

## REDUNDANCY AND DOWNSIZING SURVIVORS

In this tight economic climate many employers and organisations are currently reviewing their staffing levels. As has been well publicised in the media, such reviews have led to a number of organisations working through restructures and redundancies. At times like these, employers commonly focus on supporting the employees who through no fault of their own are made redundant. Employers may provide redundant employees with assistance to prepare a CV, counselling or time off to attend interviews, often ignoring the needs of those who are left behind.

Although employers are acting ethically and reasonably by assisting those who lose their jobs, they should also prioritise investing time, energy and support into those employees who remain in their employment. Employers need to be conscious of the fact that any restructure or redundancy affects those who are left behind as well as those who lost their jobs.

Any restructure potentially affects the level of trust held by remaining employees in their employer and organisation. Depleted trust levels could result in a decrease in productivity and morale that may hamper the recovery and ongoing profitability of the company. There are a number of actions an employer can take to reassure remaining employees of their value to you as their employer and the organisation as a whole:

- **Communicate with remaining employees individually and as a team.** Tell employees how and why you value them and what they individually and collectively contribute to the continued success of the organisation.
- **Rebuild trust.** Reassure employees of their job security now and in the future. Work with employees to rebuild their trust. Recognise that they are experiencing a loss and that they may not yet be able to view changes positively and as beneficial for them and the organisation in the long term. Allow employees space to deal with their anger, loss, denial, or the guilt they feel because they retained their job and some of their workmates did not.
- **Redistribute workflow together.** As a result of any redundancy, employers and employees need to work together to redistribute the work previously performed by others. Identify opportunities that may exist to streamline processes and procedures with a view to work more efficiently and effectively. Involve employees wherever possible, showing them that you value their thoughts and ideas.
- **Reassess the organisation's short-term goals.** Identify and reassess the goals of the organisation for the coming year. Focus on tasks that work towards achieving these goals whilst keeping the overall vision of the company in mind. Give employees tasks/roles that are relevant to the direction of the company and to the employee.
- **Identify the skills and knowledge base of remaining employees.** A restructure may provide employers with an opportunity to discuss career development with employees and to identify the training, resources and support that employees may need. Employees that have been assigned to new tasks may experience workplace stress because they feel they do not have the relevant skills or knowledge to perform in their new or expanded roles. Therefore, an employer needs to work with employees to understand how they are feeling and assist the employee to become confident and aware of their ability to perform.

Whatever steps an employer takes to support remaining employees, considerable thought needs to be put into creating an environment which supports employees who remain after a restructure, remembering that for every downturn there is an upturn and employers should look to retain talent where possible. Remember that any restructure or redundancy brings with it a period of change and employees deal with change in different ways. Be sensitive to the needs of employees, communicate in an open and honest manner, and work through how the change will affect them and how they can contribute positively moving forward. Taking these steps now will ensure the ongoing success of your organisation and establish a great workplace environment for everyone.

*If you would like more information on how to deal with surviving employees after a restructure, or a period of change, please contact one of our Consultants*

## SICK LEAVE—HOW MUCH IS TOO MUCH?

Employers often struggle to deal with issues that involve staff taking excessive amounts of sick leave.

There are two common yet different scenarios when it comes to the taking of excessive sick leave. The first is when an employee takes intermittent periods of sick leave (commonly Mondays and Fridays) and there are concerns regarding the genuineness of the absence. The employer may reasonably deal with such situations through disciplinary procedures as misconduct.

The other situation is when an employee is taking periods of sick leave for *genuine* reasons which exceed their sick leave entitlement. Many employers may consider that taking disciplinary action in such circumstances would be an appropriate course of action; however a decision in the Employment Relations Authority last year should be taken into consideration.

### BENTLEY V LAND TRANSPORT NEW ZEALAND WQ 10/08

The employee Ms Bentley took 144 days sick leave between 2001 and 2007. The employer accepted that her reasons for taking such significant leave were genuine as she had two children of her own and up to three foster children who had varying health issues that required her to care for them. Additionally the employee's husband had some serious health issues which also required her to take more time off work.

The Collective Employment Agreement that applied to Ms Bentley provided for 9 days paid sick leave per year. The Company policy stated that "once an employee has five or more days absent within a six month period, the manager will decide whether or not they will raise the matter with the employee...At this stage of the process the matter is not being treated as a disciplinary issue."

