

NEWSLETTER - FEBRUARY 2009

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RIGHT ROAD TO REDUNDANCY

It is difficult to pick up a newspaper at the moment and not read the words “recession” or “redundancy”. A January 2009 case of the Auckland Employment Relations Authority (ERA) highlights the importance of an employer following the correct procedure when looking at a restructuring of their business.

In *Cochrane v Kitchen House Limited*, the employee commenced employment with the employer as an Operations Manager in November 2006.

On 8 November 2007, a meeting was held which included all staff. The employees were informed that sales were not as anticipated, that expenses were higher than expected and that there were to be redundancies. This advice was confirmed in a business update document handed to staff at the same time. Management also advised that recently advertised vacancies would not be filled and the advertisements for the same would cease.

On 21 November 2007, the employee met with the CEO and another manager. He was immediately advised his position was redundant. The employee was asked to think about other opportunities and informed that the employer would do the same. The employee was asked to get back to management the next day to see if he could “come up with a position the company had not thought of”.

On 22 November 2007, the employee met again with the CEO. The employee advised that he could not think of any other positions. He was then advised that the company needed to make him redundant.

Later that same day the employee was handed a letter dated 21 November 2007 confirming the termination of his employment for redundancy. Three weeks after his employment ended, the employee commenced looking for employment.

In his search he found an advertisement by his former employer looking for a new staff member dated 23 November 2007.

The employee also found further advertisements on 28 December 2007 and 17 January 2008. The advertisement of 17 January 2008 related to the position of Operations Manager – the employee’s former position.

The ERA concluded that the employer failed to properly and fairly consult with the employee as to alternatives to redundancy. The employer also failed to properly consider his redeployment.

The employee was awarded a total of \$10,000.00 in compensation for hurt and humiliation.

BREAKING NEWS

On 8 February 2009, the government announced that the minimum wage will rise from \$12.00 to \$12.50 an hour from 1 April 2009. The youth training and new entrant wage will also increase from \$9.60 to \$10.00 an hour. Between 94,000 and 123,000 workers will benefit from the increase.

EMPLOYEES PROVIDE EMPLOYERS WITH NEW YEAR HANGOVER

December is the month when employers traditionally hold Christmas parties for their staff. This festive time can be a great end to the year, but it can also result in behaviour that may affect the employment relationship in the New Year.

The case below highlights that despite the festive time of year, proper employment law processes must still be followed by an employer when dealing with inappropriate behaviour at any work function.

EMPLOYEE GETS INTO A FEW DRINKS AT XMAS DO – LITERALLY

In *Townsend v Prospace Designz Limited* (unreported, Wellington, 2005) evidence was given that the owner/operator was dissatisfied by a number of aspects of Mr Townsend’s work. What became the principal matter of concern to the owner/operator was Mr Townsend’s behaviour at the staff Christmas party on 19 December 2003.

There had been a lot of skylarking between a number of the employees. At one point one employee splashed Mr Townsend with water and ice. The owner/operator did not see this occur. Mr Townsend decided that he would retaliate, but he did so by dunking the employee who had splashed him into the drinks bucket, which was filled with ice. This resulted in minor injuries to the other employee.

The owner/operator then called a meeting to discuss this incident, other performance issues and Mr Townsend’s personal relationship with the administration clerk. This meeting resulted in Mr Townsend’s dismissal.

EMPLOYMENT LAW BRIEFS

EMPLOYEE GETS INTO A FEW DRINKS AT XMAS DO – LITERALLY

The Employment Relations Authority concluded dismissal in these circumstances could only have occurred following a proper investigation and on notice. Accordingly the Authority ordered the respondent to pay to Mr Townsend \$3,000.00 in compensation and \$2,165.33 gross in lost remuneration.

POTENT COCKTAIL: WORK FUNCTION + ALCOHOL

Many of the situations that arise from work functions are caused by alcohol. If present, alcohol must be served responsibly and with the following considerations:

- Food must be readily available;
- Non-alcoholic drinks should be provided initially so that employees are not drinking because they are thirsty;
- A range of alternative low-alcohol and non-alcoholic beverages should be available;
- Transport options should be provided to prevent driving while intoxicated; and
- Staff under the age of 18 should not be provided with alcohol.

LESSONS TO BE LEARNT

Cases such as the one above provide a number of reminders to employers about the appropriate way to deal with staff issues, in and out of the workplace, especially in social situations such as above:

1. An employer must provide an employee with adequate notice before inviting them to a formal disciplinary meeting.
2. An employee must be informed of what the meeting is about and the possible consequences.
3. An employee must be given the opportunity to bring along a support person.
4. An employee must take some time to consider the employee's responses before taking any disciplinary action.

PACKAGE AIMED AT THE NEWLY REDUNDANT

On the topic of redundancy again, in December 2008 the National led Government announced a package for people who have recently been made redundant.

The Government's "ReStart Package" is aimed at providing short term support to low to moderate income families with children, and to people with high housing costs, who have been made redundant.

ReStart will be available to people who have been in work for the last six months, including self employed people and those who have changed jobs or employers during that time. The assistance will be available for 16 weeks or until they move into work.

ReStart comprises of three components:

- **ReCover:** A payment for families with children and who are no longer eligible for the In Work Tax Credit, of \$60.00 per week for families with up to three children and \$15.00 per week for each extra child.

- **RePlace:** Available for those who qualify for the maximum accommodation supplement after they have been made redundant. RePlace increases the amount by up to \$100.00 per week.
- **ReConnect:** Employment and job services.

People who are made redundant have 20 working days to apply from the date they lose their job.

YOU CAN PICK YOUR FRIENDS...

The case below highlights how quickly a family dispute can turn into an employment one.

In *Glen v Loader* (Employment Relations Authority, Christchurch, 2008) the employers (a married couple) owned and operated a garden and function venue. The employers lived in a house in the gardens.

The "employee" was the cousin of one of the employers and came to live with them in October 2005. Later he started working for them but no employment agreement was provided. In addition to some garden maintenance work (unpaid) the employee was paid to do function work and if there were no functions he was not employed. When there was work available he was paid \$18.00 per hour.

On 4 August 2007, the employee moved out of the family property. On 9 August 2007, the employer rang the employee to let him know that the only forthcoming function on 18 August 2007 was a small function and they did not require him to work.

Next, the employers received a letter from the employee's advocate stating, "our client instructs that he lived on site. Our client also instructs that on 27 July 2007 he was requested to vacate the property. Our client has not been offered further work since he was requested to leave. However, he was contacted almost immediately after his departure and told by the employer that there were only two small functions and he was not required. The request by his employer to leave and not offer further work will be viewed as a dismissal".

The Employment Relations Authority held that there was no sending away of the employee. In fact, there was no dismissal; rather it was the employee who ended the employment relationship some time prior to 1 October 2007.

EMPLOYMENT RELATIONS TEAM

If you have any queries in respect of the above, or any other employment law issues, please contact a member of Lane Neave's Employment Relations Team: **Glenn Jones, Andrew Shaw, David Caldwell, Amy Shakespeare and Fiona McMillan.**