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IMMIGRATION ARTICLE

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EMPLOYMENT RELATIONS AMENDMENT ACT – 90 DAY EMPLOYEE PROBATION

On Friday, 12 December the New Zealand Government passed the controversial Employment Relations Amendment Act. From 1 March 2009 this legislation provides businesses (with less than 20 employees) the right to dismiss an employee within the first 90 days of employment without the employee having the right to lodge a personal grievance case against the employer for unfair dismissal.

So what does this legislation mean to a new migrant? There are two schools of thought.

First, concern has been raised that employers may use the legislation to dismiss an overseas migrant on minor performance related issues or if they simply change their mind if the migrant is having difficulty adjusting to the work place environment during the initial period of their employment.

Difficulty will arise in the event the employer decides not to continue to offer employment to the migrant before residency is granted, or in the alternative before the employee has completed the three months of full time employment post the grant of New Zealand residence that is required as per immigration regulations. The loss of a position could ultimately lead to not only the revocation of the migrant's work visa, but also the decline of the residence application. This (understandably) would create serious issues for migrants who are unlucky enough to find themselves already settled in New Zealand.

Second, because of the major risk to small organisations hiring an employee who does not perform, there has been reluctance by a number of employers to take a chance and hire a migrant. As a result of the legislation it is possible that many New Zealand employers who are having difficulty recruiting may take a chance on a skilled migrant from overseas knowing that if it does not work out well within 90 days they have an option to dismiss. Allowing an employer to take a risk and hire a migrant may equate to more job offers being provided to migrants across the board.

It is difficult to conclude at this early stage as to what material effect the change in Government policy will have on new migrants. By and large, migrants from the United Kingdom find it much easier to adjust and perform in New Zealand based work environments than migrants from other cultures. It is hoped therefore that the legislation does encourage small employers to take a chance in hiring an overseas migrant. There is still reluctance from a number of New Zealand employers to take a chance on an overseas migrant and although this attitude is gradually changing, perhaps the 90 day probation legislation will be the encouragement needed to a vast number of employers to take a chance. With this chance however there is a risk, and unfortunately that will be placed squarely upon the shoulders of the migrant.

For further information or assistance with the immigration process please contact **Mark Williams** of Lane Neave Lawyers on **+64 3 379 3720** or email liveinnewzealand@laneneave.co.nz

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