

EMPLOYMENT LAW NEWS:

The law relating to employment is again changing. The Government recently announced changes to the Employment Relations Act 2000 and the Holiday's Act 2003. The changes will impact upon the **90 day trial period, medical certificates** for sick leave, the ability to exchange **annual leave for cash, union access** to the workplace and the standard by which we gauge **justification for dismissal**. This all means that it is high time we got together for another discussion on employment law. We will be hosting a casual but informative seminar with food and refreshments at our offices on Wednesday 29 September 2010. Keep this date free. Further details about the seminar will be emailed to you or be available on our website

'KEEPING IT CASUAL'

THE ART OF HIRING CASUAL EMPLOYEES

Many employers find the prospect of hiring workers on a casual basis enticing. The beauty is that casual employees work "as and when" required with no guarantee of set hours or ongoing work. The essence of casual employment is that an employment relationship only exists during periods of work. The parties have no obligations to each other under employment law in between those periods.

Despite intentions to 'keep things casual', casual employment relationships can unexpectedly morph into permanent employment relationships. Where an employment relationship is permanent, a wide range of duties apply under employment law. So how can you tell if your casual employee is no longer casual?

This issue has been recently addressed by the Employment Court. The Employment Court accepted that casual employment is typically irregular and lacks continuity. There is often an element of unpredictability as to when work will be available. Due to the unpredictable nature of the work, a casual employee has no obligation to accept any work offered.

However, in this case the Employment Court found that even though the employment agreement labeled the employee as 'casual' the real nature of the employment relationship was that the employee was permanent. They found that the employment relationship had changed over time from a casual to a permanent position.

It was determined that the status of an employee will be assessed at the time it comes into issue not when the employment began.

Some useful indicators were provided to help determine when an employee could be considered permanent. These are whether:

- Work is allocated in advance by a roster;
- There is a regular pattern of work;
- There is a mutual expectation of continuity of employment;
- The employer requires notice before an employee is absent or on leave;
- The employee works to consistent starting and finishing times;
- The employee has become an integral part of the workforce.

These indicators are not exhaustive and all do not need to be present for a permanent employment relationship to exist.

The moral of the story is that employers must review the real nature of the employment relationship on a regular basis. If the relationship has changed then it should be recorded in a new written employment agreement.

For employers uncertain of what type of employment relationship they have with their employees or for employers that require new written employment agreements to reflect a changed employment relationship, see the Webb Ross Employment Team for information and advice.

David Grindle, LL.B. Partner

David graduated from Waikato university with a law degree in 2002 and was admitted to the bar later that year. David has a refined ability to resolve conflict and to provide solutions to complex problems and legal issues. David works in the Webb Ross litigation department and is the head of our Employment Law Team. His other interests include construction law and general civil litigation.



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Judy Collins, LL.B., B.A (Hons) Staff Solicitor

Judy graduated from Otago University with a Bachelor of Laws and a Bachelor of Arts (Hons) in December 2007. She was admitted to the bar at the Whangarei High Court in 2008. Judy, who is originally from Northland, came back to Whangarei to join Webb Ross in 2008. Judy works in our litigation department and her particular interests are civil litigation, employment and resource management law.



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HEALTH AND SAFETY BREACHES: THE TREND TOWARDS INCREASED FINES

In the last year there has been a marked increase in the amount of fines imposed for workplace health and safety breaches. This is because the High Court has reviewed sentencing principles and directed the District Court to amend the way it sentences offenders. Fines are now fixed on the following scale:

<i>Level of culpability</i>	<i>Level of fine</i>
Low	Up to \$50,000
Medium	Between \$50,000 and \$100,000
High	Between \$100,000 and \$175,000
Extremely High	Exceeding \$175,000

A judge will assess culpability by looking at whether reasonably practical steps were taken, the nature and seriousness of the risk of harm occurring, standards in the relevant industry, the obviousness of the hazard, the availability, cost and effectiveness of means to avoid the hazard, knowledge of the risks and the nature and severity of the harm which could result, and the means available to avoid the hazard or mitigate the risk of its occurrence. Orders of reparation can also be made on top of fines.

Because fines can now be substantially higher than they were in the past it is even more important for employers to ensure that they have health and safety systems in place. If you have any questions or concerns about your obligations under health and safety legislation then contact the Webb Ross Employment Team.

WEATHERING THE STORM Managing Risk in Today's Economic Climate

It's been a tough couple of years and everyone is worrying about what the next 12 months will bring. Make sure you are doing everything to protect yourself and the things that matter.

Your survival kit includes:

Seminar 1: Business Barometer – Find out what's happening in business and the economy.

Where: Webb Ross. When: Wednesday 1 September 2010 @ 5:00pm

Seminar 2: Managing risk in your business – where are the danger points and how to deal with them.

Where: Webb Ross. When: Wednesday 15 September 2010

Seminar 3: Employment Law for Employers – *Changes to the law.*

Where: Webb Ross. When: Wednesday 29 September 2009 @ 5:00pm

Plus the opportunity for a **FREE** Business Health Check with Webb Ross @ a time to be arranged with you.

Please RSVP by 25 August 2010 to Irene or Bronte on 470 2400.