

Explaining the Employment Relations Bill

A guide for employers



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CONTENTS

BACKGROUND

OVERVIEW: MAJOR CHANGES IN THE ERB

OVERVIEW: COST IMPACTS ON INDIRECT WAGES

ANNUAL LEAVE & COMPASSIONATE LEAVE

SICK LEAVE

MATERNITY LEAVE

CHANGES TO MAKING CONTRACTS

CHANGES TO HOW YOU CAN TERMINATE STAFF

CHANGES TO PAYMENTS ON TERMINATION

CHANGES TO HOURS OF WORK, INCLUDING WORK ON PUBLIC HOLIDAYS

CHANGES TO WAGES PAYMENTS

NON-DISCRIMINATION

CHANGES TO DISPUTE RESOLUTION PROCEDURES

CHANGES TO COLLECTIVE EMPLOYMENT RELATIONS

OTHER DEVELOPMENTS: SOCIAL PROTECTION LAW & OHS CODES

SUMMARY & QUESTIONS/COMMENTS

BACKGROUND

Vanuatu and the ILO

In 2003 Vanuatu joined the International Labour Organisation (ILO). Since then it has signed 8 ILO Conventions:

- C029 - Forced Labour Convention, 1930
- C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948
- C098 - Right to Organise and Collective Bargaining Convention, 1949
- C100 - Equal Remuneration Convention, 1951
- C105 - Abolition of Forced Labour Convention, 1957
- C111 - Discrimination (Employment and Occupation) Convention, 1958
- C182 - Worst Forms of Child Labour Convention, 1999
- C185 - Seafarers' Identity Documents Convention (Revised), 2003

Vanuatu's law needs to be revised to make sure that it complies with the requirements of these international Conventions.

Vanuatu is also committed to broad values of the ILO, including promoting decent work and operating in a tripartite manner – with employers, workers and the government working together to development employment policy and law.

Developing the ERB

In mid-2006 a draft Employment Relations Bill (ERB), which drew heavily on Fiji's draft law was produced. The ERB is intended to take the place of the current Employment Act, Minimum Wage and Minimum Wages Board Act, Trade Unions Act and Trade Disputes Act.

In 2008 and 2009 some major changes to the maternity leave, severance allowance and annual leave provisions of the Employment Act were introduced. These changes did not help Vanuatu to comply with the ILO

Conventions that it is a party to. Employers strongly lobbied against these changes because of the costs that they placed on business.

In 2010 the Labour Advisory Board was abolished Tripartite Labour Advisory Council (TLAC) was established. TLAC is very similar to the Labour Advisory Board, and is made up of representatives of the Government, employers and trade unions who work together to advise the Government on labour market policy.

TLAC, with the help of the ILO, re-started work on labour law reforms. TLAC decided to develop the draft ERB from 2006. By mid-2012 a revised draft ERB had been produced.

The purposes of this booklet

A very important part of the TLAC process is for TLAC members to consult with the people that they represent and get clear directions. Consultation needs to be based on clear information. This booklet is being produced in conjunction with a survey that will be used to develop an employer's position paper on the ERB.

We already know that there is clear concern among employers that Vanuatu's labour laws provide high levels of benefits compared to other Pacific countries, and this reduces the competitiveness of businesses. This booklet particularly focuses on changes in costs and how the costs compare with other Pacific island countries.

We also know that employers want to be given "advance notice" of potential law changes. This booklet will help you to become familiar with the ERB, so that when changes are introduced you will have some knowledge of what the law changes will require.

At the moment there is no set timeframe for when the ERB or other employment law reforms will be introduced into Parliament.

OVERVIEW: MAJOR CHANGES IN THE ERB

The purpose of the ERB is stated to be:

An Act to provide for a legislative framework which promotes the well-being and prosperity of all people in the Republic of Vanuatu by –

(A) Creating a fair and optimum working environment through the maintenance of minimum and acceptable labour standards that are fair to both workers and employers, with the view to building productive and sustained employment relations;

(B) Assisting in the prevention and elimination of discrimination in employment .

