

Siouxsie Wiles case highlights employer's health and safety obligations

A recent Employment Court decision involving Associate Professor Siouxsie Wiles from the University of Auckland has highlighted the challenges faced by academics who engage in public discourse and the responsibilities of their employers in ensuring a safe working environment.

As the COVID-19 pandemic arrived in New Zealand, a small number of academic experts became well known in the media. Siouxsie Wiles was perhaps one of the most prominent. Wiles provided a significant amount of commentary and expert advice on the COVID-19 pandemic for mainstream media platforms.

However, this visibility also subjected Wiles to severe harassment, via email, social media and in person. She was also "doxed", with her personal information being posted on an anti-government website. These threats escalated significantly during key pandemic events, such as vaccine rollouts and lockdowns.

Wiles regularly reported the harassment to the University. In June 2021, the University advised Wiles and the other academics that they should consider pulling back from COVID-19 commentary and that providing such commentary did not form part of their jobs. In July 2021, the University arranged for an external provider to undertake a security and safety audit. It wasn't until October 2023 that the all recommendations in the report had been actioned. Wiles was supportive of the recommendations of the report, but was

concerned about the speed of implementation and the fact that there was no individual risk assessment for staff experiencing harassment.

Alongside the health and safety issues Wiles was raising, the University had its own concerns about the wide range of activities Wiles was carrying out in her private capacity including as a "celebrity speaker" engaged through a talent agency.

Legal issues

Wiles raised a number of claims against the University. Wiles argued that the University failed to provide a safe working environment, thereby breaching its health and safety obligations. She also argued that the University did not engage in constructive dialogue regarding her safety, violating its statutory duty of good faith. Wiles also asserted that the University's suggestion for her to minimise public commentary infringed upon her academic freedom. Lastly, she believed the University's actions hindered her ability to fulfil responsibilities to Māori, breaching Te Tiriti obligations and resulting in disadvantage.

The Court's decision

The Employment Court acknowledged the difficult context in which the University and its staff were operating and that it was under pressure. However, it found the University's response to the harassment insufficient and too slow.

The Court noted that abuse of academics is not new and the risk was well recognised. Despite that, the University did not have a well-developed strategy for dealing with that risk. While it was reasonable for the University to have consulted with Wiles over steps that she might wish the University to take, the onus was on it to obtain the right advice and put in place a plan proactively. The Court concluded that the University failed to provide adequate protection and support,

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breaching its health and safety obligations. While it did make some efforts, these were ultimately insufficient and reactionary. Simply telling Wiles and her colleagues they should stop providing commentary on the pandemic was not reasonable.

The Court also found that the University breached its statutory duties of good faith and its contractual obligations to act as a good employer. The Court held the focus on Wiles' alleged outside activities was misplaced and the correspondence from the University was aggressive and unreasonable, exacerbating Wiles' distress rather than alleviating it.

However, the Court did not find substantial evidence that the University's actions impeded academic freedom or that Wiles' claims regarding Te Tiriti were made out.

Compensation and remedies

The Court declared that the University breached its contractual obligations to protect Wiles' health and safety and its statutory duties of good faith. It awarded general damages of \$20,000 to Wiles for the unjustifiable disadvantage and general damages for breach of contract. The Court did not impose additional penalties, as it found the University's actions were not deliberate or intended to undermine the employment relationship. The Court noted Wiles was still undertaking her work and there was no medical evidence of any serious or ongoing health consequences. That limited any damages or compensation due.

Implications for employers

This decision highlights the importance of proactive and adequate measures to protect employees from psychosocial health and safety risks, including harassment by members of the

public. Employers must ensure robust health and safety protocols are in place and maintain constructive engagement with employees where these risks are at play.

Want to know more?

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