BusinessCentral

EMPLOYER BULLETIN

3 July 2023

A Weekly News Digest for Employers

EMPLOYER NEWS

Support package for growers, farmers and businesses affected by North Island weather events

The Government is further supporting businesses, including growers and farmers affected by the North Island weather events earlier this year by underwriting bank lending and offering cheaper finance options to ensure the long term survival of critical regional industries.

"The North Island Weather Events (NIWE) Loan Guarantee Scheme will provide relief to affected firms seeking commercial lending. This scheme leverages the Crown's financial strength by carrying 80 percent of the credit risk on covered loans, allowing banks to reduce interest rates and offer more flexible terms.

NIWE Loan Guarantee Scheme design elements:

- An 80 per cent Crown guarantee
- A five-year guarantee period, meaning loans issued between 1 July 2023 and 30 June 2024 would be covered by the guarantee for five years from the date of issue
- New and refinanced lending, meaning lenders could refinance existing lending under the guarantee in addition to issuing new loans under the guarantee
- New customers, meaning lenders could offer loans to new customers and refinance lending that borrowers have with other lenders
- Limits to the amount of lending to each borrower of $10 million, (with exceptions on a case-by-case basis), from each lender and across the entire Scheme
- Principled targeting requirements, including that eligible firms must be located in impacted NIWE regions, be classified as having been materially financially impacted, and meet their lender's credit assessment criteria (ie, that they are lendable)
- A general requirement for lenders to pass on lower interest rates reflecting the benefit provided by the guarantee

Eligibility criteria for NIWE Primary Producer Finance Scheme (Concessional Loans and Equity Injections)

To be eligible, a business must:

- Have incurred losses of 30 percent or more of their uninsurable productive capacity because of the NIWE
- Demonstrate its loss of viability was due to the NIWE and not a pre-existing issue
- Demonstrate it has a reasonable prospect of returning to viability (i.e. restored positive cash flow) over a reasonable time period
- Demonstrate it has sought and failed to receive lending from commercial lenders and that it does not have access to sufficient capital through other means (eg, through a firm's own balance sheet capacity). For the avoidance of doubt, a firm would not be immediately eligible for support if it has simply received less financing that it desires from its commercial lender. In these scenarios a bank would have determined that the firm was viable but at a smaller scale and therefore not part of the target cohort.
- Demonstrate that it took reasonable steps ahead of the event to mitigate or avoid losses, such as insuring assets where there are readily available insurance products;
- Demonstrate its commitment to improve resilience to similar risks in the future, such as flood risks; and
- Be a producing land-based primary sector entity, located partially or wholly in the following affected regions: Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, Wairarapa (in line with other NIWE-related business support to date)

New Zealand Government [29 June 2023]

ACC changes to client payments from 1 July 2023

What this means for clients receiving weekly compensation

Based on movements in the Labour Cost Index this year, ACC will increase payments by 4.32% for clients who have been receiving weekly compensation for more than 26 weeks. The new gross maximum rate of weekly compensation payable will be $2,257.17 per week.

What does this mean for clients receiving other grants and allowances?

Based on movements in the Consumer Price Index, non-taxable entitlements (Independence Allowance and Lump Sums) will increase by 6.65%. Funeral grants, survivor grants and weekly childcare payments will increase to the following amounts:

- Funeral grants: $7,491.95
- Survivor's grants: $8,032.33 for a partner and $4,016.18 for each child under 18 and each other dependent
- Weekly childcare payments: $170.80 for one child, $102.48 each for two children and $239.13 in total for three or more children

Changes to interest rates paid on overdue weekly compensation

The interest rate ACC will pay on overdue weekly compensation payments will change to 5.42% per annum. Up until 30 June 2023, the interest rate continues to be 2.477% per annum. A payment is considered overdue if ACC have taken more than one month to pay a client after they've received the information needed to calculate and make it.