(C) Providing for a framework of rights and duties for the all parties engaged in employment relations to regulate the relationship and encourage collective bargaining in good faith and co-determination based on observance of agreements as well as effective prevention and efficient settlement of employment related disputes;

(D) Establishing the Mediation Service, the Employment Relations Tribunal and Employment Division of the Court to carry out their respective powers, functions and duties;

(E) Encouraging and facilitating consultation between labour and management in the workplace for better employment relations;

(F) Complying with international obligations, relevant laws and the Constitution of the Republic of Vanuatu; and

(G) For related matters .

They are reasonable purposes; ‘creating a fair and optimum working environment... with the view to building productive and sustained employment relations’ is a purpose which should be agreeable to all employers.

The table below the main differences between current laws and the ERB. Comments explain reasons for the changes more and/or briefly explain impacts on employers.

Area	Main differences with law under the ERB	Comments on differences
Structure of laws	Separate Employment Act, Minimum Wage and Minimum Wages Board Act, Trade Disputes Act and Trade Unions Act brought together into one single, long, Employment Relations Bill.	May be more complex to use for employers who are used to shorter Employment Act.
Minimum wage setting	<p>Minimum wages must be reviewed at least every 2 years.</p> <p>Both hourly and monthly minimum wage must be stated.</p> <p>Minister can make minimum wage orders in absence of recommendation by TLAC (same as current law).</p>	Ensures regular reviews.
Forming contracts	<p>Defines “employment” more clearly to stop employers from getting employees business licenses and calling them contractors.</p> <p>Written employment contracts needed for most <i>regular contracts</i> (regular contracts = open ended or fixed term contracts with set days or hours of work).</p> <p>New classes of casual & daily workers that do not need written contracts and can be terminated at any time without notice or cause created.</p>	<p>Reduces employers avoiding employment law obligations.</p> <p>More employers will need written contracts.</p> <p>Makes casual employment easier to manage.</p>
Ending contracts	<p>Regular open ended contracts can only be terminated because of employee misconduct or <i>redundancy</i> (where business conditions require a reduction in staff).</p> <p>Regular fixed term contracts end on expiry and can only be terminated early because of employee misconduct or redundancy</p> <p>Process for termination due to poor conduct more clearly defined and more complex.</p>	<p>Cannot terminate open ended contracts by giving notice without reason.</p> <p>Cannot terminate fixed term contracts early by giving notice without reason.</p> <p>Employers will need to learn new processes for termination.</p>
Payments on termination	Current draft is unclear and contains both current severance allowance provisions (1 month’s salary per year worked) and new redundancy payment provisions (1 month’s salary for the first year and ½ a month’s salary for	Assuming that only redundancy payments remain, payments on termination are less costly. If both severance and redundancy remain, ERB is more costly.

	subsequent years). The previous draft only contained redundancy payments, as a replacement for severance allowance.	
Wages	Clearer wages records must be given to employee and kept by employer. Law prohibits charging interest on salary advances.	Employers will need to learn record keeping requirements.
Hours of work	Up to 44 hours per week, 6 days per week, 10 hours per day. Overtime rates remain the same.	Hours of work provisions clearer than current law.
Leave: general	Applies to part time workers on a pro rata basis. (<i>Part time</i> = a worker who has a regular ongoing contract but does not work 44 hours a week; <i>pro rata</i> = % basis, based on the number of hours worked per week) Does not apply to casual or daily rated workers	More employees can claim sick leave and annual leave. Less employees can claim maternity leave.
Annual leave	Flat rate of 20 days per year, regardless of length of service. At least 1 week's leave must be taken every year and all leave must be taken within 4 years of the time it was earned.	When annual + compassionate leave are combined, leave increases for those employed for less than 19 years. Employers will have to actively manage annual leave use.
Compassionate leave	Flat rate of 3 days paid per year. It is not defined when compassionate leave can be taken.	New type of leave.
Public holidays	Workers who <i>do not work</i> on public holidays must be paid their regular salary/wage, although this is forfeited if the worker is absent without reason one the day immediately before or after the public holiday. Workers, except for shift workers, who work on public holidays, get paid double time. There is no provision to be given another day off for working on a public holiday.	Does not affect <i>salary workers</i> (whose payment is based on yearly amount), but may increase payments for <i>wage workers</i> (whose payment is based on hours or days worked). More costly than current law, but also clearer than current law.
Sick leave	10 days paid sick leave. The employer can request a medical certificate for any length of leave.	Sick leave amount reduced. Certificate requirements reduce chance of employee

