
\$100,000 fine for migrant exploitation

The Employment Court has dismissed a challenge by Shalini Limited against penalties of \$100,000 imposed by the Employment Relations Authority (ERA) for migrant exploitation - *Shalini Limited v A Labour Inspector* [2020] NZEmpC 89 [24 June 2020].

Shalini was taken to the ERA by the Labour Inspectorate following employment standards breaches against seven migrant employees who worked as retail assistants at two liquor stores and one dairy owned by the business. In June 2019, ERA has ordered Shalini to pay \$100,000 in penalties.

Shalini challenged the determination on three grounds. They claimed that –

- a) the ERA suggested that Shalini’s director, Mr Reddy, was also a landlord, when in fact they were only a “go-between” the workers and the landlord,
- b) that the ERA interpreted the company’s financial position and ability to pay incorrectly and
- c) that the ERA did not give considerable weight to the fact that Shalini has separately agreed to repay nearly \$97,000 in minimum wage and holiday pay arrears to seven workers.

The third ground raised in the pleadings relates to the apparent agreement between the parties in reaching their settlement that parameters for penalties would be put before the Authority. The statement of claim alleges that the Authority erred by failing to accord any weight to the parties’ agreed approach to penalties arising from the settlement.

The Authority Member properly held that she was not bound by any agreement of the parties. She made the pertinent comment that even at the higher level of penalties proposed by the Labour Inspector, that proposal would be inadequate to reflect the serious nature of the breaches in this case.

Neither the Authority nor the Court are bound by any agreement between the parties on penalties unless, following proper analysis, they are held to be at a level which would be regarded as appropriate.

The Court said that deterrence must play an important part in assessment of penalties for breaches of minimum standards of employment for vulnerable employees. This is fortified by the nature of the legislation providing for the assessment of such penalties. The deprivation the employees in this case suffered in not receiving their proper monetary entitlements was substantial.

Shalini derived financial benefit from these breaches over several years. The Authority’s careful assessment of penalties in this case resulted in penalties at an appropriate level.

The Employment Court dismissed the challenges.

ACC levies frozen

The Minister for ACC Iain Lees-Galloway has [announced](#) that levy rates will remain the same until 2022. He said that the Government has made the decision to continue the current levies for the 2021/22 year as part of a set of changes to help ease the financial pressures of COVID-19 and account for an uncertain economic outlook.

“The previous Government increased levies during the global financial crisis only to find they were too high in following years. We are taking a cautious approach and ensuring we do not add to pressure on businesses and New Zealanders where it’s not necessary” he said.

“ACC is also helping businesses by delaying invoices normally sent in early July. These will be issued in October to give firms more time and flexibility in making their levy payments. Other invoices issued this year will also be on hold for three months.”

While the rollover ensures ACC levy rates remain the same for the 2021/22 year, the Work levy businesses and self-employed pay is calculated using their liable earnings.

If a levy payer’s revenue or income decreases, which may be the case for many levy payers as a result of COVID-19, the ultimate amount they pay in levies will also reduce. [Find out more about how levies are calculated](#)

Levy payers will have the opportunity to submit on levy rates and levy policy settings during the consultation stage of the next levy period in 2021.

The Small Business Cashflow (loan) Scheme extended

The [Small Business Cashflow \(loan\) Scheme](#) has been extended until the end of 2020. Applications opened on 12 May 2020 and can now be submitted up to and including 31 December 2020.

Organisations and small to medium businesses, including sole traders and the self-employed, may be eligible for a one-off loan with a term of 5 years if they have been adversely affected by COVID-19. They must have 50 or fewer full-time-equivalent employees.

Eligible businesses and organisations are entitled to a one-off loan. The maximum amount loaned is \$10,000 plus \$1,800 per full-time-equivalent employee.

The annual interest rate will be 3% beginning from the date of the loan being provided. Interest will not be charged if the loan is fully paid back within one year.

Inland Revenue administers the payments and repayments of this scheme.

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