Accident Compensation Corporation [26 June 2023]

Government increases Carer Support Subsidy

Changes to the Carer Support Subsidy announced today more appropriately recognise carers' important work and will improve the lives of those they care for, Minister of Health Hon Dr Ayesha Verrall announced today.

From 1 July, Te Whatu Ora will increase the daily rate of the subsidy and widen the options for how it can be used to support the work of the main carer.

Under the changes, the daily rate of the Carer Support Subsidy lifts from $64.50 in some regions to a minimum of $80 per day nationwide.

Carers will also be able to use their allocation to buy items that support their work. This might include a weighted blanket for someone living with anxiety or home monitoring device to support the care of someone living with dementia.

The Carer Support Subsidy is accessed by having a needs assessment from a Te Whatu Ora Needs Assessment Service Coordination (NASC) service and your GP, mental health clinician or specialist may also be able to support you to access the subsidy.

New Zealand Government [28 June 2023]

Resource Management reform report-back makes useful changes

Environment Minister David Parker today welcomed the Environment Select Committee's report into the new resource management reform laws.

These include:

- Reducing the number of RMA plans across New Zealand from 100 to 16
- Better quality plans with more permitted activities
- Enabling development within environmental limits
- Achieving better environmental outcomes, limits and targets (rather than effects-based management, which has not adequately guarded against cumulative effects like declining water quality and climate emissions)
- More affordable housing, and
- Fewer, faster consents.

"The reform will establish a more efficient, less costly system that allows the housing and infrastructure we need for our communities to thrive, without depleting our natural resources and degrading the state of our environment.

New Zealand Government [27 June 2023]

COURT OF APPEAL: ONE CASE

Uber granted leave to appeal declaration that drivers are employees

Rasier Operations BV (Rasier) sought leave to appeal an Employment Court decision from October 2022, which declared four Uber drivers to be employees. An appeal from the Employment Court's decision on a question of law requires leave. The Court of Appeal may grant leave if the question of law is one that, by reason of its general or public importance or for any other reason, ought to be submitted for decision. While the Employment Court only dealt with the four drivers, the decision potentially extended to all Uber drivers classifying them as employees.

Rasier sought leave to appeal on the following questions of law. First, did the Employment Court err by misdirecting itself on the application of section 6 meaning of 'employee' of the Employment Relations Act 2000 (the Act)?

The Employment Court noted that there were two prerequisites to falling within the section 6 definition: a worker must be engaged to work for hire or reward and be engaged under a contract of service. On the latter, the Employment Court noted that what amounted to a contract of service was to be assessed having regard to the real nature of the relationship. This is assessed pursuant to section 6(3) of the Act by considering all relevant matters, including those that indicate the parties' intentions.

Secondly, did the Employment Court err by misapplying the test in section 6, or alternatively was the Court's conclusion so insupportable to amount to an error of law? Chief Judge Inglis considered the matters relevant to assessing the real nature of the relationship were: the nature of the Uber business and the way it operated in practice; the impact of the Uber business model and its operation on the drivers; who benefited from the work undertaken by the drivers; who exercised control over the drivers' work, the way in which it was conducted and when and how it was conducted; any indication of intention, including what can be drawn from the nature, terms and conditions of the documentation between the parties; and the extent to which the drivers identified as, and were identified by others as, part of the Uber business.

Finally, did the Employment Court err in finding that joint employment may arise in New Zealand simply because of several entities being sufficiently connected and exercising common control over an employee? Construing section 6 purposively, the Employment Court held the drivers were in an employment relationship when driving for the benefit of the Uber businesses. It was further concluded that the Employment Relations Act 2000 did not exclude joint or multiple employers employing an employee, with the real nature of the relationship in this case indicating joint employment.

