



Presentation to KiwiSaver Seminar on 28 February 2007

Employer's Legal Responsibilities

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1. Context

- 1.1. Auld Brewer Mazengarb & McEwen is an employer
- 1.2. Auld Brewer Mazengarb & McEwen is a legal adviser
- 1.3. Other relevant advisers
- 1.4. KiwiSaver start date: Sunday, 1 July 2007

2. Responsibilities

- 2.1. Must do
- 2.2. May do
- 2.3. Safe harbour

3. Relevant legislation

- 3.1. KiwiSaver Act
- 3.2. Securities Act
- 3.3. Fair Trading Act
- 3.4. Investment Advisers (Disclosure) Act
- 3.5. Consumer Guarantees Act
- 3.6. Privacy Act
- 3.7. Employment Relations Act
- 3.8. Immigration Act
- 3.9. Superannuation Schemes Act

4. Preparation

- 4.1. Is the payroll system compliant?
 - 4.1.1. IRD sent specifications to payroll providers and payroll software developers in January 2007
 - 4.1.2. Existing payroll subsidies will continue
- 4.2. Are there systems in place to comply with responsibilities?
- 4.3. Determine whether to have an employer chosen KiwiSaver scheme
 - 4.3.1. Agree with provider
 - 4.3.2. If employer reaches agreement with provider, employer is to notify IRD
- 4.4. Any existing registered superannuation scheme
 - 4.4.1. Convert to a KiwiSaver Scheme
 - 4.4.2. Add KiwiSaver to the existing scheme under an umbrella trust deed
 - 4.4.3. Apply to Government Actuary for exemption from automatically having to enrol new employees into KiwiSaver
 - 4.4.4. Run the existing Scheme alongside KiwiSaver

5. Must Do

- 5.1. Make KiwiSaver available to employees
 - 5.1.1. Criteria
 - 5.1.2. New employees are subject to automatic enrolment provisions
 - 5.1.3. Give effect to opt-in notices
- 5.2. Provide information to new and opting in employees
 - 5.2.1. When
 - 5.2.2. What information
 - 5.2.3. Penalty for failure to provide information

- 5.3. Provide relevant employee information to IRD - form KS1
 - 5.3.1. Legal name
 - 5.3.2. Addresses
 - 5.3.3. IRD numbers
 - 5.3.4. Not previously a legal requirements - just deducted at the highest rate
 - 5.3.5. Penalty for failure to provide information
- 5.4. Deduct contributions and pay to IRD
 - 5.4.1. From first pay
 - 5.4.2. Including upon receipt of IRD notice that person has own contract with a provider
 - 5.4.3. 4% or 8% of employee's gross salary/wage
 - 5.4.4. With normal PAYE payments
 - 5.4.5. Provide remittance certificate and employer monthly schedule
 - 5.4.6. If there are to be employer contributions paid through IRD
 - 5.4.7. Penalty for failure to provide information
- 5.5. Stop making deductions
 - 5.5.1. Employee can opt out from end of week 2 to end of week 8 of starting new employment
 - 5.5.2. Contributions holiday
 - 5.5.3. Penalty for failure to provide information

6. May Do

- 6.1. Employer contributions
 - 6.1.1. Not compulsory
 - 6.1.2. Can comprise part or all of the 4% or 8% contribution
 - 6.1.3. Employer contributions to other registered superannuation schemes that meet certain criteria will also be exempt from SSCWT (subject to a cap) provided that the contributions are subject to lock-in rules similar to KiwiSaver
- 6.2. Salary sacrifice requests

7. Safe harbours

7.1. Securities Act

If an employer complies with its obligations or has an employer chosen KiwiSaver scheme, it will not be a promoter or issuer

7.2. Investment Advisers (Disclosure) Act

If an employer supplies an information pack, gives a factual description of the features of a KiwiSaver scheme, gives information about KiwiSaver schemes in the course of promoting the benefits of retirement savings in general, acts as an intermediary who transmits information about a KiwiSaver scheme or otherwise exercises or carries out a function, duty or power under the KiwiSaver Act, they will not be giving investment advice

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