

EMPLOYER BULLETIN

4 December 2023
A Weekly News Digest for Employers

EMPLOYER NEWS

Apparent fraudulent access to some MyACC client accounts

ACC are currently managing an issue of apparent fraudulent access to some accounts in their self-service online platform, MyACC.

The people behind the apparent fraud appear to have used MyACC to submit fraudulent travel reimbursement claims to ACC for financial gain.

The fraud was picked up after ACC initially detected a small number of unusual transactions.

ACC Chief Executive Megan Main says it appears likely to have been perpetrated by several people.

“At this stage it seems that a large proportion of those committing the apparent fraud were using their own MyACC account, or the accounts of others who had shared identity information with them,” she says.

“There is currently no evidence that ACC’s cyber security has been compromised. Our investigations are ongoing.”

Overall, ACC has identified up to 500 MyACC accounts that have recently changed their personal details, which are being investigated. All of the clients associated with these accounts have either been contacted, or contact has been attempted on multiple occasions.

To read further, please [click here](#).

Results from 2023 Census available from May 2024

Data from the 2023 Census will start to be released from Wednesday 29 May 2024, Stats NZ.

2023 Census data will be published by Stats NZ in a series of key releases from May 2024 through to August 2025. The first data release on 29 May 2024 will include population, dwelling, and Māori descent counts.

“We look forward to achieving the significant milestone of delivering 2023 Census data from May 2024, so its value can be realised in the important decisions that impact every person, iwi, and community in Aotearoa New Zealand,” deputy government statistician and deputy chief executive insights and statistics Rachael Milicich said.

“A current focus is on processing and preparing the 2023 Census data set, which is on track and going well. This involves combining the data collected in census forms with other data sources (such as government ‘admin’ data) to produce the best quality data set possible for census customers.”

Iwi data from the 2023 Census will also be released by the Data Iwi Leaders Group, a sub-group of the National Iwi Chairs Forum, on the Te Whata data platform. The first release on 29 May 2024 will include Māori descent counts, with two further releases of iwi data from the census planned for 2024.

“The 2023 Census is providing a significant opportunity to better deliver for and with Māori, iwi, and hapū. Under our Mana Ōrite Relationship Agreement with the Data Iwi Leaders Group, we have worked together to ensure the release of 2023 Census Māori descent and iwi affiliation data is prioritised for the Te Whata platform,” Milicich said.

To read further, please [click here](#).

New Zealand election increases filled jobs for October

Filled jobs rose by 13,046 when seasonally adjusted in October 2023 compared to September 2023, according to figures released by Stats NZ.

The increase in filled jobs was driven by the public administration and safety industry, which includes public administration, defence, public order, regulatory, and safety services.

“The election was the biggest driver for the increase of filled jobs in the public administration industry. The Electoral Commission employs around 20,000 people over the election period. That’s according to Work at the 2023 General Election on the Electoral Commission’s website,” says business employment insights manager Sue Chapman.

Stats NZ calculates filled jobs by averaging weekly jobs paid throughout the month, based on tax data.

Annually, public administration and safety had the largest increase in filled jobs, up 23,442 jobs from October 2022 to October 2023. Health care and social assistance had the second-largest industry rise, up 13,683 jobs over the year to October 2023.

Accommodation and food services followed, up 7,839 jobs. Agriculture, forestry, and fishing decreased by 2,475 jobs for the period between October 2022 and October 2023.

To read further, please [click here](#).

Linked employer-employee data: March 2022 year – NZ.Stat tables

Annual linked employer-employee data (LEED) provides person-level statistics for the March year about New Zealanders' interaction with the labour market and their sources of income.

To read further, please [click here](#).

Employment indicators: October 2023

Key facts

Changes in the seasonally adjusted filled jobs for the October 2023 month (compared with the September 2023 month) were:

- all industries – up 0.5 percent (13,046 jobs) to 2.4 million filled jobs
- primary industries – down 0.8 percent (821 jobs)
- goods-producing industries – flat (up 159 jobs)
- service industries – up 0.7 percent (13,449 jobs).

Filled jobs changes by industry

By industry, the largest changes in the number of filled jobs compared with October 2022 were in:

- public administration and safety – up 15.3 percent (23,442 jobs)
- health care and social assistance – up 5.2 percent (13,683 jobs)
- accommodation and food services – up 5.1 percent (7,839 jobs)
- transport, postal, and warehousing – up 7.7 percent (7,074 jobs)
- education and training – up 2.7 percent (5,487 jobs).

