

Tourism operator heavily fined for Employment Law breaches

South Island Tourism Company, Alps Travel Company Limited, has been penalised \$75,000 plus pay and holiday pay arrears following an investigation by the Labour Inspector. The case demonstrates the protracted enforcement processes that can result from failing to keep accurate employment records.

History of non-compliance

Alps Travel Company Limited (**Alps Travel**) operated a coach tour company, which mainly offered tours for Chinese visitors to the South Island. In 2015 an employee of the company complained to the Labour Inspector about his conditions of employment, which resulted in a request by the Labour Inspector for relevant employment records from the Employer.

The Labour Inspector found a multitude of failings by the employer to comply with minimum employment standards, including: the failure to keep time and wage records; failure to comply with the Minimum Wage Act; and failure to keep an accurate record of leave and holiday pay.

Further complaints surfaced in November 2015 and February 2016. In addition to being short-paid the employees alleged unreasonable deductions had been made from their wages.

In June 2016 the Labour Inspector issued Alps Travel with an Improvement Notice - an enforcement step under

section 223(d) Employment Relations Act 2000. An Improvement Notice requires an employer to comply with employment standards as prescribed in the notice and can be issued by the Labour Inspector prior to proceedings being issued in the Employment Relations Authority (the **Authority**).

Alps Travel was required to demonstrate to the Labour Inspector that it had complied with the matters set out in the Improvement Notice. This included evidence of substantial payments required to be made to employees who had complained about a shortfall in their pay and holiday pay.

Alps Travel objects to the Improvement Notice

Alps Travel objected to the Improvement Notice and the matter went before the Authority in a series of hearings to determine the exact number of breaches of employment law and the quantification of both penalties and arrears owed to employees.

In the absence of wage and time records, the litigation involved the use of a forensic accountant, as well as a large amount of corroborating documentation, such as driver logbooks, itineraries, and statements from the relevant employee about the hours they worked.

After two investigation meetings in the Authority, it was discovered the General Manager of the Queenstown branch of Alps Travel had been convicted of causing a driver to dishonestly use another person's driver's licence for financial advantage. The driver was also found guilty of dishonestly using another person's driver licence and admitted charges of falsifying a log book and making false entries in his logbook. This gave the Authority cause to doubt the accuracy of relying on the logbooks as a record of time worked.

The Authority noted that had the employer kept accurate wage and time records, rather than relying on subsequent documents such as itineraries and logbooks, it would not be in a position of having to adopt a theoretical

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methodology to determine what hours the employee had actually been worked for and paid for.

We expect this would have been an expensive exercise for Travel Alps.

Penalties Imposed

When arriving at a penalty of \$75,000 for 153 employment law breaches, the Authority took into account:

- The failure to keep adequate records impacts on each affected employee;
- The breaches were not a 'deliberate strategy' not to keep records, but still the breaches were very serious;
- The failure to pay minimum wage resulted from the failure to keep records, rather than being an intention to underpay employees;
- Although not an excuse, the employer misunderstood the law in relation to making lawful deductions from employees' wages;
- Some holiday pay arrears ordered under the Improvement Notice had been paid;
- The maximum penalty for each breach was \$20,000;
- The overall justice and appropriateness of the penalty, including the employer's ability to pay;
- Alps Travel was in a position to pay \$75,000 based on (unaudited) financial information before the Authority, and went so far as to suggest the company could sell two of its vehicles to satisfy the penalty.

Lessons from Alps Travel's breaches

Alps Travel had not paid its employees for the hours they had actually worked. Whether employees are salaried or on wages, it is important to ensure their pay covers minimum wage across the hours worked. This is more

difficult with employees in salaried positions, as it can be difficult to keep track of the hours actually worked. You can require employees to keep a faithful record of their hours as part of their conditions of employment.

The failure to pay minimum wage is serious and has flow-on effects for holiday pay entitlements.

In this particular case, the employer had also failed to impress upon those drivers required to keep a logbook under the Logbook and Worktime Rules that this is a legal document, which is important for identifying hours spent working. This is required so that operators of large passenger service vehicles and heavy vehicles are not driving on our roads while fatigued. If a driver is only driving a few hours, but working as a tour operator in between periods of driving, they remain on duty for the purposes of these rules.

In addition to attracting penalties and criminal convictions, failing to keep accurate records may mean the employer is not keeping an eye on the health and safety of its workers.

Alps Travel had tried to deduct rent from wages without an appropriate written agreement in place. If you are offering employees accommodation as part of a job offer, it is necessary to put a separate written tenancy agreement in place. If rent is to be deducted from wages, this needs to be in the employee's employment agreement.

Keeping accurate employment records is essential and required by law.

The importance of getting it right

Although the Authority found this was more of an issue of a casual and uneducated approach to the requirements of employment law, a significant penalty has been imposed as well as wage and holiday pay arrears.

If you would like any assistance with ensuring that your employment processes and record keeping is up to date please contact one of our [Employment Law Team](#).