

South Island farmer ordered to pay \$30,000 for breaches of employment standards

A reminder of the importance of good employee record keeping

In New Zealand, all employers must meet certain employment standards as governed by the Employment Relations Act (ERA). These standards include the rights for employees to be paid at least minimum wage under s 6 of the Minimum Wage Act 1983, and to be correctly paid all holiday pay under Part 2 of the Holidays Act.

The director of a company will also be personally liable for breaches of employment standards along with the company under s 142 of the ERA. It is the director of a company that is required to keep a record of wages and time sheets, and they must be able to provide these at any time under s 130 of the ERA.

A recent case example

Labour Inspector v H and S Chisholm Farms Ltd [2025] NZERA 8 is a recent example of an employer falling short of these standards, and paying the price as a result. The Authority first considered the number of breaches and the maximum penalties available. The Authority then looked at how severe the breaches were and whether any factors either aggravated or mitigated the severity. Finally, the authority made adjustments based on the director's ability to pay.

In the Employment Relations Authority, H & S Chisholm Farms Limited (**the Company**) was fined \$20,000. The Company's owner, Hugh Roderick Chisholm (**Mr Chisholm**), was fined \$10,000 for breaches of employment standards. There were 34 breaches in total, including failing to pay minimum wage, not providing holiday entitlements, failure to properly pay for public holidays, and failure to pay sick leave. Additionally, Mr Chisholm failed to keep adequate records of the payments and deducted wages from employees without consent.

Breaches

Ultimately, Mr Chisholm was found to have made significant record-keeping failures. His process was paper-based, involving either incomplete or inconsistent records. The effect was that arrears calculations could not be certain. In addition to incorrectly paying employees, failure to keep accurate records meant that Mr Chisholm hindered the Labour Inspectors ability to enforce employment standards.

Additionally, Mr Chisholm had faced intervention by the Labour Inspector on two previous occasions, reflecting a repeating nature of the breaches, despite claims by Mr Chisholm that the breaches were unintentional.

Mitigating factors

The Company had been operating at a loss of the past few years, with projected losses for 2024. Despite this, Mr Chisholm argued that the underpayment was not intentional and there were not major breaches. He argued that this was not a case of an employer trying to systematically breach employee standards, and that the Company did not take advantage of vulnerable employees.

The Authority may take factors such as payments already made or personal circumstances into account in deciding the penalty. Mr Chisholm sought a reduction for wages already paid to the employees as well as personal circumstances with health issues. The Authority found that payments already made would not have a significant impact on the fine because the time to make those payments was 15 months ago, and even health issues did not justify such a departure in time.

In an attempt to mitigate the amount of the fine, Mr Chisholm also distinguished his circumstances from other cases in which there was an inability for the employer to establish mitigating factors or cases where the violations were found to be ongoing and deliberate. Mr Chisholm raised the point that in materially similar cases, the offending was either similar or higher, while the fine was lower.

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Finally, Mr Chisholm argued that although he was involved in the employment standard breach, he and the farm are 'one in them same' due to being both the owner and director. Therefore, by fining both himself and the business, he was being double counted. Although the Authority accepted that there was a need to avoid a double count, the penalty against Mr Chisholm was still considered appropriate in order to enforce his liability as a person involved in breaches of employment standards.

Conclusion

This case is a timely reminder the importance of employers ensuring that they are meeting their obligations to their employees, and furthermore, ensuring that they are keeping accurate records in case any issues may arise. While many cases may involve unintentional oversight resulting in breaches of employment standards, this will not extinguish an employer's liability. Directors must ensure that they are meeting their obligation to meet employment standards as they are liable alongside the company.

Want to know more?

If you have any questions about employer obligations, please contact our specialist [Employment Team](#).