



DYHRBERG DRAYTON
EMPLOYMENT LAW

What's New Update

June 2012

New Lawyer

In April, DDELaw welcomed a new lawyer to the team. Kim Lennie joined us from the Department of Labour where she was working as a Legal Researcher for the members of the Employment Relations Authority, policy advisory group, mediators, labour inspectors and the Departments legal team.

Proposed Labour Law Changes

Cabinet has recently approved Labour Minister Kate Wilkinson's plans to introduce changes to New Zealand employment legislation into the house. The changes are expected to go before Parliament later this year and include:

- Good faith bargaining will **not** require the parties to agree a collective employment agreement;
- Employers will be able to deduct the pay of workers carrying out partial strikes;
- Employers will be able to opt out of multi-employer bargaining;
- All workers will be able to ask for flexible work arrangements, and without having to wait until they have been employed for six months;
- Removing the 30-day rule that provides new workers are covered by a collective agreement for the first 30 days of their employment

The changes are being promoted as a package to create more flexible working conditions for workers, improve efficiencies and make arrangements fairer for both workers and employers.

Update a year on from the introduction of the 90 day trial period

It has been a year since the 90 day trial period law was extended to cover all businesses. At the time of the law change there was strong opposition by unions and opposition parties saying it eroded worker's rights. However in the past year the Employment Relations Authority and Employment Court have on heard fewer than 20 cases dealing with the trial period rules.

The Courts have been very strict in interpreting and applying the law. Most cases where an employee has been successful in challenging the use of a trial period by their employer it has been due to a technical problem with the trial clause and its application.

In *Blackmore v Honick Properties Ltd*, for example, the employer had a verbal agreement to take on a new employee but did not advise him of the trial period and this was not made clear until he signed his employment agreement on his first day of work.

The Employment Court decided that the verbal agreement meant the employee was not "new" and the trial period was therefore ineffective. To avoid doubt the Employment Court also reminded employers that, if a trial period clause is included in the agreement, the 90-day period will start from the first day of employment, rather than when the employment agreement is signed.

Employers need to ensure that employees are aware that their employment will be subject to a trial period, and document it, before they start work.

Trial periods only apply to new employees, who have not worked for the employer before, can only be for a period of 90 days or less, must be recorded in your employee's written employment agreement and must start on the day that the employee begins work. The agreement must also state that the employee can't bring a personal grievance for dismissal, if their employment ends with the trial period.

Facebook privacy

Recently there has been a raft of media coverage about employers in America asking for access to applicants' Facebook pages when they are applying for a job. The Privacy Commissioner is concerned this overseas trend will catch on in New Zealand.

Privacy Commissioner Marie Shroff told Parliament's Justice and Electoral Select Committee recently, anecdotal evidence suggests job applicants will often be asked to give prospective employers access to their Facebook page.

Ms Shroff said while there is no hard evidence to support the practice happening in New Zealand, it is something she intends to look into.

Employers need to take care not to breach the Privacy Act when using social media sites to check up on employees or job applicants. Authorisation from prospective applicants should be obtained first. If you use information gathered from social media sites to make hiring decisions or to discipline or dismiss an employee, human rights laws must be complied with (no discrimination on the prohibited grounds) and the rules of natural justice apply (giving a fair opportunity for the employee to respond) before taking any action.