.

"I want to express my appreciation to the Insolvency Working Group for their recommendations. This important work provided the foundation for the reforms I'm announcing" Kris Faafoi said.

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# Court Cases for your Interest

## Unsafe work at height can have devastating consequences

WorkSafe is reminding businesses of the potentially devastating consequences unsafe work at height can cause, following the sentencing of building company at the Whangarei District Court last week.

The construction company was ordered to pay total reparations of \$151,578.21 to a worker who was left permanently paralysed from the chest down after falling approximately two metres and landing on his head.

During the March 2018 incident, a worker was installing attic trusses in the garage of a residential property in Whangarei, when a bundle of upright standing trusses came loose and fell towards the worker. The trusses struck the aluminium plank the worker was standing on causing him to fall to the ground.

WorkSafe's Chief Inspector Hayden Mander said the company had failed to ensure appropriate controls were in place for the safe installation of the attic trusses.

"WorkSafe's investigation into the incident found that the company had identified the hazard of working at height and the risk it posed of serious injury or death, but did not provide enough details of the equipment required to safely carry out the installation.

"The hazards and risks associated with working at height are well known and controls to manage these risks are readily available"

"This is a reminder that even a fall from a height of less than two metres can have devastating consequences."

## \$450,000 for "Inexplicable and Heinous" Treatment of Hamilton Liquor store Employees

A Husband and wife who owned two Liquor stores in Hamilton have been ordered to pay a record \$200,000 in penalties for serious employment law breaches. This is in addition to \$250,470 they already repaid to six former employees for minimum wage and holiday pay arrears.

The six employees worked at the stores between 2010 and 2017. They were paid between \$8 and \$11 an hour, which was well below the minimum wage in any given year. One employee alone was compensated \$106,076 for seven years of underpayments.

Some of them worked more than 60-70 hours per week – including on public holidays. They had not been provided with any sick leave, holiday pay or public holiday entitlements. Where they took time off, they were either not paid or required to return the money to their employer or make up the time they were away by working for free.

The employers also failed to keep accurate employment records which the Court saw as an attempt to cover up their abuse. All employees in question were migrant workers from India on temporary visas.

The Court imposed penalties of \$200,000 to be paid immediately. Following the Labour Inspectorate's submissions, \$80,000 of this will be paid as compensation to the workers for the mental and emotional hardships they endured at the hands of their employers. Failure to comply with these Court orders can lead to imprisonment.

The Court heard the husband & Wife have sold the two liquor stores and do not propose becoming employers again.

"This case sends a clear message that employers won't get away with taking advantage of vulnerable workers for their own gain," says Labour Inspectorate Regional Manager Callum McMillan.

"Beyond that, it sends a message to all franchisors that they risk having their brand name marred unless they take steps to routinely monitor compliance with employment laws within their franchise group to prevent worker exploitation.

"It's disappointing that exploitation such as this has occurred in a well-known franchise. There is a growing demand in New Zealand and worldwide, for corporations to be ethical and accountable in their practices, which extends beyond direct legal obligations. This means their profits cannot be at the expense of frontline staff in their franchises or in their supply chains."

The Judge commended the Labour Inspector who worked on the case for her forensic research to uncover the extent of the breaches and gather evidence that left the employers no choice but to concede and repay the arrears owed to workers. "Our inspectors use every means available to hold employers to account and seek justice for employees. However, employees must be willing to come forward with information to make this justice possible," Mr McMillan says.

MBIE encourages anyone concerned about the employment situation of themselves or someone they know to call its contact centre on 0800 20 90 20, where their concerns will be handled in a safe environment.



## WEB SOLUTIONS

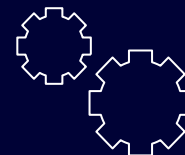
### More on scammers

Beware scammers posing as Inland Revenue. Often the sender's email address looks as though it has originated at the IRD. The department is not going to provide you with a link to click on. If you see this in an "IRD email" it is a very sure sign you are looking at a scam. Don't click on it.



## PROHUB SOLUTIONS

Are you effectively managing all of your sales enquiries? Do you have a system to record all of your potential sales leads? PROHUB CRM is designed to handle all customer enquiries and compile them in one database. Each enquiry is allocated to a team member for follow-up at the appropriate date. This ensures all potential sales are followed up and you don't miss out on critical sales opportunities. Contact us today for more information on how this program could help your business prosper.



## TAX SOLUTIONS

### Tax on crypto-currencies

Inland Revenue is giving a lot of thought to taxation issues, which affect crypto-currencies.

They see these as property and not currency. Therefore, capital gains and losses from fluctuations in value would not apply.

However, if the currency is bought for the purpose of disposal, the profits made from selling it would be taxable.

What if you made a loss, would you be able to claim this? You would need to be able to prove you really did buy the currency for the purpose of selling it at a profit. A series of short-term transactions would suggest this, particularly if you had already declared profits to the tax department.



# Migrant workers: Getting visa applications right

If you're hiring someone from overseas, they'll need to apply for a visa. Here are six tips for employers to speed up the process.

Overseas workers can be a great asset by adding new skills and perspectives to your business. But migrant workers need to apply for a visa to be able to work in New Zealand. As their potential employer, there are ways you can help your migrant worker through the visa application process.

Over the next eighteen months, Immigration New Zealand will be making changes to streamline the migrant visa process. But if you're looking to hire a migrant in the immediate future, these tips can help get applications approved faster, so your new employee can start as soon as possible and on the right foot.

## Employment agreement with all the right details

To apply for most common visas, your migrant worker will need a signed offer of employment and a copy of the proposed employment agreement. Key information often missed when applying includes:

- correct legal name of the business
- name and address of the worker
- hours of work
- the rate of pay (hourly or annual salary)
- whether the role is fixed term or permanent – if the role is fixed term, you'll need to provide a genuine business reason why.

## Minimum 30 hours a week

To qualify for a work visa, your migrant worker will need to be working at least 30 hours a week. This should be noted in the employment agreement. If the hours of work fluctuate, eg because of weather, the employee will still need to be paid for at least 30 hours a week.

## Complete job description

Just like employment agreements, if you're missing information in the job description, this could slow down the visa application process. Be sure to include the following:

- job title

- location of employment
- tasks and responsibilities
- skills, qualifications and experience required.

## Proof you tried to hire a New Zealander

If the person you want to hire is applying for an Essential Skills work visa and doesn't meet the criteria of one of the skill shortage lists, you'll need to show that you tried and failed to find a New Zealander to fill the role. Advertising for a role should be:

- recent, eg within the last three months
- at least two weeks (can be one week for certain ANZSCO skill levels – more on this below)
- widely circulated, eg using TradeMe or Seek (social media alone isn't enough)
- relevant to the position, ie don't include any skills not required for the role.

## Correct ANZSCO code

ANZSCO stands for Australia and New Zealand Standard Classification of Occupations. Immigration New Zealand uses ANZSCO codes to classify and assess the skill level of jobs. If your migrant worker is applying for an Essential Skills work visa, you need to find the ANZSCO code that best describes the role. You can use the Skill Shortage list checker to find the ANZSCO code that is right for the role.

## Skills match report

As well as an ANZSCO code, each role has an ANZSCO skill level between one (high-skilled) and five (low-skilled). If the Essential Skills work visa role is skill level four or five, you'll need to advertise the vacancy with Work and Income. If they can't find the right candidate, you can ask them for a Skills Match Report to show there are no suitable New Zealanders available to do the job.



## Quick Quote

The absolute fundamental aim is to make money out of satisfying customers.  
- John Egan

# Stephen Larsen and Co

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