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Hotel Conference 2018

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Damn good advice



Agenda

- Employment Law Update
 - Employment Relations Amendment Bill 2018
 - General Employment Law Update
 - Fair Pay Agreements
 - Health and Safety Update



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Employment Relations Amendment Bill 2018



Trial Periods

- Trial periods
 - Will be limited to employers with less than 20 employees
 - Proposed '*Dispute process*' and '*Referee*' gone
- Probationary periods
 - Remain unchanged
 - Likely to be used more



Trial Period v Probationary Period

	Trial Periods	Probationary Periods
Right to raise a personal grievance for unjustified dismissal	No – but good faith still applies	Yes
Right to be given reasons for dismissal	No	Yes
90 day limit	Yes	No – must be a reasonable length of time



Trial Period v Probationary Period

	Trial Periods	Probationary Periods
Employee status	Only used for <i>new</i> employees to the company	Can also be used for employees who are changing roles within a company
Process	Good Faith	Good Faith, plus fair process



Statutory Meal and Rest Breaks

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- Prescribed entitlements to
 - paid 10 minute rest breaks; and
 - unpaid 30 minute meal breaks
- Some employers will be exempt
 - “*essential services*”
 - compensatory measures



Collective Bargaining

- Extension of the duty of *good faith*
- Restoration of the duty to *conclude* bargaining
- Repeal of the provisions that enable the *ERA* to determine bargaining has concluded
- Removal of the “*opt outs*” for MECAs
- Restoration of the *30-day rule*
- The requirement to include *pay rate and salary* details



Union Rights

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- Restoration of the earlier initiation timeframes
- Repeal of partial strike pay deductions
- Increased union access and associated penalty
- Employer requirements to
 - pay Union delegates to represent other workers
 - give Unions information about new employees
 - provide new employees with information regarding the Union
- Greater protection against discrimination



“Vulnerable Workers”

- The Bill will provide further protections for “*vulnerable workers*” including
 - Removing the exemption for small to medium enterprises from the current rules about business transfers
 - Providing more time for employees to decide whether to transfer to a new employer
 - Providing greater safeguards on the transfer of inaccurate information



Restoration of Reinstatement

- Return to the statutory position prior to 2011
- Reinstatement will be restored as the primary remedy for an employee who has been unjustifiably dismissed
- Reinstatement where it is '*practicable and reasonable*'



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General Employment Law Update

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The Minimum Wage

- Previous minimum wage = \$15.75 per/hour
 - increase on 1 April 2018 = \$16.50 per/hour
 - increase minimum wage to \$20 per/hour by April 2021
- Promotion of the “*living wage*”
 - \$20.20 2017
- Abolishment of “*starting out*” wage



Paid Parental Leave

- Parental Leave & Employment Protection Amendment Bill
- Extensions to paid parental leave
 - paid parental leave entitlement = 18 weeks
 - 1 July 2018 = 22 weeks/1 July 2020 = 26 weeks
- “*Keeping in touch days*” also extended
 - current keeping in touch days entitlement = 40 hours
 - 1 July 2018 = 52 hours/1 July 2020 = 64 hours



Changes to the Holidays Act 2003

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- Changes came into effect on 31 January 2018
- Employees can now provide medical certificates from “*health practitioners*” as proof of injury or sickness
 - Chiropractors
 - Dentists
 - Dietitians
 - Radiologists
 - Midwives
 - Nurses
 - Occupational Therapists
 - Optometrists and Dispensing Opticians
 - Osteopaths
 - Pharmacists
 - Physiotherapists
 - Podiatrists
 - Psychologists
 - Psychotherapists



Employment Relations (Triangular Employment) Amendment Bill

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- Introduced into Parliament on 1 February 2018
- New initiative aimed at addressing so called “*triangular*” or tripartite employment relationships
- Proposed that an employee may
 - join, as a third party, to their personal grievance
 - the organisation whose control they are working under
 - but who is not their direct employer



Equal Pay Reforms

- Labour has committed to implementing changes to the Equal Pay Act 1972, which include:
 - increased judicial access and intervention
- Reconvening Joint Working Group: Pay Equity Principles
- Recommendations due February 2019



Increased Rights for Contractors

- Currently only right under the Act: claim to be employee
- Increased rights for independent contractors
 - potential for independent contractors to gain the same rights as an employee



Fair Pay Agreements

- Labour's workplace relations package promised the introduction of '*Fair Pay Agreements*' (FPAs)
- FPAs to be agreed between businesses within each industry and unions representing the workers
- FPAs to address following conditions
 - wages
 - allowance
 - weekend and night rates
 - hours of work
 - leave arrangements for employees



Statutory Entitlements to Redundancy

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- Plans to begin consultation to increase the minimum entitlements to redundancy pay
- Based on the 2008 Ministerial Advisory Group report on redundancy and restructuring
- Industry standard: 4 + 2 weeks formulae



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Health and Safety Update: First HSWA Prosecutions



First Health and Safety Cases

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Case	Fine	Reparation	Costs
1. <i>Budget Plastics</i>	\$100,000	\$37,500	\$1,000
2. <i>Rangiora Carpet</i>	\$157,500	\$20,000	\$1,228
3. <i>Dimac Contractors</i>	\$90,000	\$0	\$1,000
4. <i>Lindsay Whyte Painters & Decorators</i>	\$50,000	\$20,000	\$1,500
5. <i>StumpMaster</i>	\$90,000	\$18,500	N/A

First Health and Safety Cases cont.