The Court of Appeal was satisfied that leave to appeal should be granted on the first two questions. As they were concerned with the correct approach to section 6, they raised questions of law in the context of new ways and fast-moving changes to the way in which work is done. Similar applications to that considered by the Employment Court have been made in other jurisdictions with, as Chief Judge Inglis noted, "mixed results". Similarly, in a 2020 New Zealand case, Arachchige v Rasier New Zealand Ltd, an Uber driver was found not to be an employee. The Court of Appeal stated that while the declaration related to the individual drivers on whose behalf the declarations were sought, a potentially broader impact for many other drivers arises where there is apparent uniformity in the way the businesses operate and the framework under which the drivers are engaged.

The Court of Appeal was also satisfied that leave should be granted on the third question. It raised a question of law as to the factors that determine whether there was a joint employment of an employee. In the context of Uber businesses with multiple individual drivers who may be impacted by the decision, it is of general or public importance and therefore may have an impact on other businesses. Costs were reserved until the appeal was heard in full.

Rasier Operations BV v E Tū Incorporated [[2023] NZCA 216; 8/06/2023; Judge Courtney and Judge Mallon]

EMPLOYMENT COURT: ONE CASE

Employer did not meet its obligations with redeployment

Mr Haddad was employed by New Zealand Steel Limited (NZ Steel) as a manager of the Process Computing team for seven and a half years. He was made redundant after his role was disestablished during a significant restructure of the IT department. Mr Haddad successfully brought a claim for unjustified dismissal in the Employment Relations Authority (the Authority) and was awarded three months' lost earnings and $15,000 for hurt and humiliation. NZ Steel challenged that determination in the Employment Court (the Court).

On 1 July 2019, NZ Steel circulated a consultation document proposing a two-phase restructure. Phase one was to establish a "target state" of the IT department by altering reporting lines and creating three new managerial roles. Phase two aimed to align the Process Computing team with the proposed target state by disestablishing Mr Haddad's managerial role and moving the roles that reported to him to different teams.

Between August and September 2019, while Mr Haddad was on leave, NZ Steel commenced phase one and confirmed the establishment of three new managerial roles. No redundancies were made at this stage. On 23 September 2019, Mr Haddad returned to work. While he was told about the proposed restructure to the IT department, NZ Steel advised he was not consulted as the Process Computing team was considered "out of scope" for phase one. He was therefore unaware and uninvolved with the discussions. On 2 October 2019, he met with NZ Steel and was presented with the restructure proposal for the Process Computing team as part of phase two. This included the proposal to disestablish Mr Haddad's role and outlined where his team members would be shifted to. In Mr Haddad's feedback, and in subsequent meetings, he made it clear that he wanted redeployment over redundancy. On 24 October 2019, NZ Steel confirmed Mr Haddad's role was disestablished effective from 1 November 2019.

Mr Haddad claimed that by the time he was consulted about disestablishing his role, the decision had already been made. The Court agreed. It stated that it was apparent that once the restructure of the IT department was confirmed during phase one, the restructure of the Process Computing team, including disestablishing Mr Haddad's role, would follow. The only aspect of phase two that appeared open for discussion was where individual team members would move to.

The Court reasoned that because Mr Haddad was not consulted during phase one, which set the scene for phase two, NZ Steel had not followed a fair and reasonable process when arriving at the decision to disestablish his role. As noted, even after Mr Haddad returned from leave, he was not involved in any of these discussions or made aware of the content of those discussions. NZ Steel therefore failed to provide all relevant information which amounted to a breach of good faith. This also indicated that by the time NZ Steel began consulting during phase two, it did not do so with an open mind.

The next issue concerned NZ Steel's obligations concerning redeployment. Under Mr Haddad's employment agreement, NZ Steel were obliged "to consider redeployment… taking into account such things as skills, experience, and employment record." NZ Steel submitted the clause did not oblige it to offer redeployment but only to consider it. The Court stated the proper approach when considering redeployment was that the employer had to be active, constructive, and responsive in its communication to comply with its good faith obligations. They must also consult by providing access to relevant information, consider redeployment, and provide an opportunity to comment.

