BusinessCentral

EMPLOYER BULLETIN

14 August 2023

A Weekly News Digest for Employers

EMPLOYER NEWS

Work to Residence eligibility extended to non-AEWV holders

The Green List and Sector Agreement Work to Residence eligibility is being extended to include non-Accredited Employer Work Visa (AEWV) holders.

When the visas open for applications from 29 September 2023, all temporary work visa holders and Critical Purpose Visitor Visa holders with work rights will be able to claim work experience to count towards them.

Applicants will need to have had 2 years of work experience in a relevant role starting from 29 September 2021, and meet the relevant skill and wage thresholds.

This change aligns these residence pathway settings with the new Skilled Migrant Category, which ensures the settings are consistent, and reduces the complexity for applicants.

Applicants will also need to meet the median wage requirements and other standard residence requirements including health, character, age, and English language when they apply for residence.

Changes are also being made to make the median wage requirements for the Green List pathways clear.

People on the Green List Work to Residence pathway will need to meet the median wage, or occupation-specific wage requirement threshold in place at the start of their 24-month work experience and at the time they are applying for residence.

Immigration New Zealand [9 August 2023]

Dunedin businessman convicted and sentenced over immigration offending

Leisheng (Leonard) Cheng has been sentenced in the Dunedin District Court on Monday 7 August 2023 to a fine of NZD $11,900.

Cheng pleaded guilty to 3 offences under sections 350(1)(a) of the Immigration Act 2009 and 66 of the Crimes Act 1961, which carry a maximum penalty of $50,000 per offence. The charges related to:

- 1 person undertaking employment who did not hold a visa to be in New Zealand and was unlawfully in New Zealand
- 1 person who was working on a student visa and exceeded the maximum 20 hours work per week, and
- 1 person who was working while on a visitor visa.

Cheng operated Great Taste restaurant in Dunedin at the time the offences took place. All 3 people were working at Great Taste between 2016 and 2018. Cheng owns a number of hospitality businesses in Dunedin.

National Manager Immigration Investigations, Stephanie Greathead, says Cheng has supported numerous staff in visa applications and is familiar with the immigration system.

“It was his responsibility as company director to employ staff at Great Taste Restaurant and ensure they held the appropriate visas that legally entitled them to work,” Ms Greathead says. “Cheng failed in his director responsibilities and knowingly employed staff who were not eligible to work in New Zealand."

“This offending is serious and won’t be tolerated. Cheng deliberately evaded the immigration system and a prosecution was the appropriate avenue in this case.”

“This conviction should send a strong warning to the business community that this offending will be prosecuted and immigration visa rules need to be adhered to,” says Ms Greathead.

Immigration New Zealand [9 August 2023]

Teachers agree to 14.5% pay rise

Education Minister Jan Tinetti has welcomed the news that Post Primary Teachers Association’s (PPTA) members have accepted the Government’s offer of a 14.5 percent pay rise.

“The Chris Hipkins Government values teachers, which is why in very tight fiscal conditions we have prioritised improvements to their pay and conditions,” Jan Tinetti said.

"Teachers at the top of their pay scale will have had an increase of $27,000 or 36 percent by the end of next year under this Government, compared to a 10 percent increase under the nine years of the last National Government.

“This is one of the most significant pay increases New Zealand secondary teachers have ever received. Shortly, 30,000 secondary teachers will receive the first of three pay boosts between now and the end of 2024.

“Beginning secondary teachers will receive an increase of almost $10,000 to their base pay by the end of 2024. Most teachers will also receive a lump sum payment of over $7,000.

“Experienced secondary teachers on the top scale will receive an increase of over $13,000 to their base pay and by the end of next year will earn $103,00 before allowances.

“As a result of this settlement 67% of secondary teachers in New Zealand will earn a base salary of more than $100,000 a year, making teaching the well-paid job it should be.”

New Zealand Government [9 August 2023]

Government backing regional jobs and onshore manufacturing to grow economy

A new study shows upgrading Kinleith Mill's energy infrastructure and building a new large-scale sawmill to supply timber and bespoke engineered mass-timber products could provide hundreds of jobs and boost the economy, says Forestry Minister Peeni Henare.

The Wood Beca study, a project between the Government and Oji Fibre Solutions, showed that upgrading the mill could create 200 jobs per year and generate upwards of $566 million in additional GDP per annum and reduce greenhouse gas emissions by 65,000 tonnes of CO2-equivalent per annum.

