

Update

Mazengarb's Employment Law

Service 282 — November 2023

Commentary

Employment Court regulations 2000

- Special thanks to Jamee Miles for her assistance and contribution to the review of this commentary.
- In *F & B Remuera Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment*, the Court declined the defendant's application for security for costs. Notably, the Court gave considerable weight to the plaintiff's submission that, if security for costs was ordered, there was a significant risk that it would limit the plaintiff's ability to proceed with its challenge. The plaintiff was not required to provide evidence supporting its position (*F & B Remuera Ltd v A Labour Inspector of the Ministry of Business, Innovation and Employment* [2023] EmpC 164) (see ECR6.9.4).

Selected Topic: Contractual Aspects of Employment

- Judge Corkill referred to the inherent imbalance in power between employer and employee as a relevant contextual issue in assessing whether there was a mutual termination, holding that employees who accepted new employment with another employer had not mutually consented but had simply signified assent to a *fait accompli* (*Birthing Centre Ltd v Matsas* [2023] NZEmpC 162) (see [1047]);
- The basis of the springboard injunction has been revisited by the High Court (*Vision Personal Training Franchises Pty Ltd v Williams* [2023] NZHC 2848) (see [1031.3]).

Selected Topic: Tort actions in employment law

- The tort of inducement of breach of contract “assumes that the counterparty to the underlying contract (rather than the plaintiff) is the one in breach” (*Tracplus Global Ltd v V2Track* (2002) Ltd [2022] NZHC 1556) (see [1402]).

Practice and procedure

Mediation

- While parties can mediate about minimum entitlements, a mediator cannot sign a settlement agreement in which a party forgoes all or part of entitlements in relation to wages or holiday pay or other money payable by the employer to the employee under the Minimum Wage Act 1983, the Holidays Act 2003, the Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016, the Support Workers (Pay Equity) Settlements Act 2017, or the Fair Pay Agreements Act 2022 (see [2303] Mediation process).

The Employment Relations Authority

- The Authority issued a consolidated practice direction in August 2023 replacing previous practice notes and deals with matters such as the steps normally taken, how costs arising out of the process are dealt with and the expectations of parties who engage in the process (see [2322] Investigation process);
- The Authority uses a notional daily tariff as the starting point for considering costs. The current daily tariff is \$4,500 for the first day of any matter and \$3,500 for any subsequent day of the same matter. This may be adjusted upwards or downwards depending on the circumstances (see [2324] Determinations).

Human Rights Act 1993

- In a personal grievance claim resting in part upon alleged religious discrimination, an employee who had been dismissed after posting anti-Muslim comments on social media failed in her submission that the dismissal was in breach of that prohibited ground under the Employment Relations Act 2000 (*Turner v Te Whatu Ora – Health New Zealand* [2023] NZEmpC 158) (see [4021.23];
- Claustrophobia was held undisputedly to be a disability within the meaning of s 21 (*King v Commissioner of Police* [2023] NZHRRT 19) (see [4021.34]).