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Case	Fine	Reparation	Costs
6. <i>Easton Agriculture</i>	\$0 (reasons not be published/ indicative: \$330,000)	\$85,000	\$3,500
7. <i>Trade Depot</i>	\$98,156.25	\$24,000	N/A
8. <i>Remarkable Tortillas</i>	\$0 (reasons not be published/ indicative: \$337,500)	\$52,282.97	N/A



First Health and Safety Cases cont.

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Case	Fine	Reparation	Costs
9. <i>Tasman Tanning Company Limited</i>	\$380,000	\$18,000	N/A
10. <i>SM Callaghan Ltd</i>	\$100,000	(\$54,000 paid prior to sentencing)	N/A
11. <i>ITW NZ</i>	No decision or commentary	-	-



First Health and Safety Cases cont.

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Case	Fine	Reparation	Costs
<i>12. Avon Industries</i>	\$371,250	\$30,000	\$1,584.50
<i>13. Niagara Sawmilling Co Ltd</i>	\$323,437	\$27,000 + \$160	\$278
<i>14. Nutrimetrics</i>	\$183,750	\$15,880 (\$15,500 paid prior to sentencing)	\$2,027



The First Decisions Under the HSWA lane neave.

– Emerging Trends

- Failure to address/rectify (obvious) hazards
- Lack of training
- Lack of policy/documentation/systems
- Failure to notify



The First Decisions Under the HSWA – Emerging Trends

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- Mitigating factors in the cases included
 - Level of culpability
 - Obviousness of the risk to health and safety
 - Whether the gravity of the consequences were serious
 - Whether there was relative ease in removing the risk
 - Previous health and safety record of the company
 - Size of the company



Enforceable Undertakings under the HSWA

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- An Enforceable Undertaking is a written agreement between WorkSafe and a duty holder, given under Part 4 of the HSWA
- It is generally used as an alternative to prosecution, is entered into voluntarily by the duty holder following a breach (including an alleged breach) of HSWA and, once in place, is legally binding
- A number of Enforceable Undertakings have been accepted under the HSWA since 2016



Enforceable Undertakings under the HSWA

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- The Enforceable Undertakings so far have included initiatives to
 - Provide financial reparation to the victim
 - Upgrade current health and safety practices
 - Provide training and development for employees
 - Establish a tertiary scholarship for accredited health and safety studies
 - Donate to specified charities



First Enforceable Undertakings

Company	Industry	Value	Themes
St Kentigern Trust Board	Education	\$85,682.88	<ul style="list-style-type: none"> • Accept full responsibility • Restorative justice process with victims • Reparations • Steps to improve H&S within sector • Publish H&S policy for performing arts industry • Develop H&S training course: performing arts
Amcor Flexibles (New Zealand)	Manufacturing	\$116,712	<ul style="list-style-type: none"> • Electronic H&S system • Join H&S forum • Article • Work with educational providers • Donation • Reparations

First Enforceable Undertakings

Company	Industry	Value	Themes
National Aluminum	Manufacturing	\$129,114.	<ul style="list-style-type: none"> • NZQA unit standard in Workplace Safety • Article • Industry wide conferences • Training • Partner Community • Waikato: H&S resources • Reparations
Earthcare Environmental Ltd	Recycling		<ul style="list-style-type: none"> • Expressed regret and past performance • Further training of workers • Co-fund development of industry risk mgmt course including funding of attendees • Donation Reparations and non financial support

First Enforceable Undertakings

Company	Industry	Value	Themes
Zespri International	Agriculture	\$249,500	<ul style="list-style-type: none"> • Tertiary scholarship for H&S study • Annual audits of orchard mapping • Ongoing H&S training • Reparations
Metropolitan Waste (Waikato)	Waste Services	\$77,091.60	<ul style="list-style-type: none"> • Improve SOPs • External training and support • Join Waste Management / share story • Articles • Donation • Educational video

First Enforceable Undertakings

Company	Industry	Value	Themes
Directionz	Building and Construction	\$233,674.18	<ul style="list-style-type: none"> • Develop best practice working guide • Deploy Health, Safety, Quality and Environment coordinator • Staff training and accreditation • “Safe Operation” documentation • Articles • Donation to charity • Reparation to victim • H&S program for High School students



First Enforceable Undertakings

Company	Industry	Value	Themes
Whitford Park Golf Club Inc	Recreation	\$70,760	<ul style="list-style-type: none"> • Presentation to Industry • Provide hardcopy to every NZ golf club • Articles • Development program for young players • Free coaching clinic for retired members • Donation (over 2 years) • Payment to worker and free honorary membership (over 10-15 years)



First Enforceable Undertakings

Company	Industry	Value	Themes
Downer New Zealand	Building and Construction	\$189,548.00	<ul style="list-style-type: none"> • Payment and professional development • Revise contractor pre-qual. process • Contractor training, induction packs • Contribution to sub-contractor management • Share lessons, presentations • Develop safety information • Scholarship • Donation



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Q&A



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Note:

The material contained in this workshop is necessarily in summary form. It is not intended to be a comprehensive statement on the law as it applies to the above topics. Accordingly, you must not rely solely on this information without first seeking detailed legal advice

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