

Update Mazengarb's Employment Law

Service 281 — October 2023

Commentary has been updated to the following guidecards in Mazengarb's Employment Law

Employment Relations Act 2000

Part 8 Strikes and lockouts

- The Court held that a strike related to an attempt to address pay equity through collective bargaining was unlawful as the Equal Pay Act 1972 contained a statutory process for addressing pay equity claims (*Te Whatu Ora – Health New Zealand v Public Service Assn* [2023] NZEmpC 56) (see [ERA P8.12]).

Part 9: Personal grievances, disputes and enforcement

- The Court described the need for a significant element of deterrence in the penalty under s 140 where a defendant had “passively ignored” an Authority order, imposing a fine of \$10,000 on that defendant and applying an uplift to \$13,000 to the second defendant, which had previously been fined for ignoring an Authority order (*A Labour Inspector v Star Moving Ltd* [2023] NZEmpC 132) (see [ERA140.10.2]);
- A fine of \$10,000 was also imposed where the defendant had wilfully not engaged with the Authority or the Court with \$6,000 of that sum to be paid to the plaintiff who had had the burden of pursuing the matter “with associated stress and costs on him” (*Dhiman v Naanak Ltd (in liq)* [2023] NZEmpC 129) (see [ERA140.10.6]).

Selected topics in employment law

Pay equity

- The pay equity system in New Zealand came close to needing to consider how to judicially determine remuneration issues as part of the tortuous nurses pay equity claim process. Along the path to the settlement, the union parties had sought an application to fix rates, amongst other claims, in the Employment Court, which was contested, but ultimately discontinued as part of the “mediated outcome agreement”, which is the vehicle to deliver the nurses’ claim settlement (*New Zealand Nurses Organisation Inc v Te Whatu Ora Health New Zealand* [2022] NZERA 663) (see [2016]).

Contractual aspects of employment

- Two plaintiffs who were formerly school guidance counsellors are pursuing common law claims and personal grievances after exposure to traumatic incidents and alleged imposition of an unmanageable workload, a claim for

work-related mental injury under s 21B of the Accident Compensation Act 2001 having been rejected (*Cronin-Lampe v Board of Trustees of Melville High School* [2023] NZEmpC 144) (see [1026.2]).

Minimum Wage Act 1983

- As from 1 October 2023, employers in the Recognised Seasonal Employer Scheme must pay workers at least the minimum wage plus 10 per cent for actual hours worked: at current rates, this is equivalent to \$24.97 per hour (see [3004.5.2]).

Legislation**Accident Compensation Act 2001**

- The Accident Compensation Act 2001 has been amended by the Accident Compensation (Access Reporting and Other Matters) Amendment Act 2023, 2023 No 26.

Health and Safety at Work Act 2015

- The Health and Safety at Work Act 2015 has been amended by the Natural and Built Environment Act 2023, 2023 No 46.

Health and Safety at Work (Asbestos) Regulations 2016

- The Health and Safety at Work (Asbestos) Regulations 2016 has been amended by the Natural and Built Environment Act 2023, 2023 No 46.

Health and Safety at Work (Hazardous Substances) Regulations 2017

- The Health and Safety at Work (Hazardous Substances) Regulations 2017 has been amended by the Natural and Built Environment Act 2023, 2023 No 46.

Public Service Act 2020

- The Public Service Act 2020 has been amended by the Public Service (Digital Executive Board) Order 2023, SL 2023/211.