	Unused sick leave can accumulate for up to three years.	abusing sick leave. Employers will have to keep records to manage accumulation.
Maternity leave	Length is 14 weeks. Payment whilst on maternity leave is 66% of regular salary. Paid nursing allowance is 1 hour per 4 hours worked for the first 6 months and ½ hour per 4 hours works for babies aged 6 – 12 months.	Length of leave increases. Payment on leave stays the same. Nursing allowance decreases.
Discrimination in employment	Discrimination in all aspects of employment prohibited. Restrictions on women working at night in current law are removed. Employers must take steps to avoid sexual harassment and victimisation in the workplace.	Changes needed to meet ILO Convention requirements.
Child labour	Restrictions on child labour similar, but slightly clearer.	Changes needed to meet ILO Convention requirements.
Industrial organisation	Both trade unions and employers associations can register and be legally recognised. Procedures for good faith collective bargaining defined.	Changes put ILO Convention requirements into practice.
Employment disputes	Contracts must contain information on workplace level dispute resolution processes. If dispute cannot be settled at workplace level can be referred to mediation by Judicial Service Commission mediators. If mediation is not successful dispute can be referred to Employment Tribunal to make a ruling. Decision of Employment Tribunal can be appealed to Employment Division of Court. Employment Court decisions can be appealed to the Court of Appeal.	Process more complex, but, if managed properly, should be quicker and cheaper.
Strikes and lockouts	ERB provisions similar to current law.	

OVERVIEW: COST IMPACTS ON INDIRECT WAGES

Employer discussion on employment law changes has tended to focus on the cost impacts of indirect wages: annual leave, sick leave, maternity leave and severance allowance. There are many variations that affect the exact cost impact of indirect wages. The table below shows the cost impact of the ERB under a number of different scenarios. In all the scenarios:

- the employee works 5 days per week for a wage of 1000 vatu per day.
- the employer contributes 4% VNPF.
- the employee takes the maximum annual leave, sick leave and (under the ERB) compassionate leave allowable.
- it is assumed that 10 public holidays fall on regular work days, and that the employee does not work on public holidays. Under the current law the employee is not paid for public holidays that are not worked; under the ERB the employee is paid in this situation.
- it is assumed that under the current law the employee is paid severance allowance; under the ERB that employee is paid redundancy allowance only.

In scenarios where maternity leave is taken the employee takes the full permissible amount of maternity leave.

These scenarios give you *approximate* cost implications – every employment situation is different and slight variations do change cost impacts.

The total package of indirect wage decreases costs under the ERB in most scenarios.

However, this leaves aside the question of whether indirect wage costs of 30 – 67% make Vanuatu uncompetitive both as a destination for foreign investment and as a producer of goods (because goods are more expensive to produce due, in part, to high labour costs).

	Direct wage paid per day	Actual labour cost per day of productive labour, current law.	Actual labour cost per day of productive labour, ERB
Employee employed for 3 years and made redundant. No maternity leave.	1000	1318	1314
Employee employed 3 years and made redundant. Maternity leave paid.	1000	1617 (Cost in years that maternity leave is taken)	1669
Employee employed 10 years and made redundant. No maternity leave.	1000	1356	1302
Employee employed 10 years and made redundant. Maternity leave paid.	1000	1675 (Cost in years that maternity leave is taken)	1654
Employee employed 20 years and made redundant. No maternity leave.	1000	1461	1299

These scenarios only focus on indirect wage costs. They ignore other potential administrative costs such as the cost of preparing written contracts for all employees, increased record keeping costs, and costs of procedures to terminate staff. These issues are discussed on the following pages.

ANNUAL LEAVE & COMPASSIONATE LEAVE

How does the amount of annual leave compare between the current law and the ERB?