Filled jobs changes by region

By region, the largest changes in the number of filled jobs compared with October 2022 were in:

- Auckland – up 4.5 percent (35,302 jobs)
- Canterbury – up 2.9 percent (9,081 jobs)
- Waikato – up 2.7 percent (6,065 jobs)

To read further, please [click here](#).

EMPLOYMENT RELATIONS AUTHORITY: FOUR CASES

Care worker found to be employee

Mr Campion suffered from Parkinson's disease. From October 2019, Ms Sharp had boarded in his house, providing him personal care and household support services. His need for those services increased as the disease progressed. Their arrangements for providing the care and support, and payment to Ms Sharp for providing it, were initially made directly between Ms Sharp and Mr Campion. As Mr Campion's condition deteriorated, Ms Franklin, a long-term friend of Mr Campion, took over management of his finances with an enduring power of attorney.

On 26 January 2021, Mr Campion called a meeting at his home to discuss his ongoing care needs. While accounts differ of the meeting outcomes, Ms Sharp left the meeting with the impression she was to be an employee. Alternatively, Ms Franklin felt the matter was not settled. She had asked Mr Campion's accountant to prepare an employment agreement, however this was never sent to her. Mr Campion's accountant, and Ms Franklin, ultimately felt a contractor arrangement may be best. A contract agreement was sent to Ms Sharp however she did not sign it as she felt this was not what was agreed. Payments continued to Ms Sharp without any signed agreements in place.

In May 2022, Ms Sharp needed to take two weeks off work because the workload was affecting her health. When she was ready to return, she requested to have two days off per week so she could have proper breaks. Ms Franklin advised her, via text, that her services were no longer required, and she should vacate the premises. The reasons given include Ms Sharp's health and that Ms Franklin could not agree with the request for two days off per week. Ms Sharp sought a determination from the Employment Relations Authority (the Authority) as to the nature of her working relationship. The Authority set aside the issue of the fairness of how the working relationship ended. In recognition of Mr Campion's health, Ms Franklin was permitted to act as litigation guardian for Mr Campion.

The Authority observed that Ms Sharp was not in business on her own account in the period prior to 26 January 2021. She did not invoice for her services and used Mr Campion's own house and resources to provide care to him. The expectations for her availability meant she could not grow any business of her own or increase her remuneration by working elsewhere. No change in the nature of the relationship was agreed. The character of those arrangements did not change as a result of the 26 January 2021 meeting. She continued to act on her own initiative in meeting Mr Campion's day-to-day needs, consistent with care work of that type. However, decisions about payments, leave and relief staffing were properly referred to Ms Franklin for decision in her capacity as attorney acting on Mr Campion's behalf in relation to all matters of his personal care, welfare, and property.

The Authority concluded that contrary to submissions made on Mr Campion's behalf, Ms Franklin had the necessary authority to enter and conduct contractual relations on his behalf. The enduring power of attorney did not prevent Ms Franklin from entering into an employment relationship or contractual arrangement on Mr Campion's behalf. The appointment of someone to support Mr Campion with his health needs was in scope for the enduring power of attorney and Ms Franklin was unambiguously acting as the agent of Mr Campion in the interactions she had with Ms Sharp. She clearly understood she had authority under her powers of attorney to do the best she could to make arrangements for his personal care and welfare, including using money from his bank accounts to make payments to Ms Sharp, agency staff and any other bills. The Authority found that, assessed in its full context and under the relevant criteria of section 6 of the Employment Relations Act 2000, the true nature of the relationship between Ms Sharp and Mr Campion, including through Ms Franklin as his representative, remained one of employment for the period 26 January 2021 to 16 May 2022. Costs were reserved.

Sharp v Campion [[2023] NZERA 413; 03/08/23; R Arthur]

Personal grievance raised out of 90-day time frame did not have exceptional circumstances

Mr Putaanga was employed by Move Freight Limited (Move Freight) as a Class 5 Driver until his employment was terminated on 12 May 2022. On 28 September 2019, Mr Putaanga suffered a workplace accident and was unable to work until February 2020. Mr Putaanga believed Move Freight had failed to protect him adequately and was responsible for the accident and the injuries he suffered. Further, in connection with the termination of his employment, Mr Putaanga believed Move Freight had not properly allowed him to undertake the return-to-work programme. Mr Putaanga raised a personal grievance in the Employment Relations Authority (the Authority) for unjustified dismissal and unjustified disadvantage. The Employment Relations Act 2000 (the Act) sets out that any employee wishing to raise a personal grievance must do so within 90 days of when the action giving rise to the grievance occurred or when it came to the notice of the employee.

