

NEWSLETTER - JUNE 2009

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

New Zealand
Law 2008 Awards

IN THIS ISSUE:

- Parental Leave Payments to Increase from 1 July 2009
- Recession – Over Before We Know It?
- Swine Flu – Who Picks Up The Tab?
- Employment Relations Authority Hears Largest Number of Personal Grievances in 2008
- Review of Holidays Act 2003
- Immigration New Zealand's Changes to Seasonal Employer Policy
- Redundancies Affect Entire Workplace

PARENTAL LEAVE PAYMENTS TO INCREASE FROM 1 JULY 2009

From 1 July 2009 the maximum rate of parental leave payment will increase from \$407.36 to \$429.74 per week. The minimum payment for self-employed parents will also increase from \$120.00 to \$125.00 per week.

The maximum rate of paid parental leave is adjusted every year to account for any increase in average weekly earnings. Parents eligible for the scheme are entitled to up to 14 weeks paid parental leave at a rate calculated on the basis of their average weekly earnings.

RECESSION – OVER BEFORE WE KNOW IT?

The New Zealand Institute of Economic Research (NZIER) predicts that the economic recession will continue through to September 2009, with renewed growth in December 2009. The NZIER expects the December quarter growth to be led by migration population increases and considerable stimulation from monetary and fiscal policy.

Despite this positive outlook, the NZIER predicts that the economic environment will be difficult for both business, due to reduced demand, and households due to lower wage increases.

Rising unemployment may also persist until mid 2011 when the unemployment rate is expected to peak at 7.8%, explains NZIER principal economist, Shamubeel Eaqub.

SWINE FLU – WHO PICKS UP THE TAB?

The Swine Flu pandemic has raised a number of issues for employers. In particular, if employees are sick, quarantined or the business closes down – who pays?

Section 65 of the Holidays Act 2003 states:

“Sick leave

- (1) An employee may take sick leave if –
 - (a) the employee is sick or injured; or
 - (b) the employee's spouse [or partner] is sick or injured; or
 - (c) a person who depends on the employee for care is sick or injured.
- (2) An employee is entitled to 5 days' sick leave for each of the 12-month periods specified in section 63(2).”

If an employee chooses to stay at home because they are sick then sick leave entitlements are to be paid in the normal way. If the employee has run out of sick leave, then the employer and employee can agree to use annual leave entitlements instead.

There are two situations where the law is not so clear:

- 1 Where an employer is concerned that an employee who is not outwardly sick may still pose a risk ie they have recently returned from overseas; or
- 2 Where an employer makes a decision to temporarily close the business as the result of an actual or potential risk.

In these circumstances, it is unclear whether an employer is obligated to pay wages and this may depend on the circumstances of each case. What is clear is that the Health and Safety in Employment Act 1992 requires employees who are not well or potentially a risk to others to be absent from work.

On a practical level, the basis on which an employee is away should be discussed up front. An employer and employee can look at compromises such as an employee receiving half pay or taking sick leave in advance.

The Government is currently seeking legal advice on whether businesses ordered to close because of Swine Flu can be forced to pay healthy workers.

EMPLOYMENT RELATIONS AUTHORITY HEARS LARGEST NUMBER OF PERSONAL GRIEVANCES IN 2008

An analysis of last year's Employment Relations Authority (ERA) hearings has found that a record 521 personal grievances were heard by the ERA in 2008. 67% of these cases were determined in favour of the employee.

EMPLOYMENT LAW BRIEFS

The average award for hurt and humiliation (excluding lost wages) varied across the centres. In Wellington the average award was \$6,474.00, in Auckland \$4,851.00 and in Christchurch \$4,896.00.

EMPLOYMENT RELATIONS AUTHORITY HEARS LARGEST NUMBER OF PERSONAL GRIEVANCES IN 2008 (Con't)

Although reinstatement continues to be the primary remedy, only 17 out of 521 employees sought reinstatement.

REVIEW OF HOLIDAYS ACT 2003

A working group made up of five members, including two nominations each from the Council of Trade Unions and Business New Zealand, has been appointed to begin the review of the Holidays Act 2003. The issues that the Group will look at include the calculation of relevant daily pay, trading annual leave for cash at the employee's request and transferring the observance of public holidays. The group have been directed to report to Parliament before December 2009.

Immigration New Zealand's Changes to Seasonal Employer Policy
The Recognised Seasonal Employer Policy (RSE) was originally introduced to meet labour shortfalls in the fruit picking sector. New rules have been brought in for those employers who want to bring in employees under the RSE.

Immigration Minister Jonathan Coleman announced that there would be three changes to the RSE:

- 1 The introduction of an additional work permit – the Supplementary Seasonal Employment Permit (SSE).
- 2 Deductions made from RSE workers wages will now be the same as those for New Zealand employees.
- 3 Employers are now required to arrange health insurance for their workers and RSE workers must pay for their health insurance.

To qualify for an SSE work permit the employees will need to be already in New Zealand lawfully. Employees will be able to move from one approved SSE employer to another over six months. Furthermore, the onus will be on the employer to ensure no suitable New Zealanders are available to do the work.

REDUNDANCIES AFFECT ENTIRE WORKPLACE

A decision by the Employment Relations Authority highlights the need for employers to consider those employees left behind when making other employees redundant. In *Duffy v ASSCO Holdings Limited* (February 2008, Employment Relations Authority, Auckland), Mr Duffy had been employed for 29 years by the company.

The company underwent a restructure and disestablished the positions of two of Mr Duffy's direct reports. He was not consulted on the implementation of the restructure. Mr Duffy raised concerns about the redundancies with the company. In particular, he raised concerns about the inevitable increase in his own workload.

After his direct reports were made redundant, Mr Duffy began to feel overwhelmed by the additional clerical work he was expected to do. Mr Duffy discussed this with his Operations Manager. He then saw his doctor and went on two weeks sick leave due to stress.

Upon his return, and prior to resigning, Mr Duffy notified the company that the changes made to the staffing levels in the department were beginning to affect his health. He had a history of depression known to the company.

Mr Duffy later raised a successful personal grievance for unjustified disadvantage and constructive dismissal. The Authority held that Mr Duffy, although not at risk of losing his job, was required to be consulted with because of the significant effect it would have on his position. The workload ultimately led to Mr Duffy experiencing workplace stress and caused him to seek medical attention for the return of his symptoms of depression.

The company was ordered to pay him \$10,000.00 compensation under section 123(1)(c)(i) of the Employment Relations Act 2000.

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.