- Annual leave *increases* from 15 days per year to 23 days per year (20 days annual leave + 3 days compassionate leave) for those who have worked less than 7 years
- Annual leave *increases* from 21 days per year to 23 days per year (20 days annual leave + 3 days compassionate leave) for those who have worked 7 - 19 years
- Annual leave *decreases* from 36 days per year to 23 days per year (20 days annual leave + 3 days compassionate leave) for those who have worked less than 20 – 24 years
- Annual leave *decreases* from 48 days per year to 23 days per year (20 days annual leave + 3 days compassionate leave) for those who have worked less than 25 – 29 years
- Annual leave *decreases* from 72 days per year to 23 days per year (20 days annual leave + 3 days compassionate leave) for those who have worked 30+ years

How does annual leave under the ERB compare with annual leave in other Pacific countries?

Vanuatu’s annual leave provisions under the ERB are the highest in the Pacific.

Country	Amount of annual leave
Vanuatu under ERB	20 + 3 days compassionate leave
Fiji	10 + 3 days compassionate leave
Kiribati	0
Marshall Islands	0
Papua New Guinea	14 consecutive days paid leave including non-working days. Long service leave of 6 months for 15 years worked in Port Moresby

	Common Rules.
Samoa	10
Solomon Islands	15 days per year (also passage home paid once per year)
Tuvalu	0
Tonga	None

What other changes are there?

- Employers must make sure that employees take at least 1 week of annual leave every year, and use all their annual leave within 4 years of earning it.
This will help to make sure employees are getting proper breaks, but will also require employers to keep proper annual leave records.
- Part time workers are eligible for annual leave on a percentage basis.

Does Vanuatu’s law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What will these changes do to my costs?

The impact of costs of regular full time staff depends on the length of service. Costs increase for employees who have worked for less than 20 years.

Your costs for part time workers increase because you will have to pay annual leave to them.

Your administration costs might increase slightly as you may need to be more active in managing your employees’ use of annual leave.

SICK LEAVE

How does the amount of sick leave compare between the current law and the ERB?

- Sick leave *decreases* from 21 days per year to 10 days per year

How does sick leave under the ERB compare with annual leave in other Pacific countries?

Vanuatu's sick leave under the ERB is on par with other Pacific island countries which provide sick leave.

Vanuatu under ERB	10 days
Solomon Islands	22 days.
Fiji	10 days.
Samoa	10 days.
Kiribati	None in Act (regulations not available)
PNG	18 days.
Tuvalu	None in Act (regulations not available)
Tonga	None
Marshall Islands	None

What other changes are there?

- Unused sick leave can accumulate for up to 3 years.

For example: John takes 3 days sick leave in year 1. In year 2, if he gets sick, he can take up to 17 days sick leave.

This change creates an incentive for employees not to “waste” sick leave.

Employers will have to make sure they keep proper sick leave records in order to be able to calculate leave.

- Medical certificates can be requested for any absences. Currently medical certificates only have to be provided if the employee is sick for more than 2 or 4 days, depending on their location.

This change reduces the extent to which employees can misuse sick leave.

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What will these changes do to my costs?

Your sick leave costs will decrease.

Your administration costs might increase slightly as you may need to be more active in records so that you can calculate accumulation of sick leave.

MATERNITY BENEFITS

How does the amount of maternity leave compare between the current law and the ERB?

- Maternity leave *increases* from 12 weeks to 14 weeks

How does the amount of payment while on maternity leave compare between the current law and the ERB?

- Maternity leave payment *remains the same*, at 66% of ordinary salary

How does the amount of nursing allowance compare between the current law and the ERB?

- Nursing allowance *decreases* from 2 hours per day for up to 24 months to 1 hour per 4 hours worked for the first 6 months after giving birth and ½ an hour per 4 hours worked for the 6 – 12 months after giving birth

How do maternity benefits under the ERB compare with maternity benefits in other Pacific countries?

Vanuatu's maternity leave under the ERB are high compared to most other Pacific countries (see table on next page).

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What will these changes do to my costs?

Your costs in relation to maternity leave payments will increase, but your costs in relation to nursing allowance will decrease.

