



ISSUE

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a regular newsletter for clients of
mcp h a i l g i b s o n & z w a r t l t d

Rise of the Phoenix

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

As many of you will understand, when giving advice, we refer to what has occurred in the past to provide guidance.

On a “wander” through our archives, we came across the article below written in December 2005, and thought with all we are going through at the moment, it may provide an interesting read. Please note that while some of the broader principles may be still apply, the law has developed since then. If nothing else, it is questionable whether employers can rely on the closedown provisions of the Holidays Act 2003 outside of normal closedowns; and the Health and Safety in Employment Act 1992 has been replaced by the Health and Safety at Work Act 2015.

We hope this provides some light relief in the current environment, and you are all staying safe.

As always, we are here to provide advice on any issues arising generally and as a result of the current Alert Level.

“December 2005

Bird Flu Pandemic – Crisis in the Air

There has been a significant amount of attention on the possible effect of the bird flu if it reaches pandemic level. According to the Ministry of Health web site, it is not a case of if another flu pandemic occurs, but when.

The bird flu itself according to the Ministry of Health website is like any other flu virus, however its symptoms “can cause severe flu-like symptoms in people and may result in death”. Generally symptoms appear 3 to 7 days after infection and last up to 7 days.

What does it mean for employers raises a number of questions - health and safety, sick leave, and absenteeism of potentially large numbers of the workforce - with no easy answers.

Health & Safety

The Health and Safety in Employment Act 1992 provides that every employer must take all practicable steps to provide a safe workplace. Where the virus has been identified as a potential hazard employers will be required to take steps to manage that hazard. This will include examining such options as requiring infected employees to stay at home, where practical allowing employees who may not be infected to work from home and whether the risk of infection is such that the business should close.

Whether or not a business should close will need to be examined on a case by case basis. The Ministry of Health notes that primary industries may be able to carry on relatively unaffected.

Under the Act an employee also has the right to refuse to perform work that exposes them to a situation which could cause serious harm. If the virus is present in a workplace an employee may be in a position to exercise this right.

Disclaimer:

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 **Dean Kilpatrick, Jane Taylor or David Appleton.**

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Health Act 1956

Under this Act a Medical Officer of Health may quarantine people infected and close buildings thought to contain infection.

Payment for Absence

The next issue arising is what are an employer's obligations to pay an employee (or employees) if the business closes, employee(s) are required to stay home, employees are absent due to orders under the Health Act or an employee chooses to stay at home.

Where a sick employee is required to stay at home they will be entitled to use any sick leave they may have. What occurs when that leave runs out is not certain, generally if an employer requires an employee to stay at home the employer is required to continue to pay that person. However, in exceptional circumstances, such as a pandemic, where large numbers of the workforce are off, an employer may be able to say enough and not pay.

Where the employer closes down the business, depending on how the close-down occurs, an employer may be able to rely on the close-down provisions of the Holidays Act 2003 and require employees to take annual leave.

Where an employee refuses to work because of the risk of exposure to serious harm an employer may be required to continue to pay that employee until the employee can safely return.

Where a building is closed or persons are quarantined under the Health Act employees may use sick and annual leave as applicable, however again, once exhausted, there is no clear answer as to what an employer's obligations may be.

Another scenario is where an employee chooses to stay home because of illness. In this case the employee is entitled to use any sick leave they have and once that is exhausted use annual leave. However, as the choice not to work is the employee's, the employer is not obliged to pay beyond those entitlements.

Conclusion

As can be seen from the above there is no simple answer of how to address the possible effects of a pandemic. The Ministry of Health has published a guide for the continuity of business which is available on its website, http://www.med.govt.nz/irdev/econ_dev/pandemic-planning/business-continuity/planning-guide/planning-guide.pdf.

Ultimately however, unless there is legislative intervention, employers will need to examine circumstances on a case by case basis to establish what their rights and obligations are. If the pandemic reaches the potential estimated by the Ministry of Health there will undoubtedly be instances where, while an employer will be fully aware of its obligations and want to meet those obligations, it will simply not be in a position to do so."

MGZ | Open For Business

MGZ continues to monitor closely the situation and is following relevant government advice to ensure that we are ready to adapt to the latest situation. Our first priority is the health and wellbeing of our staff and their families, and of our clients.

We have comprehensive business continuity procedures in place for our office and in light of the current situation we are now working from home until further notice. We remain fully operational and able to support clients on all their matters and do not anticipate any significant disruption to our ability to support our clients.

We are available to attend meetings with you by video conferencing. If you have any questions please get in touch with your usual [MGZ Team Member](#)