

Employment@Work

*Welcome to
Employment@Work,
the first in a series of quarterly
updates on developments in the
areas of employment law and
human resources from
Mackinnon & Associates.*

We aim to provide you with timely, practical and relevant information to help you make informed decisions about employment law and human resource strategy in your organisation. Being our first newsletter, we would also like to introduce you to the team at Mackinnon & Associates and the range of services we provide.

If you would like more information on any of the topics discussed in these newsletters, please feel free to contact us. We look forward to the opportunity to work with you in the future.

Don Mackinnon
Principal
Mackinnon & Associates



About Mackinnon & Associates

Mackinnon & Associates provides a service offering that is quite unique in the New Zealand market, providing expertise and consultancy advice in both employment law and human resource management. The firm boasts a team of specialist employment lawyers and HR

practitioners whose expertise is available in a particular field or as a 'one-stop-shop' for employment law, HR and business strategy.

Our core competencies include:

- Employment law compliance and best practice
- Collective bargaining
- Performance management, training, retention and remuneration strategies
- Workplace Health & Safety
- HR audits; and when the need arises
- Mediation and Litigation representation

Employment Politics

The 2005 Election comes at a time of major upheaval in industrial relations in New Zealand.

This year bankers, nurses, miners, university lecturers, bus drivers and airline cabin crew have all been involved in major industrial disputes. This month, we consider why unions have adopted such an aggressive approach in 2005 and what the main political parties are saying their response will be if they are elected this September.

This year the Engineering, Printing & Manufacturing Union (EPMU) launched its '5 in 05' campaign

with the objective of gaining a 5% increase in remuneration for all EPMU members involved in bargaining. The EPMU argues that the economy is growing strongly and company profits are higher than ever. Companies such as Steel & Tube, Fletcher Building, Waste Management and Auckland International Airport have all increased their profits by 15-55%, the EPMU claims. It also argues that our labour shortage is driven by low wages and a loss of skilled workers overseas. However, this "one size fits all" campaign obviously ignores the fact that many employers are in no position to offer such a wage increase, especially those in the

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- What our political parties have in store for employers and unions
- An alarming case study on prosecution brought against an employer for workplace stress
- Introducing the team at Mackinnon & Associates

Employment Politics continued...

export sector. The call for an across-the-board increase of at least 5% also fails to recognise that many employers have consistently shared profits with employees. In reality though, the EPMU campaign, which has been embraced by the wider union movement, is about more than just pay. Union membership is currently below 25% of the workforce, with a large proportion of that membership coming from the public sector. For unions to survive, they must attract more members and that will only occur if they are

perceived to be offering a real benefit. Aggressive campaigning and a willingness to take strike action to win bigger pay increases is a key part of this strategy to drive up membership. While the threat of industrial action looms over the employment landscape, political parties will try and leverage the opportunity to win votes. In the lead up to the September election, our employment laws will again become a political football with the main parties taking a divergent approach.



2005 Election

So what are the positions of the two major parties on this issue?



National

National's employment law policy is widely considered to be a more 'middle-ground' approach to employment law, reintroducing some (but by no means all) elements of the Employment Contracts Act.

National would repeal the Employment Relations Act but its replacement, the Employment Agreements Act, would retain much of the current framework. The key points of the National policy are to:

- Allow employers to negotiate collective agreements with staff independent of unions;
- Impose greater limits on union access rights to the workplace;
- Remove the right to attend two paid stop work meetings a year for union members;
- Abolish the 30 day rule in which

new employees who come within the coverage of a collective agreement, must have their terms set by that collective agreement;

- Repeal those provisions that allow employers to provide benefits only to those covered by a collective agreement;
- Abolish compulsory trade union education leave; and
- Perhaps most significantly, introduce a "try before you buy" period of 90 days in which all new workers would be unable to bring personal grievances.

National has also promised to repeal the amendments to the ERA introduced last year including the right to impose bargaining fees on non-union staff and the limits on passing on collective terms to non-union staff.

None of these policies will assist the union movement to secure members

and it will, unsurprisingly, vigorously oppose the election of a National led government.

Labour

The Labour Party has indicated that there will be little change to its existing employment legislation. With the recent changes to the Employment Relations Act in December, Labour does plan to revisit the legislation as part of its political campaign but rather defend its current position.

However, Labour has indicated that some extensions to employment legislation may include:

- An extension of parental leave
- Possible introduction of flexible working legislation

The retention of the Employment Relations Act has the full support of unions.

Human Resource Audits

A global study by consultancy Accenture has shown that attracting and retaining staff is now the top priority for chief executives, and that workforce issues make up four of the top 10 concerns for company chiefs.

However understanding the “people” issues, and how to tackle them is not an easy task.

Mackinnon & Associates has developed a model to conduct comprehensive HR audits that are directly aligned to the business objectives of a company. The model has already proven extremely successful.

The approach involves reviewing the company’s ‘people practises’ in core areas such as recruitment, remuneration, training and development, health and safety, employment agreements and performance management. Mackinnon & Associates evaluate these areas from both a legal and human resource perspective.

