

Update

Mazengarb's Employment Law

Service 254 — July 2020

Commentary

Employment Relations Act 2000

Part 2: Preliminary provisions

- A courier driver whose contract described him as being an independent contractor was held to be an employee when the combined weight of all relevant factors was considered (*Leota v Parcel Express Ltd* [2020] NZEmpC 61) (see [ERA6.9.2]);
- In the context of contractual status within family arrangements, the Employment Court recognised that there is a presumption of fact against an intention of creating legal relations (*Dillon v Tullycrine Ltd* [2020] NZEmpC 52) (see [ERA6.20.6]).

Selected Topic: Contractual Aspects of Employment

- Migrant workers, who have lost employment as the result of the COVID-19 pandemic and whose residency status might preclude entitlement to social security payments, are intended to be supported through emergency payments under the Civil Defence Emergency Management scheme (see [1018]);
- Where a corrections officer had developed PTSD after a foreseeable serious assault by a high security prisoner, and the department had neither met its staffing ratios nor taken subsequent steps which might have mitigated the emotional damage he sustained, the Employment Court awarded \$65,000 in damages for breach of contract (*JCE v The Chief Executive of the Department of Corrections* [2019] NZEmpC 46) (see [1026.2]).

Parental Leave and Employment Protection Act 1987

- Part 3B of the PLEP Act has been inserted by the COVID-19 Response (Further Management Measures) Act 2020 as one aspect of the “response period” under the COVID-19 pandemic, enabling a COVID-19 response worker to “pause” their parental leave and payments so as to temporarily return to work in order to respond to the outbreak of the COVID-19 pandemic, without loss of entitlement (see [PLEPAIntro.4.14]);
- The Regulatory Systems (Workforce) Amendment Act 2019 makes a number of technical amendments to the PLEP Act making it possible, in certain circumstances, for the spouse or partner of a primary carer to become the primary carer of a child (see [3307.5.2]).

Social Security Act 2018

- Migrant workers, who might otherwise be unable to access a social security benefit, have the ability to apply for an emergency benefit on grounds of hardship if the Minister of Social Development gives written approval under s 64 (see [SSA20.11]);
- On 25 May 2020 the Government announced that a new form of temporary income support — the COVID-19 Income Relief Payment — would be introduced to support for families and individuals facing a sudden income drop because of a loss of work due to the impacts of the COVID-19 pandemic (see [SSA20.12]).

Health and Safety at Work Act 2015

- Introductory commentary on ‘Health, Safety and the COVID-19 Pandemic’ has been added (see [HSWAIntro.33]);
- In analysing what was “reasonably practicable” under s 22, the District Court has considered industry best practice guidelines, MBIE guidelines and electrical codes of practice (*WorkSafe New Zealand v Dong Xing Group Ltd* [2018] NZDC 22114) (see [HSWA22.4.4]);
- Amputation of several fingers in a machine accident led to “emotional harm” reparation of \$32,500 (*WorkSafe New Zealand v ITW New Zealand Ltd* [2017] NZDC 27830) (see [HSWA151.13.4]);
- The installation of unsafe scaffolding was held to depart significantly from industry standards where, among other things, it was installed in close proximity to live power lines, at an unsafe distance from a wall and was excessively corroded, with poorly packed sole boards and a distorted base plate (*WorkSafe New Zealand v Dong Xing Group Ltd* [2018] NZDC 22114) (see [HSWA151.26]).

Employment Court Regulations 2000

- The Court in held that the public interest in disclosing medical records was far outweighed by the public interest in maintaining the confidentiality of a doctor patient relationship and discussed the principles in making this assessment (*O’Boyle v McCue* [2020] NZEmpC 51) (see [ECR44.6.4]).