Mr Haddad began seeking redeployment as early as 3 October 2019, the day after the proposal was put to him. On 11 October 2019, he specifically asked about vacancies for the new project manager roles. However, NZ Steel did not immediately take any steps in this regard and Mr Haddad was denied the opportunity to apply. Further, despite its offer to one of the applicants not proceeding, NZ Steel did not consider Mr Haddad despite him being employed at the time.

The Court stated that, given the inevitability of disestablishing Mr Haddad's position that followed from phase one, it was unfair of NZ Steel to fail or refuse to begin considering redeployment until 24 October 2019, after the decision to proceed with the restructure had been notified. Even if it had not been predetermined, NZ Steel had an obligation to be responsive and communicative, but it was not. The Court considered this prejudiced Mr Haddad regarding the project management roles. In relation to other management roles, Mr Haddad's applications were not treated with seriousness or respect. Email exchanges from senior management were dismissive of Mr Haddad's application as "saving his bacon". Accordingly, Mr Haddad's applications for those positions were not dealt with fairly and reasonably in good faith.

However, NZ Steel did offer Mr Haddad the opportunity to interview for several management positions. Mr Haddad declined to be interviewed as he felt the roles were clearly within his capabilities and that was already well known to NZ Steel. NZ Steel reasoned the positions were contestable with other internal applicants, and that if he wished to be considered for one, he needed to be interviewed. On 9 December 2019, NZ Steel informed Mr Haddad that his refusal to interview meant possible redeployment options had been exhausted and as a result his employment was terminated. The Court held NZ Steel did not meet its obligations, either contractually or as a matter of good faith in relation to Mr Haddad's redeployment. Overall, the redundancy process was carried out unfairly, and this unfairness was exacerbated by NZ Steel's breaches of its redeployment obligations. His dismissal was therefore held to be unjustified.

At the relevant time, Mr Haddad had already been reinstated to a project manager role in the Engineering Services department. The Court considered this was appropriate as it was no less advantageous to Mr Haddad's previous role, which no longer existed. The Court confirmed the Authority's award of lost wages to the sum of $41,623.20, which was already paid by NZ Steel. Additionally, NZ Steel made a redundancy payout of $114,000 and as the redundancy had been reversed, the Court stated Mr Haddad would need to repay the full amount unless the parties agreed to another arrangement. Finally, an additional $10,000 as compensation for hurt and humiliation was ordered. Costs were reserved.

Haddad v New Zealand Steel Ltd [[2023] NZEmpC 74; 5/04/2023; Judge Beck]

EMPLOYMENT RELATIONS AUTHORITY: THREE CASES

Application for interim reinstatement declined

FIRST Union Incorporated (FIRST) dismissed Ms Tamaki from her role as an organiser in December 2022 on the grounds of serious misconduct. Ms Tamaki raised personal grievances of unjustified disadvantage and unjustified dismissal. She applied to the Employment Relations Authority (the Authority) for an investigation of her grievances and, if she was found to have been unjustifiably dismissed, for FIRST to be ordered to reinstate her as an organiser. Ms Tamaki also asked the Authority to exercise its discretion to reinstate her on an interim basis until her grievance application was determined. FIRST said its decision to dismiss her was justified and that even if her dismissal were found to be unjustified, reinstating Ms Tamaki would not be reasonable or practicable. It opposed Ms Tamaki's reinstatement on an interim basis for the same reason.

The Authority's determination dealt with Ms Tamaki application for of interim reinstatement application. In determining whether to order interim reinstatement the relevant principles are applied in a three-step process: evaluating whether Ms Tamaki had an arguable case; assessing where the balance of convenience lay between the investigation and when her substantive grievance claim will be determined; and assessing the overall justice of the matter.

Ms Tamaki had worked in the union's Retail, Finance and Commerce division for members working in those sectors of the economy. In addition to her role as part of the FIRST's organising staff Ms Tamaki also held the office of Āpiha Māori, an elected position established to support the work of FIRST's Rūnanga in promoting the involvement and representation of Māori members.