Based on that review, we can make recommendations on how to improve, streamline or redirect HR strategy in such a way as to help the company achieve its strategic goals. The audit has already proved very successful. For more information on HR audits and how these can deliver measurable results for your company, please contact one of our team.



Combating Workplace Stress

Workplace stress is a complicated issue for employers, largely due to the fact that no two individuals will be affected in the same way.

Employers have a legal obligation to take all practicable steps to eliminate, isolate or minimise harm caused by stress in the workplace, which means being acutely aware of the way stress can affect different people.

The issue was highlighted in April this year when a Nelson District Court decision saw the first successful prosecution for workplace stress by the

Department of Labour. The employer was fined \$8,000 for not doing enough to help an overworked employee. In this case, an accounts assistant suffered considerable stress when colleagues resigned and adequate replacements could not be found resulting in an increased workload. Medical investigations indicated that the subsequent serious deterioration in her health was directly related to the stresses on her at work. Importantly, the company had taken measures to reduce the woman’s workload, which included placing her on stress leave and employing support staff. However the problem was these initiatives hadn’t worked.

The decision is concerning for employers as it poses the question: what can, and should, employers do when faced with a similar situation? Stress is part in parcel of many workplaces but in areas where employee health is concerned, an employer must err on the side of caution, and act promptly to ensure the demands at work are reasonable. Some practical measures to help

the early identification of stress are:

- *Heed any complaints from employees*
- *Be alert to the signs of overwork*
- *Regularly monitor workloads*
- *Take extra care with those employees who show signs of being more vulnerable*
- *Conduct regular performance appraisals where workloads and health are covered*
- *Encourage employee participation in health and safety issues*
- *Provide opportunities for employees to communicate any concerns they may have*
- *If stress arises, provide counseling and work with the employee to find a workable solution*
- *Undertake a risk assessment of workplace stress and work with employees to effectively manage the risk.*

The key is not to assume that stress is under control in your workplace because no one has yet complained. Employers must take collective ownership of the issue by providing all employees (including managers) with the skills to recognise signs of stress in themselves and their colleagues.



The team at Mackinnon & Associates



DON MACKINNON | PRINCIPAL

Don is the founder of the firm and is one of New Zealand's leading employment lawyers. He previously spent 10 years as a partner with Simpson Grierson and was also head of its Litigation Department. He has nearly 20 years experience in employment law and HR, and has acted in a number of leading cases. Don has a Master of Laws Degree in Industrial Relations from the University of London, and also has a thriving sports law practice. He is currently Chair of Netball New Zealand, and a director of Variety – The Children's Charity.



KIRSTY MARSHALL | ASSOCIATE

Kirsty is an Associate. She worked as a solicitor in the employment team at Simpson Grierson before joining Mackinnon & Associates. Kirsty has degrees in Commerce and Law from the University of Canterbury and in her spare time, is a keen triathlete.



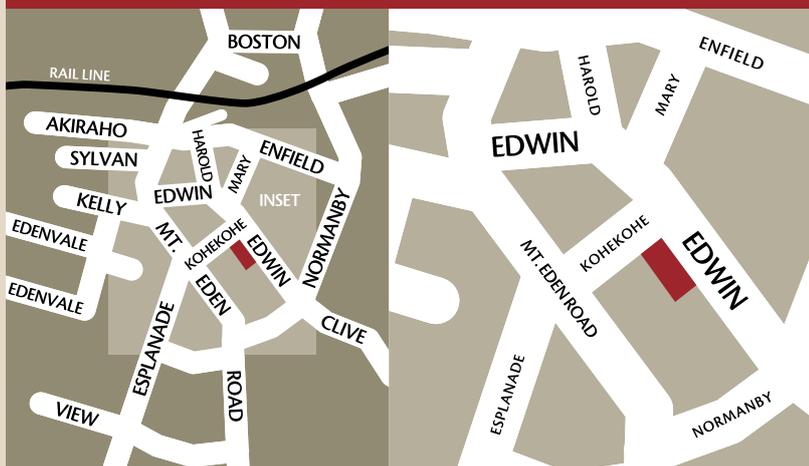
GITA JAYARAM | CONSULTANT

Gita is one of the external experts we are able to bring in for key projects. Gita is a senior HR professional with the ability to successfully design and implement HR strategies in organisations undergoing significant business and cultural change. Recent roles include General Manager Human Resources Sky City Auckland Ltd and General Manager - Human Resources and Organisational Development for Agriquality NZ Ltd. She has also held senior HR roles at Lion Breweries and Enerco. Gita is also accredited in the Emotional Intelligence (EI) tool designed by Daniel Goleman. Gita's key areas of professional interest are:-

- (a) auditing and strengthening Board communication and debate processes using the EI process and,
- (b) encouraging NZ's top executives to remain in NZ by driving high-level, specific development plans focused on broadening their leadership skills and engaging their commitment to their current and prospective roles.

HOW TO FIND US

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