

From the

Employment Officer's Casebook



Fixed Term Appointments

We have recently been approached by several members concerned about the terms of their fixed term agreements. Such appointments are usually replacing a permanent staff member who is on long-term leave – one year appointments being the most common.

The law requires a fixed term agreement to state the starting and finishing date, and the reasons why the position is for a fixed term. The problem has arisen over what rights the employee has to claim the holiday pay accruing over a full year appointment. One or two schools seem to believe that by giving the date of the end of Term four as the finishing date for the appointment, they are not obliged to make any payment for the rest of December and January – thus reducing the employee's annual salary by at least \$4000 depending on the step of the salary scale they are being paid.

In our opinion this is entirely incorrect. If a teacher has worked throughout the four terms of the school year, they must be seen as having worked a full year, and therefore must

be entitled to a full twelve months' pay. We are currently making representations on behalf of members who have been caught by this practice.

We must emphasise, however, that the majority of our schools are good employers who pay their employees appropriately.

KiwiSaver

We have recently learnt that some schools are not complying with the regulations for KiwiSaver. The law states that any new employee who began their new position after 1 July 2007 must be automatically enrolled in KiwiSaver by the employer, who must begin deductions from the first pay. It is then up to the employee to opt out if they wish.

Further, from 1 April 2008 all employers are required to contribute 1% of salary to the KiwiSaver account of any employee who is contributing.

There is no flexibility in these regulations, and we are dismayed to think that any employer should believe they are exempt from the law.

Mairi Ferguson
Employment Officer



LEARNING TO TEACH – ASSISTANCE FOR NEW TEACHERS

Recently, a seminar was held in Wellington to introduce a report called "Learning to Teach" which is the third part of a major study of beginning teacher induction carried out by a Unitec research group on behalf of the New Zealand Teachers Council. This final part of the research is based on what successful programmes do for Provisionally Registered Teachers (PRTs) in schools and makes recommendations for how New Zealand schools can better assist their beginning teachers to both gain their registration and, more importantly, reach their potential as teachers in the classroom.

At the seminar, the authors introduced the report by outlining the methodology and their main recommendations. The meeting, attended by 94 women and 22 men (symptomatic of the gender imbalance in teaching these days?) then discussed the report and made suggestions for pilot programmes that are to be established to assist teacher induction. The report will be

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FROM THE EXECUTIVE OFFICER

Some Schools are Breaching Employment Law

It has become quite apparent that many employers are not following correct employment practices in many areas. Three major issues have been brought to ISTANZ's attention over the last month. The first of these regarding several schools failing to adhere to the Employment Relations Act was highlighted in the previous issue of this Newsletter. Mairi discusses in this issue a second concern regarding some schools failing to sign-up new employees in the Kiwisaver scheme. Also of concern is the fact that many support staff do not have any employment contract at all.

The Employment Relations Act stipulates that where there is no collective agreement covering the employee's work, the employee's terms and conditions of employment that have been mutually agreed to by the employee and employer form an individual agreement. These individual agreements must be in writing [s [65\(1\)\(a\)](#) & [65\(2\)](#)] and are subject to certain requirements that include the names of the parties, a description of the work to be performed, the location, hours of work, remuneration and a "plain language" description of how to resolve employment relationship problems. Further, individual employment agreements cannot contract out of the ERA, and cannot be contrary to law.

The ERA also recognises that employees require protection against unfair bargaining. Therefore, the onus is on an employer to provide employees with sufficient information relating to the individual agreement. Employers must also advise employees of their entitlement to seek independent advice before entering into an individual employment agreement. ISTANZ can provide advice to members on individual contracts before they are signed. In fact, we recommend that such advice be sought on every occasion.

The agreement will be unfair if an employer fails to satisfy these requirements. On such occasions the Authority has an extremely wide discretion to award remedies including ordering compensation. The Authority can effectively rewrite the agreement if it believes the agreement has been entered into unfairly.

While it is quite clear that individual agreements must be in writing there are exceptions. These are where

individual employment contracts were entered into before the inception of the ERA: under [s242](#), every individual employment contract entered into under the ECA91 will continue "accordingly to its tenor" and are not subject to the provisions of Part [6](#) (relating to individual employment agreements).

While employers are in breach of the ERA if their staff work without an employment contract, teachers and support staff are also in a very vulnerable position. These various employment omissions might occur through deliberate action or through ignorance but ISTANZ is very concerned about the large number of breaches and we will be focussing on such matters during the rest of this year. If you believe that you are being treated in a manner that might be in breach of your employment agreement or the ERA then please get in contact with Mairi, mferguson@istanz.org.nz or myself at ggillon@istanz.org.nz

Grant Gillon

INDIVIDUAL EMPLOYMENT AGREEMENT

This is an agreement between the employer and one employee.

It must be in writing.

An individual agreement must include:

- ◆ Names of employer and employee.
- ◆ Description of the work to be performed by the employee.
- ◆ Indication of place and hours of work.
- ◆ Salary or wages to be paid

Plain language explanation of the procedures for resolving employment relationship problems, and a description of the services available (Employment Relations Service). Details must be included – time frame for raising personal grievance issues, for example.

There are conditions which apply to any individual agreement, and it is important that all are aware of these.

A new employee can not be required to sign any agreement on the spot, but must be given sufficient time to consider the terms being offered and to seek advice if they wish.

