

February 2024

Compensation awards

The employment law compensation awards published by MBIE have not yet been updated for the last quarter of 2023. A recent Employment Court judgement, which awarded just on \$1.8 million (\$1,795, 317) to two employees, will no doubt bump up the figures.

MBIE's list of cases of interest gives the following details of the case -

“The main issue was whether the employees would be awarded damages and remedies for their personal grievances and for claims the employer had breached their employment agreements, common law and the Health and Safety in Employment Act 1992.

The employees were guidance counsellors at a high school for 15 years. They were a married couple. During their time as counsellors at the school, there were around 32 deaths in the school community, many by suicide. They assisted students, families and teachers with the resultant trauma. They also provided a wide range of counselling services and led project work such as restorative practices. The employees were expected to be available 24/7 to provide support to the community. Over the course of their employment, their workload increased and the level of supervision and support they received decreased.

The Court found the employer breached express and implied duties to the employees, including failures to (see paragraphs 23, 111):

- **monitor the caseloads and stress levels of the employees**
- **provide training, resources, professional development and adequate supervision**
- **identify and manage hazards or harm in the workplace.**

The Court found the employees suffered post-traumatic stress disorder as a result of the breaches, and that the harm was foreseeable.

The Court further found actions of the employer had disadvantaged the employees, for example (see paragraphs 122–126):

- **failure to provide debriefing after traumatic events**
- **failure to provide regular time off and cover**
- failure to support the employees when they had difficulties with other staff
- failure to resolve the uncertainty of 1 employee about his job status and duties.

The Court found the actions of the employer were not those of a fair and reasonable employer. The personal grievances were therefore successful (see paragraph 135).

The Court quantified the appropriate level of damages and compensation and awarded the higher of the 2, being damages, because there could not be “double recovery” (see paragraph 225). The Court ordered the employers to pay the wife \$123,500 in damages for non-economic loss and \$705,855 in special damages. The husband was awarded \$95,625 in damages for non-economic loss and \$870,337 in special damages. The special damages included lost income, superannuation loss, capital loss on the sale of a rental investment they were forced to sell due to a lack of income, rental income loss, interest and medical expenses (see paragraphs 456–457).”

(Emphasis added).

Parental leave

Another recent Employment Court judgement emphasises the timing of application for parental leave payments. MBIE's list of cases of interest gives the following details –

“At issue was whether an employee was entitled to parental leave payments under the Parental Leave and Employment Protection Act 1987 (PLEPA).

The employee took annual leave for a couple of weeks after her baby was born. The employee then returned to work for 5 months, during which she had assistance from a family friend in caring for her baby. The employee then applied for parental leave. Her application was declined. 2 weeks later, the employee resigned her employment. She cared for her baby full-time for a few months, before starting a new part-time position. The Ministry of Business, Innovation and Employment (MBIE) asked the Court to decide whether the employee should have been granted parental leave payments.

A full Court outlined a “roadmap” with 5 steps to be used when deciding if a parent is entitled to paid parental leave (see paragraphs 23–41):

1. Determine the employee's eligibility to receive parental leave payments (section 71CA of the PLEPA).
2. Determine the employee's entitlement to parental leave payments (section 71D of the PLEPA).
3. Determine whether the employee made a valid application in the appropriate timeframe (section 71I of the PLEPA).
4. Determine the start of the parental leave payment period (section 71K of the PLEPA).
5. Determine the end of the parental leave payment period (section 71L of the PLEPA).

The Court found under step 2 **that the employee was not entitled to parental leave payments because she had not taken parental leave in the period she was eligible for payments** (see paragraph 44). Under step 4, **the employee was required by section 71K to commence parental leave on the earlier of the date she gave birth (or went into confinement) or the date she chose to take parental leave** (see paragraph 54). **By taking annual leave when her baby was born and immediately returning to work, she did not take advantage of parental leave** (see paragraph 46).

The Court decided the employee was eligible but not entitled to parental leave payments (see paragraph 42).” **(Emphasis added).**

You can find section 71K [here](#).

Greater focus on getting people into work

The coalition government will refocus employment efforts and the welfare system so that supporting people who can work into jobs is the number one priority, Social Development and Employment Minister Louise Upston says.

“Of concern in the labour market statistics released by Stats NZ today was the number of youth not in employment, education, or training (NEET), which rose by 3,000 people over the December quarter. The rate for young women also increased to 14 percent, up from 12.5 per cent. Young people are disproportionately impacted by tightening economic conditions.

“It is also worrying that 40,000 people under the age of 25 are currently on a Jobseeker benefit, an increase of 66 per cent compared to six years ago.

“Today's figures confirm there is plenty of work ahead for the coalition government to repair the damage done by the previous government and restore confidence for businesses to employ more staff, and for more hours.

“Part of our plan is to refocus the welfare system so that it incentivises people to work while providing support to those who need it most.

“The coalition government plans to do this by initially focusing on:

1. Early interventions to get people into work or training and prevent them from entering the benefit system
2. Refocusing the benefit system so that it reduces dependency by making sure those who can work are preparing for and finding jobs

“We will intervene early and prioritise people who need the most support to help them find work. We are committed to using an evidence-based approach to understand what works, and for whom.

“We will use community providers and offer a broader range of tools to support jobseekers, giving young job seekers a job coach and a proper plan for addressing what’s holding them back from finding suitable work.

“To realign the welfare system towards employment, we will introduce a new traffic light system for sanctions that will provide clarity on what job seekers need to do to prepare for or find work, and increase consequences to ensure people do their bit.

“This government understands that for those who are able to work, employment is the best way out of hardship. It provides individuals and families with greater independence, choice, and opportunity.”

Source: Beehive.govt.nz

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.