

## NEWSLETTER - OCTOBER 2009

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

New Zealand  
**Law 2008 Awards**

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### THANK YOU

We wish to thank our clients for their ongoing support in relation to the 2009 New Zealand Law Awards. We are finalists in the following categories:

CCH Employment Law

Legal Personnel Employer of Choice

ASB Mid Sized Law Firm of the Year

First Mortgage Trust Banking and Finance Law

Fujitsu Infinity Law Corporate and Commercial Law

Action Step Family Law – Helen Fairgray

SLS Litigation and Dispute Resolution

Babbage Property Law

The winners will be announced on Thursday 5 November 2009.

### NO TXTNG FRM NOV 09

The Land Transport (Road User) Amendment Rules 2009 come into force on 1 November 2009.

From 1 November 2009 it will only be legal to use a mobile phone to make, receive or end a call when driving if:

- 1 the driver does not have to hold or manipulate the phone to do so (ie the phone is completely voice activated); or
- 2 the mobile phone is securely mounted to the vehicle and the driver manipulates the phone "infrequently and briefly."

What "infrequently and briefly" will actually allow is not certain. Employers may need to consider whether to ban the second option altogether.

The rule does not allow drivers to create, send or read text messages under any circumstances.

Accordingly, we suggest that employers remind employees of these changes and modify company vehicles to provide for these changes to

the law. Employers may also need to consider developing a protocol or policy for employees who are required to drive a company vehicle as part of their duties.

### SECTION 150 OF THE EMPLOYMENT RELATIONS ACT - SAVING EMPLOYERS A TRIP TO THE EMPLOYMENT RELATIONS AUTHORITY

Many employers who have been faced with a personal grievance from an employee would have attended a mediation through the Department of Labour.

If the matter does not resolve at the mediation stage the employee can pursue it to the Employment Relations Authority.

There is another option open to the parties. Under section 150 of the Employment Relations Act 2000 (Act), the parties to an employment relationship problem may agree to the mediator making a final and binding decision on the parties.

While this seems a convenient and less expensive option, this section has raised some concerns:

- 1 Are the mediators appropriately qualified to make a decision?
- 2 The mediator may have been privy to confidential or untested information.
- 3 The parties may not have been given the opportunity to present their full case.

Despite these concerns, section 150 of the Act is another tool to resolving an employment relationship problem in a cost and time effective manner.

### PROCESS FOR REQUESTING A PROSPECTIVE EMPLOYEE'S CRIMINAL RECORD

Employers are constantly looking at ways to protect their businesses from employee fraudsters. One way to do this is through effective pre-employment screening.

A third party, such as an employer, can make a request to the Ministry of Justice under the Official Information Act 1982 for a copy of an individual's criminal conviction.

The individual must give written authorisation for disclosure to the third party on the Ministry of Justice form, which specifically authorises disclosure for the purposes of pre-employment vetting.

This form can be found at [www.justice.govt.nz/services/get-a-copy-of-your-criminal-record/application-forms](http://www.justice.govt.nz/services/get-a-copy-of-your-criminal-record/application-forms).

# EMPLOYMENT LAW BRIEFS

## LABOUR MINISTER SEEKS INPUT

Labour Minister, Kate Wilkinson, has made a plea for employment law feedback. Ms Wilkinson is eager to receive feedback on what is, and is not, working in terms of employment law.

Areas of interest include, but are not limited to:

- 1 The new 90 day trial period.
- 2 Part 6A of the Employment Relations Act 2000 (the continuity of employment if employees work is effected by restructuring).
- 3 The roles of the Employment Relations Authority and Employment Court.

Ms Wilkinson can be contacted on [kate.wilkinson@national.org.nz](mailto:kate.wilkinson@national.org.nz).

## PROPOSED CHANGES TO REST AND MEAL BREAKS

The Employment Relations (Rest Breaks and Meal Breaks) Amendment Bill was introduced into Parliament on 27 October 2009.

The purpose of the Bill is to amend the Employment Relations Act 2000 (Act) to implement Government policy on relaxing rest and meal breaks provisions for employees.

Currently the Act states that employees are entitled to the following paid rest breaks and unpaid meal breaks:

- 1 One paid 10 minute rest break if their work period is between two and four hours.
- 2 One paid 10 minute rest break and one unpaid 30 minute meal break if their work period is between four and six hours.
- 3 Two paid 10 minute rest breaks and one unpaid 30 minute meal break if their work period is between six and eight hours.

If more than an eight hour period is worked these requirements automatically extend to cover the additional hours on the same basis.

The aim of the Bill is to provide greater flexibility and for employers and employees the opportunity to develop breaks at a time best suited to an individual's requirements. The Bill still has a requirement for breaks but allows for "compensatory measures" such as earlier or later start times or time off in lieu.

The Bill is yet to have its first reading.

## BRITISH UNION FACES STILETTO STAND-OFF

September saw British Unions set off a heated debate across the nation after passing a motion demanding that women have the right to wear comfortable shoes in the workplace.

The Society of Chiropodists and Podiatrists introduced the motion asking employers to work in partnership with trade unions, staff and local health and safety representatives to ensure that proper risk assessments are carried out, and where high heels are deemed a health risk, replaced with comfortable shoes.

Though this motion was intended to allow women choice in the workplace, it led to a flurry of headlines insisting that the unions were attempting to ban stilettos in the office. One British newspaper reported that Conservative Member of Parliament Nadine Dorries tore into the motion, saying it was intended to cut women like her down to size.

The Director of Employment Relations, Eddie Saville, clarified this situation by stating "this is a serious issue for women in the workplace, and we at the Society of Chiropodists and Podiatrists want to ensure women workers are never forced to wear high heels which we believe can lead to foot health problems in the sort, medium and long term".

## 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.**