An individual agreement can be considered invalid if it has been agreed by an employee after having advice only from the employer or their agent. This is considered to be unfair bargaining practice.

If there is a collective agreement in the school, whether it applies to all or some of the existing staff, a new employee must be informed of it, told which union is involved, and given information about how to join the union.



FROM THE ACTING PRESIDENT

No doubt you are well settled in to the first of the winter terms - it has certainly chilled in Christchurch.

Over the last month or so I have been processing the survey on employment conditions in independent schools and coordinating our response to the Law Commission.

Thanks to some contributions from members we were able to respond strongly to the Law Commission Review of the laws governing private schools. This review was well overdue as they pointed out, as many of the provisions had not changed in over 80 years. Despite what some may think, schools in our sector have changed dramatically with the times.

Should these questions concern us? Are they rather matters for the school or our Boards? Well a few of us have representatives on our Boards so can make our views known. But you would have seen that they do relate to teaching and learning so it is totally appropriate that we comment.

Our submission was that our schools should be provisionally registered when they are founded, that all working in them should be police vetted, that schools be assessed by ERO as having facilities appropriate for learning and meeting high standards of health and safety for both students and staff, also that our schools meet standards of literacy and numeracy and that the NZ Curriculum is an appropriate comparator for the curriculum of each school. We submit that while there does not seem to be any need for extensive new legislation, there must be accountability for the health and safety of students and staff and this should be monitored by ERO. There should be penalties for any failure to carry out statutory duties.

Regarding the requirement to "encourage sentiments such as community participation, citizenship, patriotism and loyalty" we feel it would be more appropriate to "honour the intent of the Treaty of Waitangi and to instil an understanding of the culture, traditions and history of their country and the attributes of good citizenship".

The survey report should be complete and out to contributing schools early next month. Preliminary report: there was a good response showing many more schools with collective agreements. It's clear that agreements are

now covering important employment conditions in a clearer fairer way – an increasing number are offering redundancy pay for example.

Only one school was paying state rates with the others averaging 5% above state. Schools have coped well with Kiwisaver with most contributing more than the compulsory 1%. If your school has not responded to the survey, you can be added and then you will receive an overview report to assist you in negotiations.

Malcolm Walker

THE GREENPEACE CLIMATE CHALLENGE

Greenpeace invites you and your class to take part in the Greenpeace Climate Challenge.

You can help your students discover easy ways to make a big difference to our climate, be it at home, at school or while travelling.

Use the free Climate Changers CD for level 5 Curriculums.

Contact Nola on 0800 22 33 44 or nola.macaulay@nz.greenpeace.org and find out how your class can take part in the challenge.

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available on the Teachers Council website www.teacherscouncil.govt.nz

Amongst the recommendations was that more emphasis needs to be put on the mentor teachers who guide the PRTs. Professional development programmes are needed for mentors at a regional level with the appropriate funding and release time. The PRTs also need more funding allocated for their professional development linked to induction and appraisal. They need to have more time to observe other teachers teach, both in their school and in other schools and have clearly timetabled meetings with their mentor teacher. Other recommendations included requiring greater clarity about the documentary evidence required for registration; networks established for both PRTs and teacher mentors; clear guidelines provided by the schools for PRTs, preferably before they start at the school; that PRTs should work in close proximity to their mentor; that their should be a reduction in extra responsibilities and roles for PRTs and that there should be a separation between mentoring and appraisal – they should not be done by the same person.

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Of course, Independent schools needn't wait for any ministry-led changes to assist PRTs. If you are a new teacher or a teacher responsible for one, insist that your school management read the report and request that they implement some of the recommendations. I would suggest prioritising recommendations in the following way.

- ◆ Have one person in the school in overall charge of PRTs. They would ensure new teachers have clear, written guidelines, would observe some lessons, organise for the PRTs to visit other teachers in the school and at other schools and assist with and check the paperwork the PRTs need for registration.
- ◆ The school must carefully choose a mentor for each PRT and ensure they clearly know their role and get some professional development to assist them.
- ◆ Ensure the PRTs have timetabled access to their mentor and work in close proximity to them.
- ◆ Insist that the PRT has a reduced level of extra-curricular and non-classroom responsibilities.

Provisionally registered teachers represent the future of teaching in New Zealand. We must do everything possible to ensure they become fully registered teachers who are happy and confident in the classroom and are enthusiastic about continuing in their chosen career.

Mark Cleaver



**LESSER KNOWN
ENTITLEMENTS (AVAILABLE
TO TEACHERS IN STATE
SCHOOLS)**

A compassionate grant is available for next of kin of an employee who dies while employed in the state teaching service. The grant is a proportion of the annual salary at the time of death, according to length of service, and varies from 1/8 of salary for those with 20+ years service, through 1/12 for those with 10 – 20 years service, and no grant for less than 10 years.

We note that the NZEI also has a death benefit for members depending on the number of years' membership.

It's good to know that the profession acknowledges needs in such circumstances – I wonder if any of our schools offer anything similar?

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**Check our website -
www.istanz.org.nz**

Here you will find useful information about your Association, including excellent employment advice. You will also find back copies of our Newsletters.

A subscription form for membership of ISTANZ is available for prospective members [teaching and support staff] to print, complete and post to the Administrator.

**HAVE A LOOK and
JOIN YOUR UNION!**