

Changes to Your Kiwisaver Obligations: Compulsory Employer Contributions

Introduction of Compulsory Employer Contributions

On 12 December 2007 Parliament passed the Taxation (Kiwisaver) Act 2007, which amends the Kiwisaver Act 2006.

The effect of the amendments is that from 1st April 2008, employers are required to contribute to their employee's Kiwisaver account or similar complying fund. The level of employer contribution will increase over four years, starting at a minimum of 1% of gross salary or wage, rising an additional 1% per annum for four years to 4% in 2011. The compulsory employer contributions only applies to employees who are 18 years old or over and are having employee contributions deducted from their salary or wages. From 1 April 2008, employers will be entitled to receive an employer tax credit of up to \$20.00 per week per employee after 1 April 2008.

The chart below illustrates the contribution rates required by employers and employees from 1st April 2008 through to 1 April 2011.

From the first whole pay period after:	Minimum employer contribution (% of gross salary or wage)	Minimum employee contribution (% of gross salary or wage)
1 April 2008	1%	4% or 8%
1 April 2009	2%	4% or 8%
1 April 2010	3%	4% or 8%
1 April 2011	4%	4% or 8%

By default the compulsory employer contributions are in addition to existing gross salary or wages. Currently this works against non-Kiwisaver employees.

What this means for employers is that, in the absence of any agreement with the employee to the contrary, the cost of the compulsory employer contribution is over and above the employee's salary or wages.

Some employees may also be concerned that, if they chose not to join Kiwisaver, they are disadvantaged because they will not receive what is essentially an extra benefit being provided by the employer to other (Kiwisaver) employees. At first glance, employers might consider making a "top up" payment to employees who decide not to join Kiwisaver equivalent to the amount of the compulsory employer contribution. But care needs to be taken with this approach.

Example:

John Smith earns \$50,000 gross per annum. He is a Kiwisaver member. For the year 1 April 2008 to 1 April 2009 his employer will contribute 1% (\$500) to his Kiwisaver account, bringing his total remuneration up to \$50,500 for that year.

Jane Brown also earns \$50,000 gross per annum. She is not a Kiwisaver member, so her total remuneration package remains the same. She negotiates with her employer for a 1% increase in lieu of a Kiwisaver contribution. However, her employer now runs the risk of Jane joining Kiwisaver at a later date and being entitled to an additional contribution (i.e. \$50,500 + 1%).

Total Remuneration Approach

With the new law, employers and employees may agree that the compulsory employer contributions are included within an employee's total gross remuneration. This must be negotiated in good faith after 13 December 2007, and be expressly included in the employment agreement.

Example:

John Smith still earns \$50,000 gross per annum. He has agreed that his employer's contribution will be included within his remuneration package. This means his base salary for the year 1 April 2008 to 1 April 2009 will be \$49,504.95, with an employer Kiwisaver contribution of 1% (\$495.05).

In other words, this allows the employer and the employee to agree what the employee's total remuneration will be and if the employee chooses to join KiwiSaver, then the compulsory employer contribution will come out of (and is deducted from) the employee's total remuneration.

The overall remuneration package, including any Kiwisaver contributions, would be the same regardless of Kiwisaver membership. This would address the concern that employees who decide not to join Kiwisaver are disadvantaged.

However, existing Kiwisaver employees may not agree to a change from contributions paid in addition to remuneration to contributions included within remuneration. Unless their remuneration package is increased to offset the drop in base-level remuneration, the employee would receive less remuneration overall than they had previously received. Similarly, if such an employee ceased to be a Kiwisaver member after their first year then their remuneration package would also be less by the same amount.

The principle is the same for employees who are paid an hourly wage. If they decide to join Kiwisaver, then their hourly rate is reduced by the amount of the compulsory employer contribution.

Negotiating an agreement

Care needs to be taken to ensure that any agreement reached is:

- (i) carefully worded and;
- (ii) is negotiated in good faith.

Example clause

Kiwisaver – Employer Contributions

The Employer and Employee agree that the Employee's total remuneration package as detailed in the Second Schedule includes all compulsory employer contributions to your Kiwisaver or other complying superannuation fund account. Where compulsory employer contributions are required to be made by us, you agree that a deduction will be made from your remuneration. We agree that this clause has been negotiated in good faith and complies with section 101B(4) of the Kiwisaver Act 2006.

Employers should ensure that any agreement that is reached with an employee cannot be challenged on the ground that it wasn't negotiated in good faith. Some practical steps the employer could take include:

- Ensure the employee fully understand that if they agree to the total remuneration approach and subsequently decide to join Kiwisaver, their take home pay will decrease by the amount of the compulsory employer contribution;
- The employer should not give advice to the employee about the impact of the agreement, but should not say anything misleading and should encourage the employee to get independent advice;
- The agreement should be presented as an option not a requirement of continued employment. For new employees, the appropriate clause should be inserted in the employer's standard agreement;

- For existing employees, the employer should consider its timing carefully. It seems probable that an employee is much more likely to agree to the arrangement if it is tied in with an increase in their total remuneration (perhaps as part of an annual review) or when the employer is introducing a new benefit for employees.

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