Move Freight argued that Mr Putaanga had not raised the necessary personal grievances within the required 90-day time frame and therefore the Authority did not have jurisdiction to investigate and determine Mr Putaanga's claims. In response, Mr Putaanga said that he did raise his personal grievances in time. Alternatively, if he did not, then the Authority should allow the grievances to be raised outside of the 90-day period because there were exceptional circumstances relating to the timing of him raising the grievances.

In February 2020, Mr Putaanga was cleared to recommence work on a restricted basis. In June 2020, Mr Putaanga was moved to a return-to-work plan which allowed him to drive on his own. What followed until March 2021 were various attempts by Mr Putaanga and Move Freight to have Mr Putaanga work in some way to fulfil the return-to-work plan. However, it was clear that Mr Putaanga was struggling to work consistently even at reduced hours. During this time Mr Putaanga did not raise any concerns or complaints about the workplace accident in a way that could be considered to have been raising a personal grievance.

In April 2021, Mr Putaanga began writing out his personal grievance. He said it took him about six weeks to complete as he found it difficult to concentrate. On 18 May 2021, Mr Putaanga sent a letter to Move Freight that set out various complaints he had about the workplace accident and Move Freight's handling of his return to work. The letter set out the complaints as various personal grievances based on unjustified action causing disadvantage to Mr Putaanga's employment.

On 29 May 2021, Move Freight responded to Mr Putaanga's letter advising him that he had not raised his personal grievance within the 90-day period, and it would not consent to him raising it out of that time.

In December 2021, Mr Putaanga went on annual leave. In February 2022, Move Freight extended Mr Putaanga's leave on the basis that he would engage with them over his capability to return to work. The process to ascertain Mr Putaanga's fitness for work culminated in a meeting on 12 May 2022. In this meeting, Move Freight confirmed to Mr Putaanga that it was terminating his employment effective immediately.

Mr Putaanga disputed the decision, stating that if Move Freight followed the return-to-work programme he would be able to work. He said quite clearly that he disagreed with the termination of his employment, and he wanted to attend mediation to discuss it. Move Freight responded saying it had followed a fair process and was confident that termination was the right decision. The parties subsequently attended mediation.

Based on the workplace accident occurring on 28 September 2019, Mr Putaanga's personal grievances needed to be raised by 28 December 2019. Mr Putaanga did not do this. The personal grievances relating to the workplace accident were only raised in the letter of 18 May 2021. The Authority was satisfied that Mr Putaanga did not raise a personal grievance for unjustified disadvantage in connection with the workplace accident within the requisite 90-day period. Mr Putaanga's explanation for the failure to raise his personal grievance for unjustified action causing disadvantage due to the workplace accident, was that it took Mr Putaanga a long time to write the grievance down as he struggled to concentrate. The Authority was not satisfied that this amounted to exceptional circumstances as it only explained the time it took Mr Putaanga to write up his grievance once he commenced writing it in March 2021.

The Authority found it was clear that after Move Freight confirmed the termination of Mr Putaanga's employment, he complained about the decision. Mr Putaanga then told Move Freight what the nature of his complaint was. Through this, Mr Putaanga was effectively saying he could return to work if given the opportunity and this was in the context of having previously raised concerns about the implementation of the return-to-work programme. Move Freight knew Mr Putaanga wanted to resolve this complaint, so it needed to respond, which it partly did in the meeting. Mr Putaanga told Move Freight that he wanted to resolve his complaint through mediation, which Move Freight agreed to attend. Based on this, the Authority was satisfied that Mr Putaanga did raise a personal grievance for unjustifiable dismissal within the 90-day period. Costs were reserved.

Putanga v Move Freight Limited [[2023] 03/08/23; P Keulen]

Successful claim by Labour Inspector against Employer for breaches of Employment Standards

The Labour Inspector alleged that SLD Agriculture Limited (in liquidation) failed to pay Mrs Grobbelaar, an employee, the minimum wage for all of the hours she worked and failed to pay her and Mr Grobbelaar, another employee, their correct holiday pay entitlements. The Labour Inspector lodged claims in the Employment Relations Authority (the Authority) seeking payment of these minimum entitlements. The Labour Inspector also sought orders against Mr Donaldson, the director and sole shareholder of SLD Agriculture, on the basis that he was a person involved in the breaches of employment standards, pursuant to the Employment Relations Act 2000.

