

# NEWSLETTER

## Welcome



Welcome to our April newsletter.

The last couple of months have been busy with two new additions to our team plus the purchase of new premises (56 Waimea Rd) that we will be moving into in May. We are planning an opening event on 14<sup>th</sup> June so you can come along and view the new offices and meet the whole team over drinks and nibbles! ....More details to come in our next newsletter.

Our next free seminar will focus on Drug and Alcohol Policies and Employments Agreements and will be held at our new premises on Tuesday 22<sup>nd</sup> May. Please refer to the last page for booking details.

In the meantime we hope you enjoy this edition and learn something that is of benefit to you and your business.

## In this newsletter Nelson company case studies

- **Failing to follow Drug Policy**
- **Employee Dismissal for discounting products without authority**

## Welcome to Christine & Katrina



Christine joins the team as a Consultant with over 20 years' experience in General Management, Employment & Industrial Relations, Health & Safety & Human Resources. Christine has a practical and pragmatic approach to solving problems.



Katrina is our new administrator. She not only has experience in marketing & advertising but wine distribution too! If you have a general enquiry or wish to book a seminar or training, Katrina will be able to help you.

## New changes take place



As from 1 April 2012, ESCT (employer superannuation contribution tax) needs to be deducted from all employers' cash contributions to KiwiSaver accounts.

The rate of ESCT will be the employee's marginal tax rate. Previously no ESCT was required to be deducted from employers' contributions.

This is therefore a significant change you should be aware of. This will reduce the employer's contributions actually credited to the individual employees' KiwiSaver accounts and, with the reduced Government contribution, KiwiSaver may become less attractive than before but it could still be a worthwhile savings plan for some.

Whilst there is arguably no direct impact on businesses for the time being, we may see some pressure from the labour force - particularly if the labour market tightens – for employers to pick up the shortfall.

Another proposed change to KiwiSaver is to increase the minimum employee and employer contribution rates from 2% to 3% from 1 April 2013.

## Failing to follow Drug Policy proved costly for Nelson Roofing Company

In February 2012, The Employment Relations Authority (ERA) upheld a claim by an employee against his former employer Contour Roofing Nelson Ltd for unjustified disadvantage and unjustified dismissal.

Mr Patchett was employed by Contour Roofing but was dismissed following drug tests conducted by the company.

His test showed a 'non negative' result (drugs were present), and Mr Patchett had admitted occasional cannabis use outside work. The company's drug policy did not provide for random drug testing, however did allow for testing for 'reasonable cause'. The ERA found that the initial drug test was a random test.

Although the company had been experiencing general problems within the workplace that may have been attributable to drug use, there were no irregularities in Mr Patchett's conduct at work. Because of this it was determined Contour Roofing was a serious breach of its obligations to Mr Patchett in testing him in the first place.

Due to the non-negative result the Company required Mr Patchett to sign an Alcohol and Drug Rehabilitation Contract (ADRC) or face possible dismissal. Mr Patchett subsequently claimed he signed the contract under duress. The ERA found the ADRC represented a significant change in Mr Patchett's terms of employment and a fair and reasonable employer would have waited for a further test and confirmation before taking the approach they took.

Threatening dismissal as an alternative to him signing the ADRC was deemed to be unjustified. Furthermore during this process Mr Patchett was suspended without pay. The ERA determined that the unpaid suspension was not warranted as Mr Patchett was not responsible for any undue delays that occurred, and the ultimate decision to dismiss was fundamentally flawed because of the reliance on the initial random test.

Mr Patchett was awarded \$5,000 for hurt and humiliation for disadvantage and \$10,000 for the dismissal, plus lost wages; it was also noted that it was inappropriate to allow for any contribution by Mr Patchett as he should not have been subjected to the initial test and Contour Roofing's conduct was unreasonable and unlawful.

***If you already have a Drug and Alcohol Policy and would like it reviewed, or if you are thinking of introducing one, please give us a call to discuss the implications, and how to ensure the policy meets your organisation's aims.***

## Giving customers produce at low prices cost a Nelson woman \$7,743



Giving customers produce at low prices "out of the kindness of her heart" has cost a woman \$7743. Susan Frost worked for Nelson family business Cullen's Fruit and Veg from August 2010 until January 2011, and she told the Employment Relations Authority (ERA) she loved working there.

She worked an average of 20 hours a week but did not have set hours. Instead she was told each day when she would be required the following day. She believed she was a part-time employee, while the Cullen family believed she was a casual. There was no written employment agreement.

Ms Frost told the ERA she did not receive any complaints or warnings about her work for the first five months but that on January 11<sup>th</sup>, Brenton Cullen had berated her for the standard of her work and also made a comment that led Ms Frost to believe that he was accusing her of taking money from the till.

Ms Frost stated that later that same afternoon, Jeffrey (Brenton's brother) told her that the shop had not been doing so well and that they needed to cut costs, so they would call her if they needed her in the future.

She was never called again and she considered January 11 as the day she was dismissed, and claimed that it was unjustifiable.

The Cullen family told the ERA they believed Ms Frost had been charging customers too little, or nothing, for produce, and that had caused losses to the business, which was why they had decided against using her any more.

The Cullen family say that no decision was made on 11 January not to use her services anymore, but that Mr Cullen had formed that view the following day after Ms Frost had allegedly been yelling outside their shop, telling customers she had been sacked and urging them not to give the shop their custom.

ERA member David Appleton found Ms Frost was unjustifiably dismissed and awarded her three months' pay totaling \$3324. He also awarded her \$7000 for humiliation, loss of dignity and injury to her feelings.

However, he reduced the award by 75% for her contribution to the situation, meaning she would receive only \$2581. Mr Appleton concluded that; 'While Ms Frost may have been giving away produce belonging to the respondent to customers at a very low price out of the kindness of her heart, she had no right to do so, and her actions are likely to have damaged the business of her employer.'

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Having an Employment Agreement is a legal requirement and by not providing one the employer can not only be fined, but have the employment status of the employee challenged.

'Sweethearting' or giving away product at a reduced rate or even free to customers by employees, is becoming more prevalent costing companies millions of dollars in lost revenue and is something to watch out for.



## MAY FREE SEMINAR

### Key Topics:

**Drug & Alcohol Policies - Should we have one?**

**Employment Agreements - The Tough Questions**

Come to our free seminar in May and learn about Drug and Alcohol Policies and the key considerations for introducing one to your business.

Employment Agreements: What to do if the employee won't sign it, what happens if the terms are not complied with, what are the minimum clauses and must have clauses that protect the employer.

Case Law Update.

### BOOK YOUR PLACE NOW

**Tuesday 22<sup>nd</sup> May 2012, between 9.00 and 10.30am**

**At our new premises – 56 Waimea Road, Nelson**

**Ample Parking at rear**

To secure your place call 03 545 0877 or email [katrina@chapmaner.co.nz](mailto:katrina@chapmaner.co.nz)

**Please RSVP by Thursday 17th May 2012**

## Coming to Nelson in 2012..

Feeling overwhelmed at work? Can't get everything done?

### Half day workshop

Providing practical proven strategies – to assist staff in making the best use of workplace time.

**Thursday 10 May 2012**

9am – 12.30pm or 1pm – 4.30pm

Tahuna Function Centre, 70 Beach Road, Tahunanui, Nelson

#### Cost:

1 participant = \$ 180 + GST

3 participants + = \$ 150 + GST

**Enquiries and bookings to: [keith@kvconsulting.co.nz](mailto:keith@kvconsulting.co.nz)**