The Kinleith Mill is a key strategic asset for Aotearoa New Zealand, and one of our largest industrial sites. It requires some upgrades of its energy infrastructure to remain competitive, and this presented an opportunity for Government to partner with OjiFS to investigate how a redevelopment could deliver on key Government objectives through the creation of a bio-hub.

"This Government is committed to investing in our people by creating more jobs," Peeni Henare said.

"The Government's record is 22,000 more jobs at the start of 2023 alone, a total of 113,000 more Kiwis in work since June 2022. All of our regions have seen good economic growth under this Government.

"Earlier this year I announced a $57 million fund would enable the Government to partner with wood processors to co-invest in wood processing capacity to create products like sawn structural timber and engineered wood.

"The Government wants to see more logs processed onshore, help move our forestry sector from volume to value, lift our economic performance and resilience and create high-wage jobs in our regions," Peeni Henare said.

The sawmill output could also help to increase the quantity of carbon stored in wood and create low-emission products for use in building and construction.

Depending on the staging and configuration of the possible options, the construction phase could contribute $2.5 billion of additional GDP over a three-year period.

New Zealand Government [9 August 2023]

Increased pay and new sick leave entitlements for Recognised Seasonal Employer workers

From 1 October 2023, employers in the Recognised Seasonal Employer (RSE) Scheme must pay workers at least the minimum wage + 10% for actual hours worked. This currently works out to be $24.97 per hour.

The increased pay entitlements include RSE workers on current RSE Limited Visas granted before 1 October 2023. Employers who fail to update wages in line with the new minimum hourly wage would breach their Agreement to Recruit (ATR) commitments.

RSE workers will also be entitled to paid sick leave from the day they start work. Currently, RSE workers get sick leave entitlements after working for 6 months, under the Holidays Act 2023.

With the new sick leave provisions, RSE workers will be entitled to 2 days sick leave from the day they start work, and an additional 2 days each month until they reach their 10-day entitlement on their 4-month anniversary.

The sick leave change does not apply to workers granted RSE Limited Visas before 1 October.

If a worker transfers from one RSE employer to another, the new employment agreement must also comply with minimum pay and sick leave requirements.

Immigration New Zealand [8 August 2023]

EMPLOYMENT RELATIONS AUTHORITY: FIVE CASES

Employer closed down without consulting employee or paying outstanding work

Southern Lakes Sightseeing (Southern Lakes) employed Mr Canina on 17 December 2019 as a service manager who ran autonomously from his home in Queenstown. On 19 July 2021, Ms Liu, the Southern Lakes sole director-shareholder, stopped paying Mr Canina's wages. She also frequently ceased contact with Mr Canina for significant periods of time. Mr Canina continued operating the business without remuneration until 28 February 2022. He claimed for his wage arrears, outstanding holiday pay with interest and penalties for statutory breaches.

Mr Canina worked for Southern Lakes on a working visa. He arranged and took tours, handled vehicle and safety equipment maintenance, and covered all client needs. He only met Ms Liu twice, first at his interview in April 2019 and once in Christchurch. She exercised no control over his performance but paid him a fixed income per week for 40 hours without recording his hours of work. This pay was erratic before Ms Liu ceased to pay it entirely.

Ms Liu stopped contacting Mr Canina again in March 2021. On 4 October 2021, Mr Canina emailed Ms Liu, being owed 13 weeks remuneration and having trouble with the accounting system. On 21 October 2021, Ms Liu assured she was sorting Mr Canina's payroll issues. She provided a spreadsheet of payments and an IRD statement as evidence. However, she believed the business was not trading. She proposed to close the company until December but stated she would still pay what was owed to Mr Canina. This was the last time Ms Liu contacted Mr Canina. He emailed her on 27 November 2021 noting his unpaid wages were 21 weeks due and asked about selling her van to balance the books but received no response. Mr Canina stretched out his savings until he found alternative contract work.

Southern Lakes and Ms Liu did not participate in the proceedings with the Employment Relations Authority (the Authority). Mr Canina provided an employment agreement that Southern Lakes had not signed. The employment agreement defined Mr Canina's hours of work and remuneration per hour. The Authority, therefore, accepted Mr Canina's evidence of his understanding of the employment relationship, and that Ms Liu agreed she had not paid his wages, which breached employment law.

Southern Lakes did not keep wage, time, and holiday records, which gave the Authority the power to calculate a fair and reasonable valuation of the arrears and accept Mr Canina's uncontested evidence on the calculation.

