

Update

Mazengarb's Employment Law

Service 273 — November 2022

Commentary

Holidays Act 2003

- The Holidays Act commentary has been updated to reflect all current amendments.

Policing Act 2008

- In the context of a dispute over generic rotational positions, the Court of Appeal has held that s 65 is not a provision that was contrary to the powers of the Commissioner of Police as an employer, as provided for in s 18(4) (*Commissioner of Police v New Zealand Police Association Inc* [2022] NZCA 342) (see [PCA18.3.1] and [PCA65.7]).

The Health and Safety at Work Act 2015

- With the dismantling of the COVID-19 Protection Framework, the last government vaccination mandates — for health and disability workers — ended on 26 September 2022 and face covering requirements remained after that date only for people at certain health premises (see [HSWAIntro.33]);
- The original COVID-19 Order (which imposed gathering limits under the Red setting) was held not to be an unjustifiable limit on rights under s 15 of the New Zealand Bill of Rights Act 1990, either as introduced or after the Omicron variant had arrived (*Orewa Community Church v Minister for COVID-19 Response* [2022] NZHC 2026) (see [HSWAIntro.33.1]);
- Where an officer of a “very small” company failed to exercise due diligence under s 44 in relation to work leading to a fatality, reparation of \$100,000 was awarded and a potential fine of \$50,000 indicated (*WorkSafe New Zealand v Hon Sang Cheuk* [2022] NZDC 14786) (see [HSWA44.5]);
- The most recent survey of collective agreements found that 46 per cent of all employees on collective agreements have no provision for an employee participation system in workplace health and safety (see [HSWA61.5]);
- Reparation of \$30,000 was awarded for emotional harm resulting from amputation of a thumb, the Court observing that cases involving similar injuries indicate a broad range of appropriate reparation orders for injuries of those types, but that “it does not follow that because the physical injury is comparable, so too is the emotional harm” (*WorkSafe New Zealand v Mainland Poultry Ltd* [2022] NZDC 9562) (see [HSWA151.13.4.1]);
- After a charge was dismissed on the basis there was no case to answer, Judge Maze awarded costs of \$101,766 against WorkSafe, on the basis that the charge ought never to have been laid and — once brought — should have been

withdrawn as soon as practicable (*WorkSafe New Zealand v Mount Somers Sand Ltd* [2022] NZDC 12056) (see [HWSA151.54]).

Smokefree Environments and Regulated Products Act 1990

- The Smokefree Environments and Regulated Products Amendment Bill 2022 proposes to amend the 1990 Act by reducing retail availability of smoked tobacco products to approved retailers; amending the age limits for sale of smoked tobacco products to prohibit sale to anyone born on or after 1 January 2009; and reducing the appeal and addictiveness of smoked tobacco products (see [6500.5]).

Legislation**Accident Compensation Act 2001**

The Accident Compensation Act 2001 has been amended by the Accident Compensation (Maternal Birth Injury and Other Matters) Amendment Act 2022; 2022 No 51.