Country	Length of maternity leave	Amount of payment	Nursing allowance
Vanuatu under ERB	14 weeks	66% of salary	2 hours per full time day for up to 6 months; 1 hour per full time day for 6 – 12 months
Fiji	84 consecutive days – no mandatory period	First 3 births 100% of salary 4 + births, 50% of salary	Nil
Kiribati	6 weeks prior to birth optional; 6 weeks post birth mandatory	25% of salary	½ hour twice a day
Marshall Islands	Nil	Nil	Nil
Papua New Guinea	Hospitalisation prior to giving birth, 6 weeks post giving birth, plus up to 4 further weeks for sickness.	Unpaid, except where sick leave or annual leave converted into maternity leave	½ hour twice daily
Samoa	6 weeks	Either 4 weeks on full pay and 2 weeks without pay or 6 weeks at 66% pay	Nil
Solomon Islands	12 weeks in total; 6 weeks post birth mandatory	25% of salary	1 hour twice a day
Tuvalu	6 weeks prior to birth optional; 6 weeks post birth mandatory	25% of salary	½ hour twice a day

CHANGES TO MAKING CONTRACTS

The ERB has more detailed rules about making contracts. It recognises the following classes of contracts:

- open ended, which have a start date but no end date
- fixed term, which have a start date and an end date
- fixed work – where the employee is employed until a specific task is done,
- daily –where the employee is paid at the end of each day,
- casual, where the employee is paid after each shift.

It is important to decide what class of contract your employee falls under because this will determine:

- what sort of contract they need (all open ended contracts and fixed term/work contracts with a duration of more than 1 month will need to be in writing)
- whether they get leave (casual and daily workers do not get any leave)
- whether you can vary their hours of work (only casual and daily workers can have their hours of work varied)
- how employment can be terminated (open ended contracts can only be terminated because of employee conduct or redundancy; fixed term contracts expire at the end of their term and can only be terminated early because of employee conduct or redundancy; daily and casual contracts can be terminated at the end of each day or shift)

The ERB provides a template for written contracts. It says written contracts must contain, as a minimum, the following information:

Name of Employer:

Name of Worker:

Position Description / Inherent Requirements of Position:

Employment type (full time / part time / casual):

Place of Work:

Hours of Work:

Wages/Salary:

Allowances:

Pay period:

Holidays and Leave:

Employment Dispute Procedure: (there is a standard template in the ERB if employers do not want to write their own)

Other Entitlements:

Notice of termination:

Severance pay:

Applicable Minimum Wage Order or Collective Agreement:

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What will these changes do to my costs?

It becomes easier to manage casual and daily workers.

There will be more administrative costs associated with forming employment relationships, although making a simple written contract is not difficult and you just need to write in the details of your specific arrangement into the ERB written contract template.

CHANGES TO HOW YOU CAN TERMINATE STAFF

Under the law at the moment you can terminate open ended contracts at any time by giving notice. You do not need a reason to give notice. You can also terminate fixed term contracts early if there is a clause in the contract allowing you to do this.

Under the ERB you will need a reason for ending an open ended contract. You will not need a valid reason for allowing a fixed term contract to expire at the end of its term, but you will need a valid reason for ending a fixed term contract early.

Valid reasons are:

- (a) the worker's capacity or conduct
- (b) serious misconduct of the worker (thing such as theft, violence, intoxication at work, and reckless behaviour that puts another at risk)
- (c) genuine redundancy of the worker's position

Processes for termination also change.

To terminate an employee for capacity or conduct employees must have been:

- warned about any unsatisfactory capacity or conduct; and
- provided with an opportunity and reasonable assistance to improve their capacity or conduct; and
- given a reasonable opportunity to respond to any issues raised about their capacity or conduct; and
- afforded a reasonable opportunity for a representative, or trade union representative, to be present or represent their interests with respect to a proposed termination; and
- notified of the reason for the termination; and
- provided with notice of termination(length of notice varies depending on length of service).

To terminate for serious misconduct, if the misconduct is ‘of such a nature that it would be unreasonable to require the employer to permit the worker to continue in their employment during the notice period’:

- You can terminate employment instantly (without giving notice)
- You must provide reasons, in writing, for the termination

To terminate a contract for redundancy you must:

- Be able to show that the termination is necessary due to changes to business structure or operations which mean that you need less staff
- Consult with employee representative as soon as possible on measures to avoid redundancies
- Inform workers and the Commissioner of Labour at least 28 days before any terminations because of redundancy occur

Note: Probation periods of up to 3 months at the beginning of employment relationships still exist. During this time either party can terminate a contract without reason and without giving notice.

Does Vanuatu’s law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What do these changes do to my costs?

It becomes easier to terminate an employee instantly for serious misconduct.

