



NEWSLETTER

Welcome



Welcome to August's Newsletter. A particularly warm welcome to our new Blenheim businesses.

This month we cover a couple of interesting cases, one of which was raised with the Privacy Commissioner and adds to the recent Massey University case (May Newsletter), by addressing what information should be released to applicants.

The second case relates to the 90 Day Trial Period, and some interesting (scary) questions of law.

If you would like copies of previous newsletters please go to our website at www.chapmaner.co.nz.

August Free Seminar

August's was very well attended (31 attendees), at the new venue above

Mac's Brew Bar.

There were a number of suggestions on the feedback forms for Recruitment and Employment Offers to be a topic. We will include this as one of the main topics in the October Seminar, as well as the usual case law updates.

If you have any topics that you would like covered please let us know.



Caution Advised with Applicant Information

A candidate for a government department job was unsuccessful in his job application, and made a request for a copy of the personal information held by that government agency under Principle 6 of the Privacy Act. He didn't like the employer's response so lodged a complaint with the Privacy Commissioner.

Principle 6 of the Privacy Act gives an individual the right of access to information held about them, unless one of the stated exceptions applies.

The man requested a copy of the reference checks carried out on him, but the department refused on the basis that it was evaluative material. Section 29(1) (b) allows an agency to withhold evaluative material where releasing it would 'breach an express or implied promise to the person who supplied it, that the information or their identity would be held in confidence'. The Privacy Commissioner agreed the references should be withheld from the applicant.

The form used to collect applicant information stated the information would be kept indefinitely as part of a database that would be used to determine the applicant's suitability for any position they apply for in the future. The applicant took issue with this and the Privacy Commissioner agreed on the basis that Principle 9 of the Act states information shall not be kept for longer than is required for the purposes for which the information may lawfully be used.

Part of the recruitment process included obtaining personal and commercial credit history on the applicant. The applicant also took issue with this, and once again the Privacy Commissioner agreed. Principle 1 of the Act states that an agency must only collect information for a lawful purpose, and be necessary for that purpose. The Privacy Commissioner said that as the position the applicant applied for held no significant financial risk to the department, it was not necessary to gather the credit information to determine whether he was suitable for the position.

What does this mean for you? When seeking references advise the referee that the information they are giving will be held in confidence, and advise the interviewers that their evaluations of the applicant will also be held in confidence.

Only collect information on the applicant that is relevant, and always keep in mind that most information is ultimately discoverable so be careful what you record.



90 Day Trial Period Test Case

A test case on the 90 Day Trial Period is heading to the Employment Court. The Employment Relations Authority removed the case to the Court on the

basis that there are important questions of law that need to be determined.

Ricky Blackmore was employed as a Farm Manager. He had a written employment agreement that was signed on the day he started work (15 November 2010), and it contained a 90 Day Trial Period Provision. Mr Blackmore was subsequently dismissed within the 90 day period, and has raised a personal grievance about the dismissal.

It is claimed by Mr Blackmore that there was a verbal job offer and acceptance in October, and it was based on the express agreement that there would be no 90 day trial period. On reliance of that he says he resigned from his previous job and relocated his family. When presented with the written employment agreement when he started, he felt he had no choice but to sign the agreement. The employer denies making the offer on the basis that there would be no 90 day trial. That is the first issue for the Court to decide, but it is not the most concerning question of law they are being asked to determine.

There is no dispute that there was a

verbal job offer and acceptance in October. Section 6 of the Employment Relations Act 2000 defines an employee as including 'a person intending to work'. Therefore the question being asked is if it were found that Mr Blackmore became an employee at the time of the verbal offer and acceptance, can he be held to a trial provision in the subsequent written employment agreement.

Furthermore at what point does the 90 day trial period begin - on the first day of work or when there has been an offer and acceptance as the person is now an 'employee' under the definition in the Act.

Undoubtedly it will be some months before we get a decision from the Court. In the meantime I recommend all offers of employment that you make are 'subject to the parties agreeing to and signing a written Employment Agreement.' If you want to err on the side of caution, in your own mind start counting the 90 days when employment is offered and accepted, and ensure any dismissal occurs within 90 days of that event.

Custom and Practice

Here are some facts about the 1500s.



Most people got married in June because they took their yearly bath in May, and they still smelled pretty good by June. However, since they were starting to smell, brides carried a bouquet of flowers to hide the body odor.

Hence the custom today of carrying a bouquet when getting married.

Baths consisted of a big tub filled with hot water. The man of the house had the privilege of the nice clean water, then all the other sons and men, then the women and finally the children. Last of all the babies. By then the water was so dirty you could actually lose someone in it.



SECOND COURSE: MANAGING STAFF PERFORMANCE

The first course is fully booked so a second course will now be run in the morning.

MANAGERS

Constantly dealing with staff issues?
 Frustrated with non-performers and/or unacceptable behaviours?
 Tired of constant workplace problems?

Half day workshop (without role play)

Providing practical proven strategies - to assist staff to take responsibility for their performance

Thursday 1 September 2011, Morning Session
 Tahuna Function Centre, 70 Beach Road, Tahunanui, Nelson

Cost: 1 participant \$190 + GST (pp)
 3 participants + \$160 + GST (pp)
 (the 3 do not need to be from the same organization, but only one organization to be billed)

Apply & enquiries to: keith@kvconsulting.co.nz



**There are
 11 days to the start of the
 Rugby World Cup
 and
 118 day to Christmas!**