It decided Southern Lakes owed 19 weeks of wages on 14 November 2021, when Ms Liu indicated the company was out of business. Upon doing so, she abandoned her responsibilities to wind up the business and resolve employment issues with Mr Canina. Mr Canina was effectively dismissed or made redundant when he could have expected his employer to run a consultation process. The Authority therefore added 7 weeks for the period that would have been consultation, as well as his 4 weeks' notice period. This resulted in an award of 26 weeks of unpaid wages at $27,040, including holiday pay of $2,163.

Mr Canina continued to maintain the business and its assets without reward or recognition. The Authority found Southern Lakes not paying him, and not consulting him over the ongoing disestablishment of his role, negatively impacted him as he was treated without respect or dignity. At the time Mr Canina was trying to obtain residency, so his vulnerable position also caused him significant distress. As a result, the Authority awarded $15,000 in compensation for hurt and humiliation.

The Authority did not award penalties for two reasons. First, the breaches were of employment standards rather than arising out of defaults, and the arrears awards suitably remedied Mr Canina. Finally, upon consideration that he was forced to issue proceedings to receive his own entitlements and won, the Authority ordered that Southern Lakes pay a reasonable contribution of $4,000 to Mr Canina's legal costs.

Canina v Southern Lakes Sightseeing Tourism Limited [[2023] NZERA 279; 1 May 2023; D Beck]

Dismissal on the grounds of medical retirement found to be unjustifiable

Ms Tyer was employed at the Department of Corrections (Corrections) as a corrections officer for 28 years until 13 January 2021 when she was dismissed on medical grounds. At all times, Ms Tyer was covered by a collective agreement between Corrections and the Corrections Association of New Zealand which had a specific medical retirement provision. Ms Tyer believed she was unjustifiably dismissed and sought reinstatement, lost wages, and compensation.

Ms Tyer suffered a non-work injury when she fractured her ankle in 2019. Her rehabilitation was not straightforward and required a series of medical interventions. Ms Tyer commenced a gradual return to work plan for a period of three months until 18 February 2020 when she suffered further setbacks, and her medical advice was to keep off her ankle.

Ms Tyer had further surgery and started a second return to work on light duties from May 2020 which continued through to 13 January 2021 when she was dismissed. During this period of light duties, Corrections also wrote to Ms Tyer indicating their expectation she should return to full duties by end of March 2020 and extended this to 22 June 2020.

On 16 June 2020, Ms Tyer presented a medical certificate which stated she was fit to return to work on restricted duties. Given the content of this new medical certificate, Corrections wanted to discuss the situation formally with Ms Tyer, including the possibility of her being medically retired. They met on 5 September 2020, after which Corrections decided to commence the medical retirement process. It directed Ms Tyer to undergo a medical examination to assess whether she continued to meet the requirements of her role as a Corrections Officer, given her injury. There was a short delay in receiving the medical report requested from her general practitioner before they met to discuss the medical information on 3 November 2020. The preliminary view was issued after that, concluding that medical retirement on notice was the appropriate outcome. This was communicated to Ms Tyer on 3 December 2020 with an opportunity for further feedback. On 13 January 2021, the final decision to dismiss was confirmed.

Corrections based its decision on letters provided by Ms Tyer's GP and surgeon. While both letters indicated the possibility of a return to full duties following further surgery, Corrections decided there was no certainty of a full return to work, and an absence of a further six months could no longer be sustained.

In considering this matter the Employment Relations Authority (the Authority) noted it was well established that an employer was not bound to hold a job open indefinitely for an employee who was unable to attend work. An employer will be justified in dismissing an employee for long term absence where it can be shown the decision was substantively and procedurally justified. Section 103A of the Employment Relations Act 2000 (the Act) provides the test for justification of any dismissal. The test required the Authority to determine whether the employers' actions were what a fair and reasonable employer could have done in all the circumstances at the time the dismissal or action occurred.

The Authority did not consider that Corrections adopted a correct interpretation of the medical information. The progression from "some uncertainty" as to when she might return to work, to a conclusion that her medical condition was "likely to continue" into the foreseeable future was at odds with what was recorded. The Authority also observed that Corrections had relied on the views of Ms Tyer's GP and surgeon rather than seeking independent opinions as specified by the collective agreement.