It becomes harder to terminate an employee for lack of capacity or poor conduct. You will need to take more administrative steps and will need to have clear reasons for ending the employment relationship. Whilst the extra steps are an additional administrative burden, some businesses already assume this burden as part of employee performance management processes.

It also becomes harder to terminate an employee for redundancy as you will need to engage in more consultation and be able to prove that it is a genuine redundancy situation.

CHANGES TO PAYMENTS ON TERMINATION

Some things are clear under the ERB:

- Casual/daily workers do not get payments on termination
- Employees terminated instantly for serious misconduct do not get payments on termination

One major area that is not clear is whether employees will get severance allowance or redundancy payments or both if they are made redundant. Another major area that is not clear is whether employees who are terminated with notice for lack of capacity or poor conduct are entitled to severance allowance.

Earlier versions of the ERB only had redundancy payments. The current version of the ERB has both severance allowance payments, which are the same as what is in the current Employment Act and redundancy payments.

The amount of redundancy payment is:

- 1 month's salary for the first full year worked
- ½ a month's salary for any additional full years worked
- No payment for any partial year worked

The amount of severance allowance is:

- 1 month's salary per year worked
- A percentage of 1 month's salary for any partial year worked

At the moment, the way that the ERB reads:

- Employees terminated by notice for lack of capacity or poor conduct that have worked for more than 1 year are entitled to severance allowance
- Employees who retire after the age of 55 years, resign after working more than 10 years, or leave due to ill-health are entitled to severance allowance
- Employees who are terminated due to redundancy are entitled to both redundancy payment and severance allowance

How do these costs compare to other Pacific island countries?

They are considerably higher than costs found in other Pacific island countries.

Vanuatu under ERB	Redundancy payment. 1 month's basic wage for the first year worked, 2 week's basic wage for subsequent years. Also possibly, severance. 1 month's wage per year worked.
Solomon Islands	Redundancy payment. If employee has worked for at least 6 months and is made redundant by the employer, 2 weeks basic wage. A cap of 65 times the basic wage is set. Redundancy is not available to employees who resign
Fiji	Redundancy payment. If termination is because of redundancy 1 weeks pay per year worked. Redundancy is not available to employees who resign
Samoa	None
Kiribati	None
Tuvalu	None
Tonga	None
Marshall Islands	None
PNG	Nothing in Employment Act.

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What does this do to my costs?

Your current costs for severance allowance remain almost the same under the ERB as they are under the current law.

You have additional redundancy payment costs in respect of employees terminated because of redundancy.

CHANGES TO HOURS OF WORK, INCLUDING WORK ON PUBLIC HOLIDAYS

Hours of work

Current employment laws regulating hours of work are quite confusing (see the VCCI Employers' Guidebook). The ERB is more straightforward.

- The ERB keeps the same maximum hours of work per week (44 hours).
- The ERB keeps the same maximum days of work per week (6 days).
- Employees can work up to 10 hours per day before becoming entitled to overtime.
- Voluntary overtime can be worked over these hours.
- Overtime can be required by the employer so long as it does not pose a risk to the health of the employee.
- Overtime rates remain the same as what they currently are.
- Requirements for giving meal breaks and lunch breaks remain the same as what they currently are.
- Specific restrictions on working on Sundays are removed.

Variations of hours

Some employers currently vary hours of work depending on the amount of work they have on or other factors such as the weather.

This practice is specifically prohibited for all employees except for casual workers under the ERB.

Public holidays

The main change with cost implications is public holidays.

The ERB requires all workers, except for shift workers, to be paid for public holidays that they do not work.

- This *does not affect* employees who are paid based on a yearly or monthly rate, regardless of the number of days worked.
- This *does* affect employees who are paid based on the number of hours or days worked.

Workers who work public holidays must be paid double their usual rate.

- This increase affects all employees, as current law only requires an additional payment for *overtime* worked on public holidays. The public holiday overtime rate is 1.5 times the normal payment.

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What does this do to my costs?

It becomes easier to require employees to work overtime, and it also becomes easier to determine who is entitled to overtime.

You will need to be careful about the contract status of your staff if you want them to be on variable hours.

Costs in relation to public holidays may increase, depending on how your business is structured.

