



EMPLOYMENT, HEALTH,
EDUCATION & SPORTS LAW

Employment at work

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Welcome

to the first newsletter of Swarbrick Beck Mackinnon.

As most of our clients will know, the firms of Swarbrick Beck and Mackinnon & Associates merged on 31 March 2008, producing what we believe is one of New Zealand's best employment law firms.

The merged firm is already "firing on all cylinders" and our new premises in Kingdon St, Newmarket, are proving a real hit with clients and staff alike.

We've now got even greater depth and expertise for our clients to call upon, yet we've stayed small enough to make sure that we can continue to deliver personal cost effective service, the way we always have.

We hope you enjoy our newsletter and look forward to seeing you in our new premises some time soon.



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Employers strike back!

A common complaint from employers is that our employment laws are unfairly tipped in favour of employees.

The newspapers often seem full of stories about employees winning personal grievance cases, sometimes after committing acts which would seem to justify their immediate dismissal.

However, many employers don't realise that they too can instigate claims against current or former employees, where the employer has been the victim of wrongdoing.

Two decisions recently issued by the Employment Relations Authority illustrate this very clearly.

The first case involved Panel Holdings Ltd, a Huntly-based company which sued an ex-employee for breaching a number of contractual obligations during her employment. The ex-employee, Ms Paania Paki, had allegedly spent a large amount of the company's money on personal items for herself, including buying items on TradeMe.

Ms Paki did not appear at the Authority, meaning that the Company's evidence went largely unchallenged. The Company had engaged the services of a forensic accountant who gave evidence that Ms Paki

over a weekend, during which time she'd removed her original employment agreement and replaced it with an unsigned copy that included the provision to her of a work related vehicle. She had also altered

The key is being able to prove the wrongdoing and in both cases, forensic experts played a key role in compiling the evidence needed.

had made a large number of purchases for her own benefit, using Company's funds. Many of the purchases could not have

related to the performance of Ms Paki's duties and included cosmetics, sofas, a washing machine, a home theatre system and even a sex toy!

The Authority had little hesitation in finding in favour of the Company. It held that Ms Paki had to repay the Company for the full costs of all of these personal transactions totalling over \$32,000.

In addition, the Authority found that Ms Paki's conduct warranted it awarding penalties against her. It held that Ms Paki's actions were so unacceptable that some form of "punitive action [was] deserved". Among other things, Ms Paki had accessed the Company's computer systems (even after her employment had concluded) to alter computer records to cover the transactions she'd engaged in. She had also accessed the workplace

leave balances that the Company 'owed' her.

In the circumstances, the Authority ordered that Ms Paki pay the Company over \$65,000.

Similarly, in Bradford Trust Ltd v Roebuck & Ors (AA 60/08) the Authority awarded very significant damages against two former senior employees of the Trust who were found to have used confidential information belonging to their employer for their own benefit. Some of that information was used to win tenders for a new business that the two employees had an interest in. The Authority found they had deliberately undercut their employer when their own business had submitted bids on projects that the Trust was also looking to win. The Authority described the behaviour of the employees as "outrageous, contumelious and completely unacceptable. It went on to say that "... it is difficult to imagine a more serious breach of fidelity than deliberately undermining a tender price submitted by [your] employer in order to secure a contract for [your] own personal gain". Ultimately, the Authority awarded damages to the ex-employer of well over \$200,000!

These cases reinforce that employers have rights. The key is being able to prove the wrongdoing and in both cases, forensic experts played a key role in compiling the evidence needed. Clearly, once the facts are established, the Courts will take a dim view of wrong doing by employees.



What's on the radar in 2008?

Flexible Working

The Flexible Workplaces Act comes into force on 1 July 2008. This Act will allow eligible employees a right to request 'flexible working arrangements' to care for dependents.

Some key aspects of this Act to bear in mind are:

- Employees can seek flexible working arrangements to care for any child under 5 who they have responsibility for or for a child of any age who has a disability, or if they have responsibility for a "dependent" relative (which could include a parent or grandparent);
- Employees must have worked for at least six months for an employer before they can apply;
- Employees can seek to work from home, to work "glide time" and even potentially on weekends;
- Employers can refuse a request for flexible hours only on quite specific grounds. These include an inability to recruit additional staff, if the burden of the additional cost is too great or if the change in work will have a detrimental impact on quality, performance, or the ability to meet customer demand.

Breaks and Breast Feeding

The Employment Relations (Breaks and Infant Feeding) Amendment Bill has recently had its first reading in Parliament. The scope of this Bill is wider than many realise.

The Bill requires employers to provide facilities and breaks for employees who wish to breast feed or express in the workplace. The extent of the facilities and breaks are subject to what is 'reasonable and practicable' for the particular workplace.

Perhaps more significantly, the Bill will introduce compulsory minimum break entitlements. Employees will be entitled to an unpaid half hour and two paid 10 minute breaks in any one hour work day. The Bill also provides for fewer breaks in a shorter working day and more on a longer day.

However, at this stage, the Bill does not make allowances for situations where



Minimum Wage (New Entrants) Amendment Act 2007

On 1 April 2008, the youth minimum wage was abolished. Instead, there is now a minimum wage for "new entrants", applying to 16 and 17 year olds. Their current rate is \$9.60 per hour.

However, once a new entrant has completed 3 months or 200 hours of employment (whichever is the shorter) or if the employee is supervising or training others, they become entitled to the standard adult minimum wage (now \$12 per hour).

Employees must have worked for at least six months for an employer before they can apply.

Holidays (Transfer of Public Holidays) Amendment Bill

This Bill provides that when a shift overlaps onto a public holiday, the parties can record in their employment agreement that the public holiday in question will be transferred to the next shift.

This is needed because of a recent (and very surprising) decision of the Supreme Court which cast serious doubt over the legitimacy of this practice.

it would be impossible to provide the prescribed break. For example a small retail outlet where one person operates would find it extremely hard to comply with this Bill. Similarly, the requirement that one 10 minute rest break must be provided if an employee has worked "four hours or less" would seem to suggest that if an employee is engaged for half an hour a day (or potentially an even shorter period), they still are entitled to a 10 minute rest break!

The Election

Of course, the event that could have the biggest impact on employment law this year is the general election. National have traditionally taken a very different approach to employment law from any Labour led government. However, if there is a change in government later this year, on this occasion, the early indications are that the changes National will make to employment law will be incidental.

We will keep you updated as the policies of our leading parties are published.

Redundancy tax credits

Employers will be aware that redundancy compensation payments are taxed in the same manner as all other taxable income.

However, anyone made redundant since 1 December 2006, is now eligible to claim a tax credit on any redundancy pay they have received of 6 cents in the dollar, up to a maximum of \$3,600.

Although this change was introduced to counter the fact that some people who receive redundancy compensation were being pushed into a higher tax bracket, the benefit can be claimed by anyone who has been made redundant and been paid redundancy compensation.

The introduction of this tax credit may have quite an impact on negotiated settlements in an employment setting.

Often in those negotiations, employees elect to have their departure described as a "resignation" rather than a redundancy. That practice may well diminish, given the ability to now claim a redundancy tax credit.



Where we are