While the process followed by Corrections, once it decided to call for medical reports, appeared to be a reasonable set of sequential steps setting out its position and seeking Ms Tyer's responses, the issues identified collectively amounted to flaws that were more than minor, and the Authority considered it to have impacted Ms Tyer unfairly. The underlying issue was an accidental non-work injury for which the prognosis with the ankle surgery was positive at the time medical retirement was pursued by the employer.

The Authority concluded Ms Tyer had been successful in bringing her claim for unjustified dismissal. It noted Ms Tyer remained on ACC and felt that reinstatement was neither practical nor reasonable in the circumstances. In terms of considering the humiliation, distress and loss of dignity experienced by Ms Tyer, the Authority ordered that Corrections pay Ms Tyer $20,000. Corrections was also ordered to pay Ms Tyer three months remuneration. Costs were reserved.

Tyer v Chief Executive of the Department of Corrections [[2023] NZERA 295; 07/06/2023; S Kennedy-Martin]

Employee found to be a permanent employee and claim for unjustified constructive dismissal upheld

Mr Martin was employed by Wellington Laundry Services Limited (WLS) from 16 August 2019 until February 2021 as a driver and laundry assistant, although his last day of work was in January 2021. Mr Martin's employment relationship problem arose when he initially queried pay arrangements and what he claimed was a lack of pay slips. Mr Martin then required time off work for medical reasons but was denied leave, being told that he was not entitled to annual holidays due to the casual nature of his employment relationship. The relationship deteriorated and Mr Martin resigned and raised a personal grievance alleging unjustified constructive dismissal.

WLS failed to provide wage and time details for Mr Martin when requested to do so by the Employment Relations Authority (the Authority). The Authority continued with their decision as if all parties attended or were represented as allowed by the Employment Relations Act 2000 (the Act).

The Authority observed that casual employment was not defined in the Act. However, a strong indication that the relationship was that of casual employment was the lack of an obligation on the employer to offer ongoing work, or for the employee to accept it when offered. Factors to be considered included the number of hours worked each week, whether work was allocated in advance by a roster, whether there was a regular pattern of work, mutual expectation of continuity of employment, whether the employer required notice before an employee was absent or on leave and whether the employee worked consistent starting and finishing times.

Mr Martin's employment agreement stated his employment was casual in nature however, the Authority found that some provisions in Mr Martin's employment agreement were not consistent with it truly being a casual employment relationship. The primary provision that indicated this related to annual holidays, where Mr Martin was entitled to four weeks annual holidays after 12 months of continuous employment. Annual holidays provided in this way are unlikely to be a feature of a casual employment arrangement.

The Authority was satisfied that the evidence provided by Mr Martin established that he worked regular patterns of work, set in advance by base rosters, with some minor variability in actual hours worked across weeks. This strongly supported that Mr Martin's employment with WLS had become permanent. The Authority found that when Mr Martin left his employment he was permanently employed and could not be considered a casual employee.

The Authority found that in denying Mr Martin sick leave and annual leave, WLS did not deal with Mr Martin in good faith. This led to a breach of duty by WLS and made Mr Martin's resignation foreseeable. The Authority observed that Mr Martin's resignation included details of his concerns and, at no stage did WLS seek to engage with Mr Martin including after he raised a personal grievance. The Authority upheld Mr Martin's claim of unjustified constructive dismissal.

In considering remedies, the Authority ordered that WLS pay Mr Martin compensation to the amount of $20,000, $4,781.87 for unpaid annual holiday pay, $1,459.98 for five unpaid alternative holidays and four unpaid public holidays not worked which would otherwise be a working day and $6,000 being a penalty. Costs were reserved.

Martin v Wellington Laundry Services [[2023] NZERA 297; 08/06/2023; S Kinley]

Employee with mask exemption asked to do a RAT test claimed discrimination

The employee was referred to as OOE and the employer as WQX Limited (WQX) for the purpose of this hearing due to a permanent non-publication order by the Employment Relations Authority (the Authority). The non-publication order was granted on the basis that the issues in dispute related to the employee's private health matters and hence were likely to have an unfair and discriminatory impact upon her future employment applications. Additionally, the employer also risked being the target of negative commentary by the media on their business and workers.

OOE was employed by WQX working in a dispatch role from 29 July 2021 to 8 April 2022. OOE claimed that she was unjustifiably dismissed and unjustifiably disadvantaged as she was asked to do a Rapid Antigen Test (RAT test) while no other employee was and that WQX refused to accept her mask wearing exemption from the Disabled Persons Assembly (DPA). She claimed discrimination and sought lost wages and compensation.