A preliminary issue was whether SLD Agriculture was the employer of Mr and Mrs Grobbelaar as it opposed the claims asserting it was the employer. The Authority determined SLD Agriculture was the employer. SLD Agriculture went into liquidation during the investigation. This meant the Labour Inspector could not proceed against SLD Agriculture, but it could proceed with the preliminary issue for the purposes of establishing its claims against Mr Donaldson.

SLD Agriculture was incorporated on 11 May 2018 and placed into liquidation on 30 September 2022. Mr Donaldson was the sole director and shareholder of SLD Agriculture. Mr and Mrs Grobbelaar had an informal interview with Mr Donaldson in relation to managing the farm. On 1 February 2019, Mrs Grobbelaar started working on the farm without an employment agreement. On 17 May 2019, Mr Grobbelaar started working on the farm after his visa was granted.

Mrs Grobbelaar worked five days per week totalling 55 hours. Mr Grobbelaar worked seven days per week, with this likely totalling more than 50 hours as set out in his employment agreement. This was the basis used for calculation of minimum wage entitlements by the Authority. Mrs Grobbelaar's salary was \$30,000.00 and she was paid a total of \$58,287.21 (gross) during her employment. Mr Grobbelaar's salary was \$63,600.00 and he was paid a total of \$60,202.28 (gross) during his employment. Based on these figures, the Authority found Mr Grobbelaar was paid at least the minimum hourly wage for the hours he worked for SLD. However, Mrs Grobbelaar was not paid the minimum hourly wage with a shortfall of \$24,955.29. Therefore, the Authority found SLD Agriculture breached the Minimum Wage Act 1983 by not paying Mrs Grobbelaar at least the applicable minimum wage for the hours she worked whilst employed.

Mr and Mrs Grobbelaar were paid their annual holiday pay entitlement on a weekly basis at the rate of 8 per cent of their weekly wage. The Holidays Act 2003 (the Act) allows for annual holiday pay to be paid on this basis if the employee is on a fixed term employment arrangement or is a casual employee. Neither of these situations applied to Mr and Mrs Grobbelaar. It followed that SLD Agriculture paid their annual holiday pay incorrectly. After taking into account leave already taken by Mr and Mrs Grobbelaar, the amount of annual holiday pay they were entitled to was \$1,103.76 for Mr Grobbelaar and \$1,944.18 for Mrs Grobbelaar. The Authority concluded SLD had breached the Act by failing to pay Mr and Mrs Grobbelaar the amount of their annual holiday pay that had accrued but not been taken at the end of their employment.

For Mr Donaldson to be a person involved in SLD Agriculture's breaches, he had to have knowledge of the essential facts that established the breaches. Mr Grobbelaar reported to Mr Donaldson, as the sole shareholder and director of SLD Agriculture, about work relating to the management of the farm and took instructions from him about this work. Expenses for work done on the farm were charged to Mr Donaldson's account. Mr Donaldson signed the employment agreements for Mr and Mrs Grobbelaar personally. He also completed the immigration forms for Mr Grobbelaar and applied for the COVID-19 Consolidated Wage Subsidy on behalf of both Mr and Mrs Grobbelaar through SLD Agriculture.

Based on these facts, the Authority inferred Mr Donaldson managed the overall operations of the farm including the finances covering outgoings and expenditure as well as income, through SLD Agriculture. Mr Donaldson was essentially a CEO with overview of operations and finances and so must have had knowledge of the essential facts relating to the breaches of employment standards by SLD Agriculture. Thus, Mr Donaldson was found to be a person involved in breaches of employment standards by SLD Agriculture. Mr Donaldson was liable for the amounts outstanding to Mr and Mrs Grobbelaar from the breaches of employment standards if SLD Agriculture was unable to pay the amounts owed and for penalties for three breaches of employment standards. The penalties were to be quantified at a later date.

Labour Inspector v SLD Agriculture Limited (In Liquidation) and Scott Donaldson [[2023] NZERA 419; 04/08/23; P Keulen]

For further information about the issues raised in this week's cases, please refer to the following resources:

- Discipline
- Contract for Services
- Personal grievances
- Full and Final Settlements

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.

Bills open for submissions to select committee: Zero Bills

There are currently no Bills open for public submissions to select committee.

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



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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.



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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.

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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.

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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.

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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.