

Employment Court clamps down on breaches of minimum entitlements

In the recent decision *Labour Inspector v Parihar [2019] NZEmpC 145* the Employment Court imposed significant penalties on liquor store owners who breached the minimum entitlement provisions contained in the Minimum Wage Act 1983 and Holidays Act 2003.

Proceedings were commenced by the Labour Inspectorate against the Defendants, Mr. and Mrs. Parihar, the owners and operators of two liquor stores in Hamilton (Super Liquor Flagstaff and Super Liquor Hillcrest) (the Stores).

The Stores operated with a mix of the Defendants' family members and migrant workers from India. The proceedings concern six of those migrant workers (the Employees).

The Defendants failed to maintain timesheets, rosters, wage requests or holiday and leave records with respect to the Employees.

Significant breaches of the Employees' minimum rights occurred over a six year period¹. Despite having signed individual employment agreements recording hourly rates of up to \$20 per hour, some of the Employees were paid as little as \$8 per hour. In addition, the Employees were not paid for holidays or sick leave, or paid time and a half for working on public holidays.

In total, the Defendants failed to pay minimum wages of \$169,936.71. In addition, the Employees were not paid entitlements under the Holidays Act 2003, amounting to a further \$80,533.34.

¹ We note that some of the offending in question occurred prior to 1 April 2016 when Part 9A of the Employment Relations Act 2000 was introduced.

Following a thorough investigation by the Labour Inspectorate the Defendants conceded they were in breach of their obligations and agreed to repay all outstanding amounts to the Employees.

Irrespective of this admission, the Employment Court was asked to consider whether penalties should be ordered against the Defendants as a result of their conduct pursuant to Parts 9 and 9A of the Employment Relations Act 2000, and section 75 of the holidays Act 2003.

Employment Court findings

Judge Perkins found that the employees were "subject to considerable abuse at the hands of the Defendants" and that the inference must be drawn that the breaches were intentional. Judge Perkins criticised the actions of the Defendants in taking advantage of vulnerable migrant workers for their own financial gain, and labelled their conduct "inexplicable and heinous".

It was found that Mr Parihar was aware of the required standards and that he required the Employees to sign documents (such as Individual Employment Agreements) "as a subterfuge for covering up the true position."

Judge Perkins found that the abuse suffered by the Employees, including the loss of sick leave entitlements, stress of working long hours and financial pressures meant that the loss and damage they each suffered was substantial.

Assessment of penalties

The Employment Court first considered whether penalties could be awarded against each Defendant separately.

Judge Perkins found that while the Defendants operated in partnership, they were two separate legal entities and were therefore liable to separate penalties, as individuals.

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The Defendants argued that their culpability was mitigated through their co-operation with the Labour Inspectorate, their admission of the breaches and their actions in paying all arrears to the Employees.

Judge Perkins rejected the suggestion that the Employees could have left their employment with the Defendants at any stage, given that the Employees were tied to their employment by the pressure of immigration policies.

It was also advanced that Mrs Parihar was not directly involved with the breaches, which should be taken into account in the calculation of any penalty ordered against her.

Judge Perkins ultimately determined that:

- this is a decision where deterrence is an important factor for the Court to communicate, and it needed to be emphasised that such behavior will lead to substantial financial consequences for offending employers;
- the Court has an ultimate discretion to ensure that the final penalty imposed is in proportion to the circumstances existing in each case;
- the person primarily responsible for the breaches was Mr Parihar;
- mitigating factors (including the admission of the breaches) justified a discount of 30%;
- a further discount was required, taking into account the ultimate factor of proportionality;
- penalties of \$180,000 were ordered against Mr Parihar (both ordinary and pecuniary);
- penalties of \$20,000 were awarded against Mrs Parihar; and
- two of the employees are each to receive \$20,000 from the penalties recovered and the remaining four employers were each to recover \$10,000.