On 17 October 2022 Ms Tamaki sent a lengthy email to all organisers and managers of FIRST. She wrote that she was bringing forward concerns as the Āpiha Māori about unbecoming behaviour from some paid union officials during recent national negotiations of a collective agreement. Mr Maga, the General Secretary, had concerns with the email and reacted swifty. He sent Ms Tamaki an email instructing her to recall her email and to tell the recipients to delete it. Ms Tamaki did not comply with the instruction. On 18 October Mr Maga, issued Ms Tamaki with a letter headed Proposed Suspension/Dismissal. The letter stated his preliminary view that her email and her failure to comply with his instruction to recall it were instances of serious misconduct. Mr Maga's letter identified concerns with Ms Tamaki's email. On 7 December following the disciplinary process Ms Tamaki was dismissed for serious misconduct.

The Authority outlined that establishing an arguable case that a dismissal or a disadvantage resulted from unjustifiable actions of the employer has a low threshold. It was usually crossed simply by the affected worker disputing the justification of the employer's actions that are said to give grounds for a grievance. Once such a claim was made, the statutory onus falls on the employer to justify what it did and how it did it. The Authority said on assessing all the affidavit evidence, Ms Tamaki had established to the low threshold of an arguable case.

The balance of convenience weighed the potential effect on Ms Tamaki if she were declined interim reinstatement against the potential effect on FIRST if interim reinstatement were granted. The Authority considered several factors in evaluating the strengths and weaknesses of aspects of Ms Tamaki's case in assessing the balance of convenience. The Authority noted the evaluation was reached from reading untested affidavit evidence and hearing the parties' submissions, conclusions reached were provisional and subject to change when the evidence was fully tested through questioning at the eventual substantive meeting. There was reason to doubt sufficiently harmonious and productive relationships could be restored between Ms Tamaki and colleagues and managers she would need to work with. The evidence about other union staff who were most likely to need to work closely with Ms Tamaki, including two senior organisers in the Auckland office, weighed against the practicality of reinstatement in the interim period.

The Authority considered the relative hardships on the parties and whether interim reinstatement might be practicably and reasonably be made. Ms Tamaki said losing her job meant she was unable to afford the basics to live. However, Mr Maga said Ms Tamaki was paid more than $12,500 net in final pay in December, which included amounts for annual leave and service leave, so she was not without some resources to tide her over while waiting for investigation of her application. FIRST, on the other hand, was not likely to be able to offset the potentially negative effects on its operational capacity if required to reinstate Ms Tamaki on an interim basis.

The Authority determined that an order for interim reinstatement was not in the interests of justice in the case. The merits of Ms Tamaki's case were not strong enough to make her eventual prospects for permanent reinstatement sufficiently clear. Ordering her reinstatement meanwhile had operational and relationship difficulties that could not have practically and reasonably provided a workable solution in the interim period. Ms Tamaki's application for interim reinstatement was declined. Costs were reserved pending the outcome of the substantive investigation of Ms Tamaki's grievance application.

Tamaki v First Union Incorporated [[2022] NZERA 181; 14/04/2023; R Arthur]

Unpaid work agreed to be voluntary and parties mutually agreed on ending arrangement

Mr Harder worked without pay for UR Plumber Waikato Limited (UR Plumber), run by Mr Still, from August 2020 until January 2021. He was formally employed on 1 February 2021. Various circumstances resulted in the end of Mr Harder's employment on 16 August 2021. Mr Harder filed a personal grievance for unjustified dismissal, unjustified disadvantage for not being treated as an employee in the first months of working for UR Plumber, and legal breaches.

In August 2020, Mr Harder had a criminal record and was serving home detention. He offered to work unpaid for UR Plumber until he completed his plumbing apprenticeship. The qualification required time off for two courses, one week each. UR Plumber was a relatively new business, and Mr Still was not certain of the business need for another employee. Mr Still suggested that if he had satisfactory business, he could offer Mr Harder full-time employment at the start of 2021, and he followed through on this.

