



N E W S L E T T E R

Welcome



I'm sure we're all collectively breathing a sigh of relief that the All Blacks have won the Rugby World Cup - even if you're not an avid rugby follower it has been pretty hard to ignore! No more late nights spent screaming at the TV and stamping our feet! It's been a full on 6 weeks but given us a lot to be proud of - we couldn't have hoped for a better outcome. GO THE ALL BLACKS ... and here's to life now returning to normal!!

November Free Seminar

August's Seminar 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 November Seminar, as well as the usual case law updates.

Do you know that in 2008 alone 9,612 people from 131 countries spent more than \$10 million buying 10,815 fake degrees and certificates from one United States organisation - of this group 10 people from New Zealand "bought" false qualifications!

To find out how to avoid some of the key recruitment traps applicants can set, come to the November seminar. Details are on page three.

We're Growing

We've doubled in size overnight! Since our formation 10 months ago Chapman ER has grown exponentially - a great vote of confidence for the value we provide to organisations. Demand in recent months has outstripped capacity (efficient and talented she may be but there are only so many places Kay can be at one time!) so the team has had to grow in order to continue providing the level of client care that is so intrinsic to our business.

We are delighted to welcome Lynda Marnie to the organisation. She brings 20 years' experience in diverse industries, most recently as Cawthron Institute's HR Manager. The combination of Kay's and Lynda's

experience, skills and personalities creates a one stop shop for client needs across a very broad spectrum - from employment relations to more general human resources needs. We thank you for your ongoing support - you are why we are so passionate about what we do!

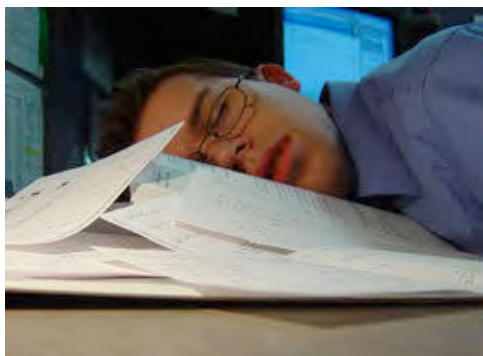


Justification for Dismissal Test Case

Mr Siggelkow was a Registered Nurse working for the Waikato District Health Board (WDHB). He was summarily dismissed alleging that he left his shift without prior notification or authorisation, and slept while on duty. Mr Siggelkow challenged this decision, and its outcome has become a landmark case as it is the first decision following the law change in April that altered the justification test for employer actions from what they "would" have done to what they "could" have done.

The Employment Relations Authority determined that Mr Sigglekow's dismissal was indeed unjustified on both procedural and substantive grounds. In making this decision the Authority reviewed in great detail the actions of the WDHB, whether they had carried out a full and fair investigation, and whether dismissal was a response that could be taken by a fair and reasonable employer in all the circumstances. The Authority found that 32 aspects of what a fair and reasonable employer "could" have done were ignored - a key factor was that Mr Sigglekow had been dismissed without the WDHB having sufficient awareness of all the circumstances.

So what messages can employers take from this? In essence the shift to "could" from "would" emphasis certainly doesn't create opportunity for procedural short cuts. An employer with sufficient HR / legal resources and time to conduct an investigation properly will still be expected to do just that. It also reinforces several detailed aspects of investigations that should not be ignored - for example, complying with any relevant contract or policy documents, and being sure to provide an employee with all relevant information if the issue is disciplinary related. We appreciate that these messages can sound like a stuck record, however failure to work within the ground rules can significantly impact your bottom line.



Beware the Casual that Becomes a Permanent Fixture

This example also comes from the health sector (no hidden messages here - pure coincidence!). Mr Muldoon appealed against the Employment Relations Authority following their initial determination that he had not been unjustifiably dismissed from the Nelson Marlborough District Health Board (NMDHB).

Mr Muldoon was employed as a Registered Nurse on a casual basis - so expectations on both sides were that he would work only as and when required. When another staff member took leave Mr Muldoon was offered work on a full time basis for a fixed period. This change offered some continuity of employment as well as entitlements to sick and annual leave. The other staff member ended up not returning to work and the NMDHB subsequently indicated that Mr Muldoon's term would be extended, and that his position would be reviewed. On this basis Mr Muldoon assumed ongoing entitlement to leave provisions, however when he sought to take annual leave the NMDHB unilaterally decided that Mr Muldoon would revert to a casual employment basis and would not receive any holiday pay. Furthermore the NMDHB eventually decided to create up to 3 permanent positions and terminate all casual positions. Mr Muldoon applied for a permanent position but was unsuccessful. He subsequently continued as a casual but received less frequent assignments.

Mr Muldoon lodged a personal grievance claiming unjustified dismissal, however this was unsuccessful with the Employment Relations Authority stating that Mr Muldoon had in fact remained a

casual employee and decided not to seek further work from the NMDHB. Mr Muldoon subsequently appealed this decision and was successful. Second time around the Employment Court decided that the NMDHB had in fact failed to comply on several counts - a critical error was the lack of review of Mr Muldoon's employment situation as promised following the expiry of the initial fixed term. In the absence of being either a casual or fixed term employee by default Mr Muldoon became a permanent employee, and when the NMDHB unilaterally terminated his employment it was therefore in unjustified circumstances.



So what are the pearls of wisdom for employers on this one? Essentially be careful about the contractual terms on which you engage employees - monitor casuals very carefully, as ANY form of pattern, routine or expectation of work can by default make them a permanent employee. Another one to watch out for are fixed term employees - it can be easy to let expiry dates lapse. In the absence of an extended fixed term or altered contractual arrangement they can be deemed to have transitioned to permanent employment. A simple means of getting around this is contract monitoring - have someone in your business tasked with keeping an eye on contract types, work patterns and any key dates. They might not be able to issue that new contract or make that decision, but they can raise a red flag which enables you to manage the risk.

CHAPMAN

E M P L O Y M E N T
R E L A T I O N S



NOVEMBER FREE SEMINAR

RECRUITMENT TRICKS AND TRAPS

CASE LAW UPDATE

Resignation Leading to Claims of Constructive Dismissal

Suspending an Employee Pending an Investigation

Dismissal for Refusing to Take Bus to Work

Book your place now!

Wednesday 23 November 2011, 9am start - 10.30am finish

The Vic Brew Bar, Nelson

RSVP Thursday 17 November 2011

Phone Kay or Lynda on 03 545 0877 or email kay@chapmaner.co.nz or lynda@chapmaner.co.nz