

**Landmark ruling on personal liability**

Individuals cannot protect themselves from personal liability by claiming they were unaware that they had breached the law, the [Court of Appeal](#) has ruled.

The case (*A Labour Inspector v Southern Taxis Ltd [2021] NZCA 705 20 December 2021*) concerns two directors of Dunedin-based Southern Taxis Limited. The company, that operated from 2002 to 2016, had drivers who were paid a flat commission of forty percent from the earnings they received driving vehicles owned by the company. Four of those drivers, who were referred to as independent contractors by the company, complained to the Labour Inspectorate about entitlements that led to an investigation.

In July 2018, the Employment Relations Authority (ERA) determined that the drivers were employees and the company owed them about \$80,000 for unpaid entitlements such as minimum wages, holidays, rest breaks and unlawful deductions.

However, Southern Taxis – a limited liability company – had wound up in May 2018 distributing its surplus assets to the two directors – Mrs Maureen Valerie Grant and Mr Ronald James Grant -- who were its shareholders and declared it had discharged its liabilities in full to all its known creditors.

The ERA noted the directors were personally liable for the arrears since they were involved in the company breaching its obligations by being wilfully blind to the possibility that the drivers were employees. However, on appeal by the directors, the Employment Court determined in May 2020 that the directors were not personally liable.

The Labour Inspectorate sought clarification from the Court of Appeal on what level of knowledge was required to establish liability for a person involved leading to this judgment. The Court of Appeal ruled it is not relevant that the directors of Southern Taxis believed their drivers were not employees. It clarified that knowledge of the essential facts is enough to lead to personal liability.

Regional Manager Southern (Labour Inspectorate) Jeanie Borsboom said this judgment by the Court of Appeal means that individuals cannot protect themselves from liability by claiming that they did not know that what they were doing breached employment law. "There is an obligation on individuals to understand their obligations, obtain proper advice and not turn a blind eye to the possibility that their actions breach employment obligations."

The case will now revert to the Employment Court, which will determine whether the two directors had knowledge of the essential facts that established the drivers were employees.

Source [MBIE](#)

### **COVID-19: Financial support for businesses**

The whole of New Zealand having moved to the red traffic light setting from 11.59pm on Sunday 23 January, this is a quick reminder of two relevant kinds of financial support available to help you, your business and employees.

#### **Short-Term Absence Payment**

The [Short-Term Absence Payment](#) is available to employers to pay workers who follow public health guidance and stay home while waiting for a COVID-19 test result. It's also available to eligible self-employed workers. To be eligible, workers need to be unable to work from home and need to miss work while waiting for their test results.

How much

There's a one-off payment of \$359 payment for each eligible worker. Employers or the self-employed can apply for any worker once in any 30-day period, unless a health official or doctor tells the worker to get another test.

You can apply on the [Work and Income website](#).

#### **Leave Support Scheme**

The [COVID-19 Leave Support Scheme](#) is available to employers to help pay employees who have been advised to self-isolate because of COVID-19 and can't work from home. It's also available to eligible self-employed workers.

How much

\$600 per week for full-time workers and \$359 per week for part-time workers.

You can apply on the [Work and Income website](#).

**This article is brought to you by AdviceWise People, who provide WGANZ's free employment helpline 0800 692 384. If you have any questions or would like to discuss the article, please call Philip or Anthony.**