Mr Harder noticed from his April 2021 payslip onwards that UR Plumbing deducted $50 a week for tools. He did not consider this appropriate but did not complain, wanting to maintain his apprenticeship study. Mr Harder completed his first week-long course on 16 August 2021 and told Mr Still he needed two more weeks off for his September courses to finish study by the end of 2021. Mr Still was displeased with the new information and wondered if Mr Harder had misled him about his remaining requirements. Mr Still asked about taking 2022 courses, but Mr Harder desired to wrap up his study sooner. Mr Still accepted Mr Harder's desire but ultimately said "This just ain't the place for employment for you".

Mr Harder engaged employment advocates to contact Mr Still when he did not initially receive his holiday pay. Mr Still claimed that he did not intend to terminate Mr Harder's employment. However, he sent a formal statement terminating the contract due to a previous altercation, on 25 August 2021. He also eventually sent Mr Harder's holiday pay.

The Employment Relations Authority (the Authority) considered if Mr Still initially unfairly disadvantaged Mr Harder. An employee expects to be rewarded for performing work for an employer. The parties did not discuss monetary remuneration; Mr Harder never expected to receive money or reward in other form; and he did not object during the relevant period. Neither did he receive reward in practice. Money bonuses were only occasional gifts, such as at Christmas, and the work tools were not sufficiently connected as a reward.

Ultimately, the parties' agreement to a volunteer arrangement came from Mr Harder's obstacles in attaining work, and UR Plumber being a relatively new business. The context outweighed the apparent unlikelihood of volunteering for an apprentice role. Mr Harder could not bring a disadvantage claim for being a volunteer. The Authority stated that even if UR Plumber's actions created a disadvantage, they were not unjustified. The Authority also considered if Mr Still 'sent away' Mr Harder in his text message. It concluded that Mr Harder's study schedule informed the employment arrangement. Mr Still did not agree to unpaid leave at short notice, and so did not agree to the proposed variation of Mr Harder's courses. The parties mutually agreed to terminate the employment, in the conversation when they could not agree on how to employ Mr Harder around his study. UR Plumber therefore did not dismiss Mr Harder.

Mr Harder claimed UR Plumber failed to provide an employment agreement. He stated that when he was given one, he returned it unsigned looking to negotiate certain terms, which never progressed. UR Plumber produced a signed employment agreement, and the Authority found UR Plumber did not likely fabricate it. Therefore, no breach was committed in this regard. The Authority did find that UR Plumber deducted from Mr Harder's wages without written consent or having sent a request, which breached the Wages Protection Act 1983. Mr Harder's failure to object did not qualify as consent. The Authority set a modest penalty for this of $500. Lastly, UR Plumber also breached the Employment Relations Act 2000 when it failed to supply wages and time records to Mr Harder's representative. However, the Authority elected to not impose a penalty, because at the time the Stills suffered the death of their child. Costs were reserved.

Harder v UR Plumber Waikato Limited [[2023] NZERA 183; 14/04/23; N Craig]

Employee's dismissal held to be fair and reasonable despite minor procedural defects

Mr Joyce was employed by Traffix (2020) Limited (Traffix) as a traffic controller from 31 March to 1 November 2021 when he was dismissed for being intoxicated and driving home while under the influence. Mr Joyce claimed his dismissal was unjustified and sought lost wages and compensation for hurt and humiliation in the Employment Relations Authority (the Authority).

On 21 October 2021 at around 2pm Mr Joyce sent a text to numerous Traffix employees encouraging them to "bring food, drinks and… your beers, weed." Traffix was providing traffic management for maintenance work during the night. Two of Traffix's supervisors, Ms Betterton and Ms David learned of Mr Joyce's text message from other workers and made an unannounced visit to the site at around 3.30am. On arrival, they saw Mr Joyce urinating against the side of the work truck appearing drunk. There were some empty bottles and cans of alcohol in the truck. They took photos of these along with a chilly bin belonging to Mr Joyce with alcohol in it.

