

Annual holidays – when can you refuse a request?

The Holidays Act 2003 provides that an employer must not unreasonably withhold consent to an employee's request to take annual holidays. When can an employer withhold consent without being unreasonable? A recent case, *Dearsly v Encore Designer Seconds Ltd*, provides a useful example of this in practice.

Ms Dearsly wanted to take annual holidays between Christmas and New Year so that she could have an uninterrupted holiday of 9 days with family in Tauranga. Her employer had very clearly communicated expectations:

- Employees needed to give four weeks' notice when requesting annual leave, in writing.
- The employment agreement recorded that the employer would endeavour to accommodate requests but may not be able to do so (with examples given).
- Annual leave applications would be dealt with on a "first in first serve basis" with the owner/manager providing cover to control costs.
- Staff were told on 8 September 2013 that annual leave would not be granted over the period 27 December 2013 to 3 January 2014 while the owner took her first Christmas/New Year holiday in 10 years.

Ms Dearsly was rostered to work 27, 30 and 31 December 2013. In early November she asked verbally for leave on 31 December, to ensure her son's safety on New Year's Eve in Tauranga. This was reluctantly granted.

By text on 28 November Ms Dearsly asked for leave on 27 and 30 December as well. This request was declined, however leave was approved for 28 and 29 January, which would give Ms Dearsly an extended break with Auckland Anniversary Day and her rostered days off. Ms Dearsly threatened to resign if her leave request were not granted, but the owner stuck by her decision, giving reasons. Ms Dearsly then did resign, and claimed she had a constructive dismissal personal grievance.

Had the employer unreasonably withheld consent to Ms Dearsly's request to take leave on 27 and 30 December? No. The Employment Relations Authority held that in the circumstances the owner was not required to cancel her own leave arrangements or pay for someone else to cover for Ms Dearsly. There was no breach of duty by the employer and Ms Dearsly's claim was dismissed.

We recommend:

- Have a clear process for employees making annual holiday requests.
- Deal with requests promptly.
- Signal in advance any known limits on when staff can take annual holidays.
- Give good reasons for refusing any leave request.
- Offer alternative solutions for the employee if their request is refused.