

# Employment Practices for Smaller Herd Businesses

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What you need to know to keep out of trouble and what SMASH farms can offer that others can't...

In this session we will explore some of the myths around employing people and help you make sure you're not one of the nearly 75% of dairy farms that MBIE found in their recent work in the rural sector are breaking the law. From understanding the basics of employing full-time, part-time, casual or on-contract people through to paying them well and getting the best out of them, this session is about getting some knowledge and sharing some experiences so we can make smaller herds the best places to work.

## Employment law compliance

In early May the following article appeared on Stuff and was then picked up by other news agencies.

### ***Majority of farmers breaking employment laws - MBIE***

*Nearly three out of four dairy farmers have been caught breaking basic employment laws in a government crackdown.*

*Farmers have been told to "lift their game" after Ministry of Business, Innovation and Employment's (MBIE) labour inspectorate visited 44 farms, 31 of which were found to be in breach of minimum employment rights.*

*In one case a farmer was ordered to pay \$6000 in arrears to an employee for breaching the Minimum Wage Act, the ministry said in a statement today.*

*Several cases remained open with the possibility of more serious enforcement action pending.*

*MBIE announced in November it would be visiting dairy farms throughout New Zealand between December 2013 and April 2014 to check compliance with minimum employment rights.*

*The visits were part of a national dairy strategy with a focus on the seasonal averaging of salaries and failure to keep accurate time and wage records....*

## **What does this mean for SMASH farmers?**

- You have to get the people part of your business in order.
- The sector is being targeted and no one can rely on flying 'under the radar'.

## **What Provisions / Acts apply to you?**

- Employment Relations Act 2000
  - Requirement to keep a signed employment agreement. Under section 64 the employer must retain a signed copy of the employee's individual employment agreement or the current terms and conditions of the employment.
  - Under section 65 (2) an individual employment agreement must include the following six requirements:
    - i. The names of the employee and employer concerned.
    - ii. A description of the work to be performed by the employee.
    - iii. An indication of where the employee is to perform the work.
    - iv. An indication of the times the employee is to work.
    - v. Wages and salary payable to the employee.
    - vi. An explanation of the services available for the resolution of employment problems.
  - 90 day trial period provision. Section 67 (a) contains the provision for an employment agreement to include the 90 day trial period.

The trial provision includes:

    - i. The employee is to serve a trial period for no longer than 90 days from the start of their employment.
    - ii. The employer can dismiss the employee during the trial period.
    - iii. If the employee is dismissed they cannot take a personal grievance or any other legal proceedings for dismissal during the trial period.

Your employee must sign their employment agreement prior to starting work for any trial period clause to be valid.
- Minimum Wage Act 1983
  - Recording of hours. Section 8 (a) requires every employer to keep wage and time records for the preceding six years.
  - Minimum wage. Section 4 prescribes that the minimum wage (\$14.25) must be paid to employees who are over 16.
  - Calculations for the minimum wage can only be done within the pay period (i.e. if you are weekly paid then averaging can only happen within that pay period).
- Service Tenancies and the minimum wage

In a recent position statement MBIE confirmed that 'reasonable' and agreed deductions for rental of on-farm properties could be included in calculations for minimum wage. This is a practice that is prevalent in dairy farming and we need to be mindful of the guidelines that MBIE have put around this. These are:

- Employees must be paid their wages in money and cannot be paid in non-cash benefits.
  - Employees can however agree to deductions from their wages by their employer before payment, including for the provision of accommodation or other goods or services.
  - Any agreement relating to accommodation needs to clearly detail the accommodation arrangement and its cost to the employee, which should be reasonable.
  - Wage records should include the wages payable before any deductions are made for the agreed value of the accommodation or other goods and services.
  - The rental or accommodation agreement should be either separate from the employment agreement or able to be separated. Any agreement relating to provision of goods and services for which deductions have been agreed should be recorded outside of the employment agreement.
- Casual versus permanent part-time staff.

It is important that the distinction is clear between casual and permanent staff to ensure that holiday pay is accurate. A casual staff member does not have a clear pattern of work whereas a permanent part-time staff member does i.e. a relief milker who works every second weekend is classified as a permanent part-time staff member (or may be employed as a contractor).

For casual workers you must add at least 8% of their total earnings every pay period for holiday pay. This is known as “pay-as-you go”. The Holidays Act 2003 section 28 has provisions for when annual holiday pay may be paid for employees paid on a “pay-as-you go” basis.

## Attracting good people

Whether you’re looking for a relief milker, a manager to take over running your farm or a permanent employee, finding anyone, let alone the right one, is becoming increasingly difficult. Why?

- People aren’t seeing the industry as an attractive place to work (reputation).
- We don’t offer reasonable time off compared to other industries.
- The ‘lifestyle versus income’ card doesn’t have the same pulling power.
- Equally, the ‘be frugal now because your rewards will come’ card is no longer as glossy.

## Emerging employment trends

- End of an era for 50/50 sharemilkers and the rise of the professional manager.
- Increasing numbers of farmers choosing to pay hourly wages as opposed to salaries.
- Declining numbers of farm assistants entering the industry in their late teens and early 20s.

- 5 and 2 rosters.
- Monday to Friday working week.
- 8 hour or less shifts – eliminating the split shift paradigm.
- Hourly rates of pay (rather than salaried).
- Housing charged at market rental rates.
- Training and development are a 'given'.
- People like working 'shoulder to shoulder'.
- People like working with others.

## **What are our opportunities to do things differently on SMASH farms?**

- Be proud of being a smaller herd owner....market yourself specifically around this.
- Find the USP (Unique Selling Proposition) that applies to you, your farm, your business and market this.
- Think about what you can offer and talk about this before you think about what you're looking for.