**Crimes (Theft by Employer) Amendment Bill**

According to the Explanatory note to this Bill, it amends the Crimes Act 1961 to clarify that not paying an employee their wages is theft.

Currently, offences relating to theft by a person in a special relationship are insufficient to account for wage theft by employers. Existing processes are too complex and can be a deterrent for those that are victims of wage theft.

The new offence created by this Bill will capture employers who owe wages and intentionally do not pay them to the employee. This includes the unlawful withholding of wages, salaries, and other monetary entitlements within an employment relationship.

Workers deserve the codification of their rights within the law. This small change will provide clear direction to employees that they have the right to be paid what they are due and that it is clearly set out in law.

The Bill provides that an employer’s intentional failure to pay to an employee any money owed in relation to the employment is theft.

If the employer is an individual, the maximum penalty is 1 year’s imprisonment, a fine of $5,000, or both. In any other case, the maximum penalty is a fine of $30,000.

The Chair of the Education and Workforce Committee is calling for submissions on the Bill before midnight on Thursday, 12 October 2023. Submissions can be made [here](https://www.parliament.nz/en/pb/sc/how-to-make-a-submission/). The Bill can be read [here](https://legislation.govt.nz/bill/member/2023/0245/latest/whole.html?search=ts_act%40bill%40regulation%40deemedreg_Crimes+(Theft+by+Employer)+Amendment+Bill_resel_25_a&p=1).

Source: [NZ Parliament](https://www.parliament.nz/en/pb/sc/make-a-submission/document/53SCEW_SCF_6ADAAD28-BA40-4BA8-EC06-08DB36349ADD/crimes-theft-by-employer-amendment-bill)

**Constructive dismissal**

In July 2023 the Employment Court considered a case of constructive, which is interesting. The Court’s summary follows.

Ling v Super Cuisine Group Ltd [[2023] NZEmpC 106](https://www.employmentcourt.govt.nz/assets/Documents/Decisions/8b97b3c7bf/2023-NZEmpC-106-Ling-v-Super-Cuisine-Group-Ltd.pdf)

This was a non-de novo challenge by an employee to a determination of the Employment Relations Authority (Authority). The challenge was solely on the basis of whether the employee had been constructively dismissed, following breach of a contractual duty by the employer. Whether there had been a breach was not disputed (see paragraph 31).

The Court began by setting out the relevant question: did the breach cause the resignation, and was the resignation foreseeable (see paragraph 16)?

The employer previously submitted that the employee finding new employment was the cause of the resignation (Ling v Super Cuisine Group Ltd [2021] NZERA 145, at [28]). However, the Court held the breach was the cause.

The Court held the context in which the employee operated was crucial to its finding – he was in New Zealand on a working visa which specifically named the employer. He could not lawfully work elsewhere until the visa was varied, and he needed to work to support himself.

The Court held the new employment did not cause the employee to resign; it merely enabled him to resign (see paragraph 45).

The next step of the Court’s analysis was considering whether resignation was reasonably foreseeable given the seriousness of the breach. The employee was underpaid by $160 per week for 22 weeks.

The Court found this breach was sufficiently serious that were it knowingly carried out, resignation would clearly be a reasonably foreseeable consequence (see paragraph 48). However, reasonable foreseeability was complicated because at the time, neither the employee nor employer were aware the pay rate amounted to breach of a contractual duty.

The Court held the employee’s lack of awareness of the breach could not be relevant to whether resignation was foreseeable. He could not be expected to have a full grasp of his rights considering he was an immigrant with little to no English (see paragraph 50).

Turning to the employer’s knowledge: the Court held it is not about what they subjectively knew, but what was objectively reasonably foreseeable (see paragraph 51). *The employer was required to comply with employment law and had a duty to inform themselves of their contractual obligations – the Court held this was enough that they reasonably ought to have known about the breach.*

The Court held the employee was constructively dismissed (see paragraph 55).  The Court ordered the employer to pay the employee $8,000 in compensation (see paragraph 63).

*(Emphasis added)*

Source: [Employment.govt.nz](https://www.employment.govt.nz/about/employment-law/cases-of-interest/case-of-interest-july-2023/)

**Two men jailed for covering up poor health and safety practices**

The New Zealand Police charged William Mansfield Trevor Sullivan for making a false statement and Steven Patrick John Sullivan for perverting the course of justice. William Sullivan was sentenced to nine months imprisonment on 21 July 2021 and Steven Sullivan to 20 months imprisonment on 25 July 2021 – ([2012-NZDC-14313 WorkSafe New Zealand v Aimex Ltd](https://www.districtcourts.govt.nz/all-judgments/2021-nzdc-14313-worksafe-new-zealand-v-aimex-ltd/)).

An apprentice at Aimex Limited was exposed to vapour from solvents he had been directed to use when cleaning an engine room which wasn’t adequately ventilated, causing serious brain injury.

Aimex was sentenced in the Nelson District Court for health and safety failings contributing to the incident. WorkSafe’s investigation found Aimex failed to develop a safe system of work relating to hazardous substances, and had failed to properly supervise, train and instruct its workers on work with hazardous substances.

Concerns deepened when WorkSafe was informed the same thing had happened with a different worker the week before.

“In that instance the worker was fortunate to recognise symptoms and keep themselves safe. Information passed on to WorkSafe related to the destruction of key documents to cover up the previous incident, which affected our ability to substantiate it.”

“The deception meant the sentencing of Aimex was not carried out with full understanding of failings. WorkSafe informed Police, who then prosecuted the two individuals,” says WorkSafe’s head of Specialist Interventions Dr Catherine Gardner.

Dr Gardner says businesses and organisations should focus on preventing harm instead of covering it up. Exposure to harmful chemicals is a well-known risk businesses and organisations must manage under the law.

“Risks must be managed, and workers must be protected from this kind of harm.”

The District Court began by ordering emotional harm reparations of $50,000 to the victim, as well as consequential losses of $15,000.

The start point for fine was $500,000, which was then reduced for guilty plea, remorse, remedial steps, cooperation with the investigation and otherwise good character.

The final fine was $250,000 plus costs of $1434.12. That means that the total penalty amounts to $316,434.12.

Sources:  [Worksafe.govt.nz](https://www.worksafe.govt.nz/about-us/news-and-media/strong-sentences-a-warning-prevent-harm-dont-cover-it-up/)

[Districtcourts.govt.nz](https://www.districtcourts.govt.nz/all-judgments/2021-nzdc-14313-worksafe-new-zealand-v-aimex-ltd/)

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