

# Court Requests Good Faith Report from Authority

A recent judgment of the Employment Court (*The Travel Practice Limited v Owles* CC15/09) demonstrates the weight placed on good faith in relation to the conduct of parties before the Authority. The claim before the Authority concerned an employee who had been employed for little more than two weeks before she resigned and claimed constructive dismissal.

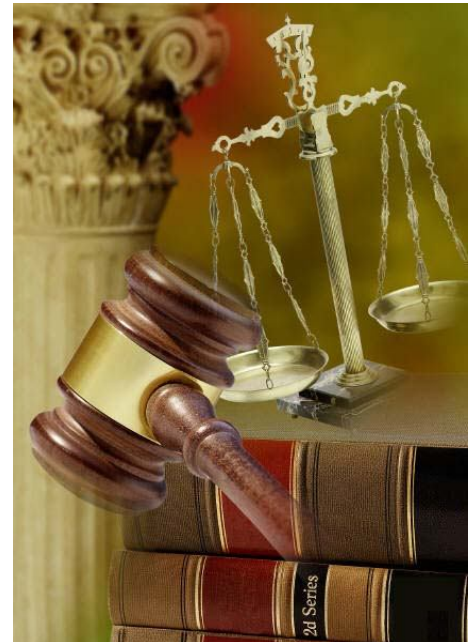
On three occasions, the employer failed to attend mediation. The employer also failed to file a statement in reply or statements of evidence in the Authority before failing to attend the investigation meeting in the Authority. The Authority found in favour of the employee and awarded her over \$8,000 and a further \$1,070 in costs. After being reported in "The Press" as stating it was 'waiting to have the matter dealt with in the right forum', the employer then filed a challenge to the Authority's determinations and sought a de novo hearing.

The Court was concerned in relation to the conduct of the employer and sought a good faith report from the Authority before determining whether the de novo challenge should be granted.

The Authority concluded the employer had acted in a way which had obstructed its investigation.

The Court commented that allowing the application would mean all evidence relied upon by the employer would be new to the employee. However the employer gave evidence of having written to the Authority seeking an adjournment to the investigation meeting (although the Authority had no record of this being received) and also providing various other reasons for non attendance at mediation.

The Court further commented that although allowing the challenge could frustrate the principle underpinning the Employment Relations Act that matters should be dealt with in the first instance via mediation and investigation in the Authority, the prejudice to the employee in allowing the challenge could be minimised through directions of the Court and costs awards. The de novo challenge was allowed on strict conditions, including that the parties attend mediation.



Although in this instance the Court allowed the challenge, employers should tread cautiously in terms of taking a dismissive approach to mediation and the Authority.

If an employer does not participate in good faith in these forums, there is a significant risk that any ability to pursue the matter further in the Employment Court could be affected.

## Cellphone ban whilst driving comes into effect

From 1 November 2009 it will be unlawful to use a handheld cellphone whilst driving. 'Use' includes talking, texting and emailing. 'Hands free' equipment is permissible to enable calls to be made while driving, provided the call can be made, taken or ended by pressing no more than one button. Employers will now have health and safety obligations to take all practicable steps to manage the 'hazard' of employees using cellphones whilst driving. As such employers should make employees aware of the law change, and if appropriate, amend existing company policies and procedures to clarify cellphone use while driving is not permitted. Such a policy should also state that any fine resulting from any breach by the employee of the new legislation will be the responsibility of the employee not the employer. It may also be appropriate to state that disciplinary action could result for an employee who breaches the new legislation and/or the relevant policy.



## Proposed Changes to Meal and Rest Breaks Legislation Before Parliament

A new Bill was introduced into Parliament on 27 October 2009 by the Minister of Labour, Kate Wilkinson. If passed, this amendment will provide greater flexibility for employers in relation to the current legislation providing for meal and rest breaks which was introduced by Labour, and came in to effect earlier this year.



In its current form the Bill effectively removes the requirement to have a specific length of meal and/or rest break. In addition where an employer and employee do not agree on the timing or duration of such breaks, this can be specified by the employer within reasonable limits.

If passed, the Bill would also entitle employers and employees to agree to 'compensatory measures' which could include time in lieu of the break or a later start or earlier finish time during the work period.

A further proposed change which will be welcomed by employers is that breaks may be subject to reasonable and necessary restrictions in that the employee may be required to continue 'to be aware of his or her work duties', or, if required, continue to perform some of his or her work duties during the break. In this regard the current legislation has created significant issues for businesses, for example situations where a sole employee is engaged in a role such as a shop assistant. The current legislation requires such an employee be provided with one 30 minute meal break (when the qualifying number of hours had been worked) regardless of whether or not other employees were available to cover the employee for the period of the break.

We will keep you updated on the progress of this legislation.

## Are your Employees Working on Show Day or Xmas Day ?

- Yes Are you aware of your obligations in regard to paying employees for working on public holidays?  
 No Are you aware of your obligations in regard to paying employees not working on public holidays?

The answers to these questions and many others regarding annual and public holidays will be answered in our **Holiday Pay Refresher Seminar** being held in Christchurch on Thursday 19 November 2009 from 9.00 am to noon. Please contact us for further details.

**Don't miss out - enrol today!**



This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Neil McPhail, Raewyn Gibson, Peter Zwart** or **Sarah Bradshaw**.

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