

NEWSLETTER - APRIL 2009

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

New Zealand
**Law 2008
Awards**

IN THIS ISSUE:

- New Tax Code - ME
- Who Wears the Pants?
- April 2010 – Cash for Holidays
- Reminder – Employers Providing Immigration Advice after 4 May 2009
- Payment to Employees under the Employment Relations Act 2000
- Employer Fights Back

NEW TAX CODE – ME

From 1 April 2009 a new tax code, ME, was introduced. This is a new independent earner tax credit, which will give up to an extra \$10.00 a week to those earning between \$24,000.00 and \$48,000.00 a year who do not receive a benefit, Working for Families, tax credits or National Superannuation.

Furthermore, from 1 April 2009 many people will begin paying less tax with the income of a worker of the average wage of \$48,500.00 increasing by \$18.00 a week.

Despite the drive to put more money into the economy both John Key and Finance Minister Bill English have warned that further tax cuts scheduled for 2010 and 2011 may not be affordable.

The forecasts have been described by Mr English as unacceptable as they would lead to large debt levels, credit risk downgrades and higher interest rates for everyone.

Taxpayers will get an indication in the 28 May 2009 Budget on whether the scheduled 2010 and 2011 tax cuts will go ahead.

WHO WEARS THE PANTS?

In *Curtis v Airwork (NZ) Limited* (Employment Relations Authority, Auckland, April 2009), the employee began working for the employer in 2004. He started as an apprentice, and reached the role of an electrician with a supervisory role in the employer's electrical workshop. He had no history of any previous disciplinary action.

Throughout his employment the employee had worn his own work shorts to work during the summer months. He only wore trousers in the cooler winter months.

In late December 2008 the employer issued each employee with a new uniform. The employee's Employment Agreement required him to wear a uniform provided by the employer.

In January 2009 the employee asked if he could be supplied with cotton shirts as the polycotton material was aggravating his eczema condition. The following week the employer had an informal meeting with the employee where the employer expressed concerns about the employee's attitude to management. During that conversation the employer agreed to supply cotton shirts for the employee and asked why he was not wearing the uniform trousers. He replied that he only wore shorts in summer and wanted to keep doing so.

Two weeks later the employer met with the employee and told him to wear trousers the next day. The employee explained he did not want to and did not attend work the next day.

In the following week the employee wore shorts to work on Monday. On Tuesday he was called to a meeting with the employer and was asked to explain why he was not wearing the uniform trousers as directed. The employee insisted he wanted to wear shorts because trousers were not comfortable and would affect his eczema.

Over the next week a number of disciplinary meetings were held. These resulted in the employer explaining that the situation had become one of "loss of trust and confidence issues". His employment was terminated on 19 February 2009.

The employee claimed the dismissal was unjustified and sought orders for permanent reinstatement, lost wages, compensation for hurt and humiliation and his legal costs. The employer was ordered to reinstate the employee to his former position pending the hearing of his personal grievance.

APRIL 2010 – CASH FOR HOLIDAYS

By April 2010 employees will be able to trade their fourth week of annual holidays for cash announced John Key on 23 March 2009. The decision to pay out the fourth week will have to be made at the employee's request only. Unions are concerned the move will see a return to the three week holiday entitlement.

REMINDER – EMPLOYERS PROVIDING IMMIGRATION ADVICE AFTER 4 MAY 2009

From 4 May 2009 employers will no longer be able to provide immigration advice to their employees or potential employees, as doing so could put the employer in breach of the Immigration Advisors Licensing Act 2007 (Act).

The Act has been introduced to regulate immigration consultants, as there have been many cases of foreign nationals in New Zealand being given incorrect immigration advice, charged exorbitant fees, and

EMPLOYMENT LAW BRIEFS

REMINDER – EMPLOYERS PROVIDING IMMIGRATION ADVICE

AFTER 4 MAY 2009 (Con't)

provided with very poor service from immigration consultants who hold themselves out as being professional immigration advisors.

Whilst the Act is aimed to regulate those working in the immigration advice industry, the effect of its provisions essentially limits the types of people who can give advice on an immigration matter. Employers who provide immigration advice to an employee or potential employee post 4 May 2009 could find themselves in breach of the Act and therefore risk a substantial fine. It is not necessary to charge a fee to be caught by the Act.

It is recommended that from 4 May 2009 the advice of an experienced immigration lawyer is sought on any immigration matter. Lawyers are exempt from the new licensing regime as their advice is regulated by the New Zealand Law Society.

If you have any queries in respect of the above, or any other immigration law issues, please contact a member of Lane Neave's specialist Immigration Law Team.

PAYMENT TO EMPLOYEES UNDER THE EMPLOYMENT RELATIONS ACT 2000

Payments that are genuinely and entirely for compensation for humiliation, loss of dignity or injury to feelings under section 123(1)(c)(i) of the Employment Relations Act 2000 (Act) are not viewed as income under section CE 1 of the Income Tax Act 2004.

Such compensation payments are not gross income under ordinary concepts under section CA 1(2) of the Act. There is consequently no liability under section NC 2 of the Act for employers or former employers to deduct PAYE from these payments.

However, if the parties to a settlement agreement agree to characterise or describe payments as being for humiliation, loss of dignity, or injury to feelings when they are in reality for lost wages, this transaction would be a sham which would be open to challenge by the Commissioner of the Inland Revenue.

This raises the question of how much money can an employer pay under section 123(1)(c)(i) of the Act? The rule of thumb is that the IRD will not look into payments which are \$15,000.00 or less.

Where the Commissioner of the Inland Revenue has some doubt about the amount attributed to humiliation, loss of dignity, or injury to feelings, he may ask the parties to a settlement agreement what steps they took to evaluate objectively what would be a reasonable amount to attribute to humiliation, loss of dignity, or injury to feelings.

Our aim is to assist our clients to be proactive in ensuring statutory compliance and best risk management in the area of employment law. This publication is, however, necessarily brief and general in nature. You should therefore seek professional advice before taking any action in relation to the matters dealt with in this publication.

EMPLOYER FIGHTS BACK

Employers will be pleased to know that they too can utilise the Mediation Service and Employment Relations Authority (ERA) when disputes arise with employees.

This has been highlighted in the recent decision of *Installer Services Group Limited v Ashley Burd* (Christchurch, April 2009).

In this case the employer sought to recover monies owed to it by the employee, the return of company money retained by the employee, reimbursement of notice not worked and a penalty for breaches of the executed employment agreement.

The employee had signed a written employment agreement on 28 September 2007.

On or about 22 March 2008 the employer received an undated handwritten resignation from the employee indicating that the company vehicle of which he was in charge, had been left at Nelson Airport and that his resignation was to take effect immediately.

However, at the time of the resignation the employee had in his possession:

- 1 Two CD players belonging to the employer;
- 2 Unaccounted for banking belonging to the employer; and
- 3 A company float of \$500.00 which remained unaccounted for.

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.**