The employment relationship breakdown started during the emergence of Omicron. OOE was experiencing trauma with a relationship breakup which was known to WQX. To devise a COVID-19 response policy, YEI, the sole director of WQX, conducted a survey with its employees proposing protective measures. Anonymous feedback from the survey demonstrated that most employees wanted additional protections and so a policy was formed which had a requirement to wear a mask.

OOE claimed that wearing a mask triggered ongoing trauma that she was experiencing in her life. A letter from her psychologist confirmed she was receiving regular psychological treatment for trauma but did not mention PTSD. OOE also provided a mask wearing exemption card from the DPA. Despite not taking any steps to ascertain the validity of OOE's DPA-issued exemption card, it was unaccepted by YEI and had no legal validity.

After some altercations between OOE and her co-workers due to her refusal to wear a mask, YEI proposed that OOE should work in a temporary office to minimise contact with other workers. OOE contested the suggestion and raised a personal grievance by email claiming the DPA issued mask exemption should be respected, she felt bullied by her co-workers and that her working location could not be changed without agreement.

Following an unsuccessful mediation, YEI insisted that OOE could only return if she wore a face mask (unless a GP's medical certificate stipulated otherwise), underwent daily RAT testing, refrained from entering shared spaces until advised otherwise, complied with social distancing requirements, ensured all customers wear face masks and scanned QR codes. OOE refused to wear a mask or take a RAT test unless it was required by all other staff. WQX's defence was that all other staff were vaccinated and wore masks so YEI did not agree to this. She agreed to be temporarily suspended due to health and safety reasons and warned that if she did come to work without following the requirements then she would be disciplined.

On 28 March, OOE returned to work without a mask and refused to do a RAT test or work in another location away from her co-workers. This prompted YEI to initiate a disciplinary process for wilful disobedience. During the disciplinary process, OOE flagged her unresolved personal grievance again and also sent an updated personal grievance. YEI continued the disciplinary process and put the personal grievance aside. Following a fair process of giving appropriate notice, inviting feedback, considering the feedback genuinely, presenting a preliminary decision and then allowing further comments before giving the final decision, it was decided that OOE was dismissed due to serious misconduct.

The Authority found that she was justifiably dismissed on the grounds of OOE's inexplicable objection to undertake daily RAT tests as an alternative to mask wearing and her unreasonable refusal to contemplate a sensible change to her work location and duties. Both these stances destroyed the trust and confidence in the employment relationship that both the employer and co-workers were entitled to place in OOE. There were no defects in the process leading up to the dismissal and how it was affected.

The Authority, in assessing whether OOE was unjustifiably disadvantaged found that YEI could have avoided the confrontation around mask wearing by accepting the DPA issued exemption as legitimate, as they were a small employer and there was no requirement to take such strong preventative measures. However, the ongoing attempts to force OOE to produce further medical evidence, was unreasonable in all the circumstances and caused OOE distress known to YEI. They could have approached the situation in a more compassionate manner. $5,000 in compensation was ordered for distress.

The Authority also notes that OOE could have easily resolved matters by obtaining a specific letter from her psychologist confirming what was implicitly evident. OOE's refusal to provide further supporting medical information fell into a pattern of unreasonable behaviour by OOE. She adopted a defensive and obdurate approach to communications, and this contributed to the circumstances leading up to her personal grievance including her isolation from co-workers. Due to this, 10% reduction in compensation was ordered for her contribution.

The Authority found that she isolated herself because of her own actions and so she was not the victim of bullying, but WQX should still have investigated. In the final analysis the Authority found there was no discrimination by WQX as they took a consistent approach to all workers as they considered how to mitigate the risk of COVID-19 transmission. Costs were reserved.

OOE v WQX Limited [[2023] NZERA 217; 02/05/23; D G Beck]

Constructive dismissal claim failed due to lack of serious breach of duty by employer

Mr Muir worked for Network Service Providers Ltd (NSP) as a Strategic Advisor from May 2012 until his resignation in May 2021. Mr Muir advised NSP that its actions had forced him to leave and that he regarded himself as having been constructively dismissed. He raised a personal grievance and claimed compensation and monetary entitlements including commission which was part of his remuneration under Appendix C of his individual employment agreement with NSP.

After the problem was brought to the Employment Relations Authority (the Authority) and before the investigation meeting began, NSP paid a total of $33,071.31 to Mr Muir, expressing the payments to be made on an ex-gratia basis and without admission of liability.