CHANGES TO WAGES PAYMENTS

The main change to wage payments is that employers will need to provide employees with better records, and will also need to keep better wages records.

Employees will need to be provided with payslips which state:

- the worker's name;
- the nature of employment or job classification;
- the days or hours worked at normal rates of pay;
- the rate of wages;
- the wage period;
- the hours of overtime worked during a wage period and the rate of wages payable for the overtime;
- the gross earnings of the worker;
- allowances, loadings or other sundry payments due to the worker;
- deductions made from the gross earnings of the worker;
- the net amount due to the worker after all deductions have been made in respect of each wage period;
- employment number, Vanuatu National Provident membership number, taxation identification number or any other form of identification; and
- any other prescribed information.

Employers will also need to keep pay records which show:

- the name of the worker;
- the date of birth;
- the worker's address;
- the kind of work on which the worker is usually employed;
- the contract of employment or collective agreement under which the worker is employed;
- the classification or designation of the worker according to which the worker is paid;
- their hours of work;

- the wages paid to the worker each week and the method of calculation;
- any maternity benefits paid
- other prescribed particulars.

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What will these changes do to my costs?

The law already requires you to keep pay records, so keeping pay records should not affect your costs at all.

There will be more administrative costs associated with producing payslips, but these should be minor.

NON-DISCRIMINATION

One major new area is non-discrimination regulation. Vanuatu's law already requires equal pay for equal work. The ERB goes further than this:

- Hiring:
 - you are not allowed discriminatory job advertisements (for instance an advert that only asks women to apply, or only young people)
 - you are not allowed to require medical examination as a condition of employment

- Sexual harassment:
 - Employers will be required to develop and maintain sexual harassment workplace policies

- Victimization:
 - Nobody is allowed to victimise a person who has complained of, or given evidence about, an incident of sexual harassment or discrimination

- Equal pay for equal work is expanded to also require equal conditions

Does Vanuatu's law need to change to comply with ILO Conventions?

Yes – Vanuatu has not signed two ILO Conventions in this area.

What will these changes do to my costs?

Most of these changes should have little impact on your costs. Standard template sexual harassment policies are available.

A potential cost is that you cannot “screen out” people with medical conditions that may affect their work performance. However, sick leave amounts are decreased. Further, you could *probably* terminate an employee's employment on the basis of lack of capacity if ill-health results in too many absences.

CHANGES TO DISPUTE RESOLUTION PROCEDURES

The ERB sets up a new, quite complex dispute resolution process:

Step 1: Attempt to settle the dispute at the **workplace level**.

Schedule 3 of the ERB provides a simple procedure for businesses that do not want to design their own.

This step can be skipped by the worker if the dispute is about termination of employment, sexual harassment or discrimination and the worker thinks workplace resolution is likely to be unproductive.

Step 2: Report to the Industrial Registrar to take the matter to **mediation**.

The Mediation Service is a service to be established by the Judicial Service Commission and staffed by qualified mediators.

The Industrial Registrar must refer the dispute to the Mediation Service within 7 days of receiving it.

The Mediation Service must schedule a mediation session within 14 days of receiving the dispute, although this period can be extended if all parties consent. There is no limit on the number of mediation sessions that can be scheduled.

Lawyers are not allowed to represent parties during mediation.

Step 3: If mediation fails the matter may be referred to the **Employment Tribunal**. (Disputes cannot go to the Tribunal without having gone to mediation first.)

The Employment Tribunal is appointed by the Judicial Service Commission and is comprised of a lawyer, as Tribunal Chief and two others, who do not need to have legal qualifications.

Its jurisdiction is to hear and determine offences under the ERB, impose fines of up to 100,000 vatu and adjudicate on claims up to 2 million vatu.

If the claim is more than 2 million vatu the matter will go straight to step 4.

The matter must be referred to the Tribunal by any party within 28 days of the mediation being exhausted.

The Tribunal must schedule the dispute for hearing within 20 days, although this period can be extended if all parties consent.

The Tribunal must make its decision within 40 days of the hearing.

Step 4: Either party can appeal the decision to the Employment Division of the Court, which is a division of the Supreme Court of Vanuatu.

Step 5: The decision can be appealed to the Court of Appeal on a point of law.

Does Vanuatu's law need to change to comply with ILO Conventions?

