

NEWSLETTER - MARCH 2009

Winners of the New Zealand Employment Law Award in 2007 and 2008

New Zealand
Law 2008 Awards

IN THIS ISSUE:

- **Nine Day Fortnight Plan Becomes an Option for Many**
- **Ignore It and It Won't Go Away**
- **Disputes Tribunal Changes to Help Small Business**
- **First Hitch with 90 Day Probationary Law**
- **Real Estate Agents and Conflicts of Interest**
- **Did You Know?**

NINE DAY FORTNIGHT PLAN BECOMES AN OPTION FOR MANY

The Job Support Scheme floated at the recent Employment Summit has been given financial backing by the Government.

The Scheme involves employers, workers and unions negotiating voluntary agreements to reduce their hours at work to a nine day fortnight for up to six months. While workers are in the Scheme they cannot be made redundant.

The Government will pay the \$12.50 minimum wage for five hours to subsidise lost wages for employees who agree to join the nine day working fortnight. Prime Minister, Mr John Key, hoped that employers would help top up the subsidy.

Originally the plan was for employees to enter into some form of training on their "10th working day". However, this proved to be too difficult. Despite this the Government hoped training would be offered and taken up but it would not be a compulsory requirement.

The Scheme is initially aimed at private sector businesses with 100 or more staff. There are around 1,600 companies employing 580,000 people who would qualify for the Scheme. The Scheme will only be available for up to 10 employees for each threatened redundancy.

The Scheme will begin on 27 March 2009 and will run through until the end of 2010.

IGNORE IT AND IT WON'T GO AWAY

A recent decision of the Employment Relations Authority (ERA) highlights the importance of employers dealing with personal grievances when they arise.

In *Bernard Joyce and Bruce Cotton t/a Emerson Breakdown Service*, ERA, Auckland, February 2008, the employer did not make himself

available for mediation nor did he attend the investigation meeting.

Mr J was employed in April 2005 as a Breakdown Service Technician. There was no written employment agreement. Mr J was initially paid \$500.00 net per week plus \$10.00 for each after hours call out. In 2006 this was increased to \$600.00 per week and \$15.00 per after hours call out.

Mr J heard rumours that the Automobile Association (AA) was going to terminate its contract with Mr C but nothing was said directly to him. He telephoned his employer on a number of occasions to chase up his wages and was told not to worry, it was just a quiet period.

On 24 July 2008 he telephoned Mr C regarding his wages and was told that he no longer had a job and had been given notice two weeks prior. Mr J said that at no stage was he given notice. Mr J was not given any instructions regarding the company vehicle in his possession. Mr J said his last AA job had been on 18 July 2008.

Mr J had requested his time and wage records but these had not been supplied. Mr J was also not aware of what annual leave he was owed. The Authority held that Mr J was to be paid:

- 1 Four weeks annual leave (\$2,400.00);
- 2 One week pay in lieu and three weeks lost remuneration (\$2,400.00);
- 3 Compensation for humiliation and distress pursuant s123(1)(c)(i) of the Employment Relations Act 2000 (\$4,000.00); and
- 4 An award for legal costs (\$1,320.00).

When a personal grievance is raised an employer should take advice in the first instance. If the employee wishes to attend mediation to resolve the matter it is normally in the interests of both parties to attend. Furthermore, it is recommended that employers are legally represented in the ERA.

If the employer above had taken advice in the first instance it could be argued that he would now not be liable for the \$10,125.00 awarded by the ERA.

DISPUTES TRIBUNAL CHANGES TO HELP SMALL BUSINESS

On 4 February 2009 the Government announced changes to be made to the jurisdiction of the Disputes Tribunal.

Currently, the maximum claim level of the Disputes Tribunal is \$7,500.00, or \$12,000.00 with the consent of both parties. The Government will lift these levels to \$15,000.00 and \$20,000.00.

There are two reasons behind the change:

- 1 To relieve some of the pressure placed on the District Court; and
- 2 To lighten the load on small and medium sized businesses.

**DISPUTES TRIBUNAL
CHANGES TO HELP SMALL BUSINESS** (Con't)

Though you are not allowed to take legal representation with you to a Disputes Tribunal hearing, at Lane Neave we can assist you with preparing for the hearing. This includes what to expect from the process and what to say on the day.

The expansion of the Tribunal is part of a five part package to support small business. The other parts are tax changes, expanding the role of the Export Credit Office, expanding business advice services and creating a fast payment requirement for Government agencies.

FIRST HITCH WITH 90 DAY PROBATIONARY LAW

It was revealed in Parliament on 4 March 2009 that a Work and Income office in Christchurch told a beneficiary that a job under the new 90 day probation law was not considered permanent employment. Accordingly, the beneficiary's application for relocation assistance was turned down.

Green Party MP Sue Bradford said that the man concerned had wanted assistance to raise a bond so he could rent a house.

Despite the fact the man was declined financial assistance to obtain a bond, he was granted \$1,050.00 for his family to live temporarily in a cabin at a camping ground.

Ms Bradford stated, *"it is ludicrous that Work and Income is prepared to pay for a temporary stay at a camping ground while refusing to help the family with a bond for a permanent house"*.

Social Development Minister, Paula Bennett, was not aware of the case and was to look into it.

REAL ESTATE AGENTS AND CONFLICTS OF INTEREST

A March decision of the Supreme Court has highlighted the importance of real estate agents disclosing any potential conflict they may have.

In *Mark Moncrieff Stevens & Others v Premium Real Estate Limited* (Agency), the Agency acted as the agent for Mr and Mrs S in the sale of their home. It introduced the purchaser, Mr L, who acquired the property in May 2004 through a trust for a price of \$2,575,000.00.

The property was on-sold seven months later for \$1 million more. The Supreme Court held that the Agency withheld two vital pieces of information.

1 The Agency and its sales person, Ms R, acted on a number

of occasions for Mr L in buying and selling properties and had some expectation of acting for him in the future, including in any subsequent re-listing of Mr and Mrs S's property, setting up what the Courts have held to be a conflict of interest which should have been disclosed.

2 Mr L was a trader in residential properties, a fact the Court considered was material to the decision made by Mr and Mrs S to sell their property for \$2,575,000.00.

It was also found that, not only was disclosure relating to Mr L not made by the Agency, but Ms R actively promoted in Mr and Mrs S's belief that Mr L was acquiring the property as his own home, even though she acknowledged in evidence that she knew that giving that impression to vendors was a tactic he had used before when acquiring residential properties for resale at a profit.

The Court was unanimous in dismissing the Agency's appeal from liability and, by majority, allowed the S's appeal from the Court of Appeal \$225,000.00 damages award, substituting \$659,813.00 together with 7% interest from settlement date. The Court also unanimously restored the High Court order for repayment of the \$67,500.00 commission as the Agency had not earned it by good faith performance.

DID YOU KNOW....?

Lane Neave is more than New Zealand's top employment law team. Lane Neave provides a range of services across a number of areas of law, from all aspects of property to personal, to commercial and more. Please contact one of our team if you need non-employment advice and we can point you in the right direction.

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.**

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.**