Mr Muir's commissions claim was based on an express term of the employment agreement which he interpreted as meaning payments, at scale, had to be made on gross profit, regardless of whether that profit was derived from new business clients or from additional business carried on with existing clients. NSP rejected this interpretation. The clause did not expressly limit commission to new business, nor did it extend commissions to existing clients and therefore Mr Muir contended in the absence of such words, it should not be implied into the employment agreement. Whereas Mr Larsen, the managing director and owner of NSP, argued a term should be implied. The ambiguity in the wording of the clause led to a dispute to the intention of it.

The Authority found that sales was presented to Mr Muir as being a potentially significant component of his job with NSP and he was strongly encouraged by the employment agreement to pursue and secure new business wherever he could. The Authority noted that the major component of Mr Muir's remuneration was intended to be salary and hence unlike some employees, he was not dependent on earning commissions or having a high ratio of commission to salary to make a living and pay his bills.

Appendix C required Mr Muir to first make a claim to receive his entitlement to commissions, but he had never once made a claim in his eight years of employment with NSP and hence NSP had never processed such a claim. The Authority was satisfied that Mr Muir understood the requirement for him to initiate recovery of commissions if he considered they were due to him. He knew what NSP's standard procedures were for employees to use if claiming, and he had access to all the information he needed to verify his entitlement as due. The Authority found that NSP did not obstruct or hinder Mr Muir from making commissions claims.

The Authority considered the relevant test to be what meaning the clause would convey to a reasonable person with all the background knowledge that would have been available to Mr Muir and NSP when they concluded their agreement. Mr Muir engaged with existing clients to return profit in various ways such as sales work, having customers allocated/introduced to him by NSP and being the designated account manager of a customer's business or association with a business through another NSP employee. Therefore, the Authority considered that though in principle it was possible for Mr Muir's entitlement to commissions to include existing customers, the options for defining his entitlement would require detailed specification to the extent that the parties could not have intended to leave that information out of Appendix C, if they had agreed the scheme applied in the way contended by Mr Muir. Hence the more reasonable explanation was that the parties did not see it as necessary to add words to make it expressly clear the scheme was 'net new' only.

The Authority agreed with NSP that the scheme Mr Muir claimed was intended by the parties, would have been unworkable without the necessary detail needed to bring some understanding as to how and when it was to apply to any contribution Mr Muir made to results. The Authority considered that if it were to fill in the necessary details, it would go well beyond interpretation and instead be the fixing of new terms which was an exercise only for the parties to carry out during negotiation of the employment agreement and Appendix C. The Authority found that Mr Muir's entitlement was limited to 'net new' business which he had brought to NSP by his efforts after commencing employment.

Mr Muir claimed constructive dismissal on the grounds that NSP had breached its duty to him thus leading him to resign. NSP contended that there was no dismissal of any kind and no breach of duty. The Authority agreed, finding that there was no breach of duty owed by NSP to Mr Muir under the employment agreement, or the ER Act or other statute, inducing his resignation. NSP could not have reasonably foreseen that Mr Muir who believed he was entitled to commissions, knew he had to initiate a claim for commissions, chose not to do so for eight years, would then resign over non-payment of commission and hence he did not have a grievance for unjustified dismissal.

Mr Muir also complained of a toxic workplace due to the conduct of a new employee, Mr Veerasamy and alleged NSP was unwilling to intervene. The Authority disagreed as Mr Larsen had taken reasonable and active steps to address these concerns through an investigation and hence found this action did not give rise to a claim of constructive dismissal.

The Authority found there was no breach of duty, and especially not one of such seriousness that it could reasonably have been foreseen that Mr Muir would resign. Mere dissatisfaction was not enough, it needed to be caused by a serious breach of duty for it to be a constructive dismissal. The Authority determined that Mr Muir did not have a personal grievance of unjustified dismissal or of any other type. It was left to the parties to resolve any question of costs themselves.

Muir v Network Service Providers Limited [[2023] NZERA 240; 12/05/2023; A Dumbleton]

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.

Mclean Institute (Trust Variation) Bill (30 August 2023)

Fair Trading (Gift Card Expiry) Amendment Bill (14 September)

Sale And Supply Of Alcohol (Cellar Door Tasting) Amendment Bill (14 September)

Employment Relations (Restraint of Trade) Amendment Bill (18 September 2023)

Emergency Management Bill (3 November 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,
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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.

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