No – Vanuatu has not signed any ILO Conventions in this area.

What will these changes do to my costs?

It is not known what the costs will be for users of the mediation service and the Employment Tribunal, although it is usually thought that mediation provides a quicker and cheaper resolution to disputes than taking matters to court.

The time it should take from first reporting a matter to the Industrial Registrar and the Employment Tribunal making a decision is about 16 weeks.

CHANGES TO COLLECTIVE EMPLOYMENT RELATIONS

Both trade unions and employer organizations can be registered. Once registered they are legal entities that can do things such as undertake enter agreements.

One of the most important changes to collective employment relations is that the ERB sets out, in detail, processes for collective bargaining in good faith in order to make a collective agreement that will bind all the members of the trade union and/or employer organization. Basically the law allows a trade union or an employer association to initiate collective bargaining processes which others must then participate in. Collective bargaining must follow a Code of Good Faith.

Collective bargaining in good faith does not require parties to reach an agreement. However, if bargaining breaks down then it can be referred to the Industrial Registrar as a dispute.

Does Vanuatu's law need to change to comply with ILO Conventions?

Vanuatu has signed two ILO Conventions in this area. Whilst these Conventions are not particularly detailed about requirements to promote collective bargaining, the changes reflect the spirit of Vanuatu's obligations under international law.

What will these changes do to my costs?

At the moment there are not many collective agreements in Vanuatu. Many workplaces are not heavily unionised. These changes may increase union presence and influence in more workplaces. They may also require you to get involved in potentially time consuming collective bargaining processes.

Ideally these processes lead to better employer/worker relationships in the workplace because of the cooperation shown during collective bargaining.

OTHER DEVELOPMENTS: SOCIAL PROTECTION LAW & OHS CODES

Social protection laws

Social protection laws cover areas such as payments on retirement, benefits due to being unable to work due to disability or injury, maternity benefits and unemployment benefits. At the moment Vanuatu's employers directly bear many social protection costs in relation to their employees.

The Vanuatu National Provident Fund is looking at expanding member services in relation to medical treatment, and there are also proposals to revise the Workmen's Compensation Act.

The ILO Suva Office has recently appointed a Social Protection Officer, and it is hoped that project will be established to develop a national dialogue on social protection. The employer survey which accompanies this booklet has some questions relating to social protection in anticipation of this project developing.

Occupational Health and Safety

The current Health and Safety at Work Act allows codes of practice to be developed by the private sector and approved by the Minister. At the moment no codes of practice exist. The Australian Chamber of Commerce and Industry has offered to help the VCCI to develop codes of practice. The employer survey which accompanies this booklet has some questions to gauge employer interest in codes of practice.

These potential reforms are not part of the Employment Relations Bill but are part of the wider discussion on developing decent work. We will keep you updated on progress in these areas.

SUMMARY & QUESTIONS/COMMENTS

Under the ERB in some areas your indirect wage costs will increase and in other areas they will decrease. These increases and decreases largely balance out (assuming redundancy payment replace severance allowance altogether). Indirect wage costs remain about the same under the ERB and the current law.

This leaves aside the question of whether Vanuatu's current employment law sets benefits too high. Comparisons with other Pacific countries indicate that in most areas the ERB provides comparatively generous benefits.

Employers will be required to keep better records in a number of areas. Whilst this may increase administrative costs it also requires employers to be more active in human resource and performance management. Better performance management should enhance productivity, so administrative costs should be outweighed, but how workable will the administrative requirements be, particularly for small businesses in Vanuatu?

Other significant changes are the ways in which contracts can be formed and brought to an end. Introducing the ERB may result in more workplaces becoming involved in collective bargaining. It also restricts employers' ability to terminate staff. Whether you agree with these changes depends, to a degree, on your personal political philosophies.

The dispute resolution changes are intended to create a quicker, cheaper and better way for solving disputes. This leaves aside the question of how workable they will be in practice in the Vanuatu environment.

Questions/comments

This booklet has been prepared as part of the VCCI Employer Survey on the Employment Relations Bill. If you have already done the survey, but have additional comments or questions after reading this booklet, please let us know.

You can contact us by sending an email to reception@vcci.com.vu or phoning Alick Berry or Flaviana Rory on 27543.