Getting it right - employment tips

BY JAMES SKINNER

A recent article run in Stuff reports on a fine of several thousand dollars being handed down by the Employment Relations Authority for an employer in the construction industry breaching employment law. This brings into focus the importance of all employers in the construction industry to make sure they are complying with all employment laws to avoid being fined or sued by employees in a personal grievance.

BACKGROUND

In the said Stuff article, reference is made to statistics released by Immigration New Zealand showing that, since 2016, Labour Department inspectors have visited 112 building sites across the country as part of an ongoing investigation into the construction industry. The article mentions that, so far, the actions taken by NZ Immigration have resulted in $45,000 worth of fines and seven applications to the Employment Relations Authority.

Employers are now firmly on notice that they may receive a visit from Labour Department inspectors to make sure their employment practices are up to scratch.

WHAT CAN BE DONE TO HELP AVOID GETTING INTO TROUBLE

The Ministry of Business, Innovation and Employment (MBIE) has a great website full of useful information on what practical steps employers need to take when hiring new employees. Some of the pitfalls we see in practice for employers are things like no written employment agreements being prepared or a lack of clarity around essential terms of employment. If you go to the MBIE website, it even has an



employment agreement builder that you can use as the base for preparing an employment agreement. It is important to keep in mind that, apart from the essential terms an employment agreement must have, every employee is unique and the agreements need to be tailored to the specific role they perform.

The MBIE website also has helpful information on health and safety that we all know is so important in the construction industry. The website is a treasure trove of helpful information and in plain language. It is well worth a read as a starting point for ensuring compliant employment practices.

We have spoken previously about the use of technology in the workforce. As lawyers, we must face the digital age and our firm has tried to do that by operating pretty much a paperless office. In the context of this article, it is very beneficial if you have all your signed employment agreements scanned onto your software system into designated employee files. If a Labour Department inspector comes knocking, you are able to access all this information with ease and provide it to them electronically. This avoids the stress, cost and inconvenience of having to search for paper records.

When dealing with the inspectors, remember they are just there to do their job and deserve respect. You are of course able to get legal assistance as part of the process but, once that is cleared up and it is a simple case of providing documentation and cooperating with the enquiries, do so in good faith. It is likely to be a much smoother process if the employers are respectful and provide timely and well-organised documentation. In our experience the inspectors are looking to educate employers as much as maintaining the standards. Every day, employers are learning something and so it is important in our view to have a positive attitude to the experience.

SUMMARY

Employers in the construction industry are running a business and want to have well-organised and efficient operations. Most will say that the most important investment an employer can make is in their staff. Part of that investment is making sure that the employment relationship is well defined, documented and transparent. We encourage you to use the tools available and outlined in this article and seek help from your legal advisor if you need further assistance. Getting it right first time is better than learning the hard way on the back of an infringement notice.

FOR MORE INFORMATION

James is an experienced construction and civil litigator who has represented a wide range of clients large and small, including builders, building companies, waterproofers, roofers, window joinery suppliers, designers, engineers, homeowners and councils across New Zealand.

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