Ms Betterton and Ms David gave evidence when they returned to the truck depot, they witnessed two other employees, 'Mr A' and 'Mr B', struggling to help Mr Joyce out of the truck. When Mr Joyce got in his car, they asked him not to drive home. The following week Ms Betterton emailed Mr Eremin, the managing director, saying "it was apparent not only by the smell but the slurred speech and slouched appearance that he was highly intoxicated". She said she asked him if he had been drinking and he replied yes. She said Mr Joyce drove off but returned "yelling obscenities" before leaving again.

Around 10am that morning Mr Eremin spoke with Mr Joyce by telephone explaining there would be a disciplinary process. He sent him a letter that day outlining that consumption of alcohol at work was a dismissible offense under the employment agreement, while advising of his right to have a representative accompany him. Mr Eremin's letter said Mr Joyce was "argumentative and sounded drunk" during their conversation. He also later said Mr Joyce told him during that call that "he was not in the yard" earlier that morning. Mr Eremin checked CCTV footage and confirmed Mr Joyce sitting in the driver's seat of his car with Ms Betterton and Ms David appearing to talk to him.

On 29 October 2021, at the disciplinary meeting, Mr Joyce accepted he texted other workers about coming to the site with beers and weed but was only meant as "a joke". He denied drinking any alcohol that night. Instead, he said it was Mr B who was drunk. On 1 November 2021, the parties had a subsequent online meeting. Following this, Mr Eremin sent Mr Joyce a letter proposing summary dismissal for serious misconduct. The letter outlined the discussion during their meeting that the allegations of serious misconduct were for "being intoxicated at work and driving under the influence" and invited Mr Joyce to comment on the proposal to dismiss. Mr Joyce responded by stating Mr B was to blame, not him.

The Authority acknowledged Mr Eremin had statements from two supervisors of their observations of Mr Joyce's conduct and demeanour and CCTV footage. Mr Eremin had no information supporting Mr Joyce's allegation that Mr B was really the one intoxicated. The two supervisors each spoke to Mr B and reported no signs he had been drinking. By contrast, Mr Eremin had information he could reasonably rely on that Mr Joyce was intoxicated but denied any wrongdoing. While the Authority considered there were procedural defects, such as Mr Eremin not interviewing two workers who Mr Joyce and his advocate suggested could have provided information about his demeanour and whether Mr B, not Mr Joyce, was drinking, they were considered minor.

Considered overall, Traffix had met the obligations of following a fair and reasonable process. Mr Joyce was advised of Traffix's concerns. He attended a meeting to give his account of events with the assistance of an employment advocate. He was provided with relevant information about what Ms Betterton and Ms David said about what they saw and heard and an opportunity to comment on it. Mr Eremin's evidence established Mr Joyce's explanations were genuinely considered. It was within the range of reasonable responses that a fair employer could have made for Mr Eremin to reject Mr Joyce's emphasis on Mr B's conduct and to conclude Mr Joyce had not adequately explained his own conduct. In all the circumstances at the time, Traffix did what a fair and reasonable employer could have done to investigate its concerns and decide Mr Joyce had committed serious misconduct and, in light of the inadequacy of his explanation, he could have been dismissed. Accordingly, Mr Joyce's personal grievance was dismissed. Costs were reserved.

Joyce v Traffix (2020) Limited [[2023] NZERA 232; 8/05/23; R Arthur]

LEGISLATION

Note: Bills go through several stages before becoming an Act of Parliament: Introduction; First Reading; Referral to Select Committee; Select Committee Report, Consideration of Report; Committee Stage; Second Reading; Third Reading; and Royal Assent.

