

## KiwiSaver, Flip Flops and Total Remuneration

On 3 September 2008, the Labour-led Government passed changes to the KiwiSaver Act under urgency in the Employment Relations (Breaks, Infant Feeding and Other Matters) Amendment Act 2008. The amendments effectively banned the “total remuneration” approach to KiwiSaver by creating a new ground for a personal grievance in circumstances where an employee’s employment was “adversely affected” because of his/her membership in a KiwiSaver scheme or a complying superannuation fund. This meant that a KiwiSaver member could not be offered lesser terms of employment (or be otherwise disadvantaged) than other non-member employees with the same or substantially similar skills, qualifications and experience.

However, in December 2008, the National-led Government passed the Employment Relations Amendment Act 2008, which effectively reversed employees’ short-lived ability to bring a personal grievance for “discrimination” on the grounds of KiwiSaver membership.

It is therefore now possible for employers to negotiate “total remuneration” arrangements with employees (ie arrangements where an employee’s total salary package includes KiwiSaver employer contributions – the effect being that the employee’s “in-hand” and pre-tax salary is greater where the employee is not contributing to KiwiSaver). The Government expects that compulsory employer contributions will become part of the normal wage bargaining process.

These changes to KiwiSaver came into force on 15 December 2008. If employees’ contractual terms and conditions of employment are silent on compulsory employer contributions, these will need to be paid in addition to the employees’ gross salary or wages. Although employers are now able to offset their compulsory contributions against pay movements or to include them in employees’ total remuneration, they must have negotiated their contribution obligations with the employees in good faith.

The Act is not retrospective, however, so the previous legislation will apply for the period 9 September 2008 to 15 December 2009 (ie the prohibition on “total remuneration” arrangements).

The following further changes will commence from 1 April 2009:

- The minimum employee contribution rate will reduce from 4% to 2% of gross salary or wages;
- Compulsory employer contributions will be capped at 2% (although employers can agree to pay more);
- The exemption from Employer Superannuation Contribution Tax will be capped at 2% of the employee’s gross salary or wages;

- The employer tax credit will be discontinued; and
- The member fee subsidy will be discontinued from 1 April 2009 (leaving the employee tax credit of up to \$20 a week, the \$1,000 kick-start, mortgage diversion, deposit subsidy and the first-home withdrawal provisions).

### Case Example:

	KiwiSaver Member	Non KiwiSaver Member	
Salary	53,922	<u>55,000</u>	
KiwiSaver employer contribution 2%	<u>1,078</u>		
<b>Total Remuneration</b>	<b>\$55,000</b>	<b>\$55,000</b>	
Less:			
PAYE (assuming M code)	12,542	<u>12,917</u>	
KiwiSaver employee contribution 2%	1,078		
KiwiSaver employer contribution 2%	<u>1,078</u>		difference
<b>Net take home pay</b>	<b>\$40,302</b>	<b>\$42,083</b>	<b>(\$1,781)</b>
KiwiSaver Account			
Kick-start incentive (first year only)	1,000		
KiwiSaver employee contribution 2%	1,078		
KiwiSaver employer contribution 2%	<u>1,078</u>		
<b>Total KiwiSaver Balance</b>	<b>\$3,156</b>	<b>NIL</b>	<b>\$3,156</b>

n.b. PAYE calculations will change slightly from 1 April 2009

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