Ms Bentley's manager raised concerns about her sick leave in November 2005 and again in March 2007 when it was noted that she had had 19 days off work in the previous 10 months. At this point Ms Bentley was issued with a verbal warning to remain on her file for 12 months. The employee challenged this action on the basis that sick leave was not normally regarded as a deliberate act that could attract a formal disciplinary outcome.

The Authority awarded the employee \$3,000 in compensation finding that the warning was unjustified because:

- The LTNZ policy intended disciplinary action to be taken in instances of excessive absence where there was an allegation of abuse or misuse of sick leave. Given the employee took sick leave for genuine reasons there was no misconduct justifying a warning;
- While an employer may 'fairly cry halt' where excessive sick leave is taken, the levels of sick leave taken by the employee were not sufficient to warrant disciplinary action and a 'fair and reasonable' employer would not have taken such action;
- LTNZ had applied the sick leave policy in a "mechanistic" way which did not take into consideration the employee's particular circumstances.

This case indicates that every situation of apparent excessive sick leave usage should be considered on its facts by the employer. Company policy should not be followed rigidly without considering the employee's particular circumstances. On the Authority's reasoning, absence for genuine illness or injury should not be treated as misconduct.

### KEY QUESTIONS

An employer faced with an employee taking sick leave on a regular basis should ask the following questions prior to taking any action regarding apparently excessive sick leave taken by an employee:

- What does the employment agreement state?
- Does the employee have a genuine reason for his or her absence?
- How much sick leave has actually been taken? Is it sufficient to warrant disciplinary action?
- Does the employee's particular circumstances affect the way your organisation's sick leave policy should be applied?

*If you have any questions about sick leave or any other employment law issue, please contact one of our solicitors or consultants for advice.*

## 1 APRIL 2009 BRINGS CHANGE TO...

---

### KIWISAVER

KiwiSaver changes that come into effect from 1 April 2009 are as follows:

- The minimum employee contribution will reduce to 2% of their gross pay. This means employees can contribute at 2% or 4% or 8% of their gross pay. However the change to the minimum contribution rate doesn't happen automatically for existing members. Employees are required to notify their employer if they wish their contributions to reduce.
- New employees who join and are automatically enrolled after 1 April 2009 and who don't tell their employer how much they want deducted from their pay will have a default rate of 2% deducted from their gross pay.
- The Compulsory Employer Contribution (CEC) will increase to 2% and won't increase further in future years.
- The Employer Tax Credit (ETC) will be removed and employers will not be able to claim an ETC to reduce the cost of making CECs.
- The fee subsidy will be removed. (Previously the Government paid a subsidy of \$40 per year to help employees cover the cost of the fees charged by the scheme providers).
- The employer superannuation contribution tax exemption will be capped at the CEC of 2%. Therefore if an employer chooses, or has agreed in an employment agreement, to contribute more than 2% into the KiwiSaver accounts of employees, they will be required to pay tax on the contributions over 2%.
- Where an employer wishes to reduce their CEC back to the minimum of 2% they will need to renegotiate contractual agreements with their employees.

Many of the forms and guides employers currently give their employees will be out of date from 1 April 2009. You can print forms and guides from the IRD website from this date or order printed copies by ringing 0800 KIWISAVER (0800 549472837).

### MINIMUM WAGE

New minimum hourly rates of pay are effective from 1 April 2009 and are as follows:

- the rate for adult workers is increased from \$12.00 to \$12.50 per hour; and
- the rates for new entrants (i.e. less than 200 hours in the workforce) and trainees are increased from \$9.60 to \$10.00 per hour.

## TRIAL PERIODS

---

From 1 March 2009, employers who employ less than 20 staff will be able to employ **new** employees (i.e. not existing or former employees) on a trial period for up to 90 calendar days.

Under the trial period the employer can give notice to dismiss the employee without the employee being able to take a personal grievance for reasons of unjustified dismissal. This does not restrict the employee's right to take a personal grievance based on other grounds including for unlawful discrimination or unjustified disadvantage.

Any trial period an employer agrees to with their new employee must be agreed to in good faith and in writing as part of their employment agreement.

*Our team is happy to help with any questions about this new legislation  
and with the drafting an appropriate clause for your employment agreement - just get in touch.*