

NEWSLETTER

Welcome



It is the end of May already! The year seems to be racing faster than usual. The Employment Relations Authority and Employment Court are making significant judgements at a rate of knots. Not to mention the legislation changes we are needing to take on board. This month we cover two areas of case law development. The first is on providing employees with information during a restructuring, and the second is on confidentiality in mediation.

The free seminar on 30 June is a case law update, with the overarching themes of information sharing, privacy and confidentiality. More information and booking details are on page 3.

Did you know...?

You can access copies of case law from the Employment Relations Authority, Employment Court and Court of Appeal instantly and for free through the Department of Labour website. Go to:

www.dol.govt.nz/workplace/determinations

Redundancy Tax Credit Extension

The government has proposed an extension to the redundancy tax credit, which had ended on 31 March, to 30 September this year. You can submit your tax credit claims for redundancy payments made on or after 1 April 2011. However, we can't pay them out until the law is amended to allow for the extended claim period.



Providing Information About Others During a Restructuring

An Employment Court judgment was recently released that requires a change of thinking from employers. Although the case was in the context of selection for redundancy, it has much wider implications. The case involved Massey University and was heard by the full Employment Court (three judges).

In essence Massey was restructuring and reducing the number of lecturers it had. Following consultation Massey initiated a selection process to determine who would be retained.

During the selection process two of the affected employees sought information about themselves and the other people possibly affected.

This understandably raised questions about privacy and the relationship with an employer's good faith obligations under s4 of the Employment Relations Act 2000 (the ERA).

The employees were notified of the proposed selection criteria and the composition of the selection panels. They were given time to consider and comment on the criteria but no feedback was received.

The process for selection included a scoring system for the panel to use. Each candidate was scored by each panel member individually and then a consensus score was given.



After the interviews the employees with the lowest scores were not recommended for the positions. Those candidates were met and given their scores, but without panel comments, and asked to make comments on the panel's recommendations. The affected employee's comments were considered before the panel's recommendations were confirmed.

The employee's requested the panel's evaluations of the other candidates so they could make comment on them.

Massey responded stating the Privacy Act prevented them from providing information about other people.

The employee's complained saying Massey had failed to comply with s 4 (1A)(c) of the ERA by not providing them with all of the information relevant to the decision about their future employment.

Ultimately the Court concluded that privacy legislation must yield to the good faith requirements of the ERA, and access to relevant information must be provided to the employee.

The implications are greater than the privacy issues of other employees. The Court suggested that employees should be able to share in business decision making more equally than previously thought. The Court also suggested that information not in documentary form (for example in the minds of the selection panel), and confidential information can also come within the ERA as being relevant, and therefore disclosable to the employee before a decision is made that affects their employment.

This decision places a heavy onus on employers undertaking a restructuring or disciplinary process.

Mediation Confidentiality

The background of this case about confidentiality involved the employee, Christine Rose, raising a personal grievance alleging unchecked bullying by her immediate supervisor. Ms Rose claimed that the employer, The Order of St John, set up a mediation to examine the allegations but used the occasion to discuss her work performance.

It was Ms Rose's intent to show that what happened at mediation related to the key question of how St John treated her. It was Ms Rose's evidence that her complaints were not dealt with and that the mediation addressed issues other than her own dissatisfactions with her employment, the purpose for which St John had arranged the mediation.

Judge Colgan concluded that it was appropriate to establish whether St John made good its stated intention of addressing the bullying issue in mediation. How it was done was inadmissible, but whether it did so was not. The Employment Relations Act 2000 did not preclude evidence about the general subject matter of mediation.

It is important to remember that mediation is not a place where you can say anything you want. Although it is stated to be a 'without prejudice' environment, there are limitations to the confidentiality.

If in any doubt please call to discuss your specific circumstances.



Mediation Confidentiality

'... it is not an absolute prohibition on the recounting subsequently of any communications in or to do with mediation.'

*Chief Judge Colgan,
Employment Court Wellington
Rose v Order of St John, 21 Dec 2010.*



FREE SEMINAR

Case Law Update

A presentation and discussion on the implications of recent decisions by the Employment Relations Authority and Employment Court.

INCLUDING

What information must an employer disclose to an employee before making a redundancy or disciplinary decision?

What rights does an employee have, to be redeployed to an alternative position during a restructuring?

Is mediation really confidential?



Book your place now!

Thursday 30 June 2011

Harcourts Auction Rooms, Buxton
Square, Nelson

9am start - 10.30am finish

RSVP Monday 23 June 2011

kay@chapmaner.co.nz

03 545 0877

IF YOU ARE AN EMPLOYER THAT MAY HAVE TO DEAL WITH

**REDUNDANCIES
DISCIPLINARY ISSUES or
PERSONAL GRIEVANCES**

THIS SEMINAR IS FOR YOU