There are currently five Bills open for public submissions to select committee:

Water Services Entities Amendment Bill (5 July 2023)

Taxation (Annual Rates for 2023-24, Multinational Tax, and Remedial Matters) Bill (14 July 2023)

Ngāti Paoa Claims Settlement Bill (2 August July 2023)

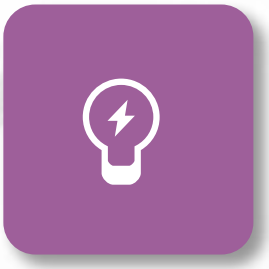
Ngāti Hei Claims Settlement Bill (2 August 2023)

Corrections Amendment Bill (10 August 2023)

Overviews of bills-and advice on how to make a select committee submission-are available at: https://www.parliament.nz/en/pb/sc/make-a-submission/

The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations.

If you would like to provide feedback about the Employer Bulletin,
contact: comms@businesscentral.org.nz
or for further information, call the **AdviceLine on 0800 800 362**



ENTERPRISE SERVICES

0800 800 362
advice@businesscentral.org.nz
www.businesscentral.org.nz

ADVICELINE

AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.

TRAINING SERVICES

Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.

OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

Health and Safety and the well-being of your employees should be of paramount importance to any employer. To help you along the way, we have a friendly and knowledgeable Health and Safety Consultant.

EMPLOYMENT RELATIONS CONSULTANTS

Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.

LEGAL

When employees test the waters with a personal grievance, Business Central Legal are here to help. We offer representation in all employment law matters.

ENTERPRISE SERVICES

0800 800 362
advice@businesscentral.org.nz
businesscentral.org.nz

ADVICELINE

AdviceLine is your link to first-rate employment relations advice. Business Central understands the difficulties employers can have with managing employees, so supports you with dedicated employer advisors.

This service is 100% inclusive of your membership. There is no time limit to your call, and the team is available 8am–8pm Monday to Thursday and 8am–6pm Friday.

Our Employer Advisors are well trained and comprise a mixture of legal and business backgrounds. They understand your issues and can help advise you on legal requirements and best practices. They are backed up by a large resource base they can call on to support with you with written resources, guides, and templates.

TRAINING SERVICES

Our training team provide you with practical training solutions across various employment topics to help upskill your staff, giving your business a competitive edge.

Whether it be best practice processes under the Employment Relations Act and the Health and Safety at Work Act, leadership training or personal development, the Business Central training team are dedicated to facilitating your business's professional learning.

For more information about Business Central's public and customised in-house courses, or to register for a course, contact the team today.

For regular training updates in your area, subscribe to our Training Update newsletter.

04 470 9930, training@businesscentral.org.nz, businesscentral.org.nz

OCCUPATIONAL HEALTH AND SAFETY CONSULTANTS

Health and Safety and the well-being of your employees should be of paramount importance to any employer. To help you along the way, we have a friendly and knowledgeable Health and Safety Consultant.

Adrienne has extensive experience with helping companies navigate Health and Safety requirements. She understands companies need to see sound return on investment for their well-being initiatives. Adrienne offers full support with compliance issues such as induction training and hazard identification and management. Additionally she can help with preparation for ACC 'Workplace Safety Management Practices'.

EMPLOYMENT RELATIONS CONSULTANTS

Employment Relations can be a difficult area to navigate. When you need close guidance on employment matters, you can rely upon our seasoned ER Consultants to be there to help.

Having someone equipped to help you do the work can take the stress out of a tricky situation.

Our Consultants have a wide range of experience and are prepared to help. Whether you need to update your agreements or policies, or embark on performance management, they have the experience to make a difference. There are so many areas they can help; it may be union issues and managing a difficult relationship or it could be confirming a restructuring selection matrix.

LEGAL

When employees test the waters with a personal grievance, Business Central Legal are here to help. We offer representation in all employment law matters.

Business Central Legal provides you best return on investment for legal advice on employment law matters. Our team of lawyers are only available to members, and can help solve your tricky issues.

While you may think of lawyers as representing people in court, this is far from everything they do. Employers take advantage of the value of the Business Central Legal team to help in drafting documents such as tailored employment agreements and offers of employment. Additionally they can help with key guidance on difficult issues as restructuring processes and rock solid performance management plans.