Employer Bulletin

Our Weekly News Digest for Employers

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Cases

Employment Relations Authority: Six Cases

Failure to attend and act as a fair and reasonable employer

Ms O'Connor worked for Dunrite Construction (2017) Limited (Dunrite Construction) as a Project Administrator until her employment was terminated on 7 May 2018. Ms O'Connor claimed that she was been unjustifiably dismissed and disadvantaged and sought reimbursement for lost earnings. Dunrite Construction did not accept Ms O'Connor's claim.

The Employment Relations Authority (the Authority) addressed the events leading up to Ms O'Connor's dismissal to determine the validity of Ms O'Connor's claim. On 4 May 2018, Ms O'Connor had arrived at work to find two letters on her desk, both dated 3 May 2018. One letter recorded a verbal warning for Ms O'Connor being late on 3 May 2018, along with five other specified occasions. The other letter invited Ms O'Connor to attend a disciplinary meeting to discuss three concerns, including continued lateness, poor performance and a breach of company rules regarding alcohol.

Ms O'Connor was invited to meet on that same day with Ms Leslie of Dunrite Construction. In the meeting Ms Leslie told Ms O'Connor that she was going to hire a new employee and there would no longer be a job for her. Ms Leslie told Ms O'Connor to go home for the day and return on 7 May 2018 for a disciplinary meeting.

Ms O'Connor attended the disciplinary meeting, Ms Leslie discussed two specific concerns at this meeting. One regarding lateness and the other regarding her leaving a local bar & bistro during work time. There had been little discussion about any other matters that might inform or explain the concerns raised in the letter dated 3 May 2018. By the end of the meeting Ms O'Connor was unsure as to what the meeting had achieved. Ms O'Connor asked for clarification as to whether she had been dismissed but was not provided an answer. Therefore, Ms O'Connor concluded that she had been dismissed and she informed Ms Leslie that she would collect her things and leave. Dunrite Construction paid Ms O'Connor her final pay and Ms O'Connor proceeded to raise a personal grievance which Dunrite Construction did not accept.

Ms O'Connor filed a statement of problem to the Authority. Dunrite Construction did not file a statement of reply and the Authority held a case management conference call on 11 June 2020. Ms Leslie participated on behalf of Dunrite Construction and in this meeting, the Authority issued directions for an investigation meeting to take place on 20 October 2020. Witness evidence was

lodged on behalf of Ms O'Connor, Dunrite Construction did not file a witness statement. They failed to attend the investigation meeting despite being aware of the event. They did not contact the Authority to explain their absence. The notice of investigation stated that if the respondent did not attend the meeting then the Authority may issue a determination in favour of the Applicant. Therefore, the investigation proceeded without Dunrite construction.

The Authority determined that Ms O'Connor had been dismissed, and that her dismissal was unjustified. With prior uncertainty as to whether Ms O'Connor had been dismissed. It was deemed reasonable for Ms O'Connor to assume that she had been dismissed despite minimal confirmation from Dunrite Construction.

The Authority believed that Dunrite Construction did not act in the way a fair and reasonable employer would have done. Procedurally, they did not follow a fair process to investigate the matter and allow Ms O'Connor to respond, and there was no evidence to show that there were concerns for Ms O'Connor's performance or conduct at work.

The Authority accepted Ms O'Connor's claim and ordered Dunrite Construction to pay Ms O'Connor $17,000 for compensation, and $15,210 gross for lost remuneration. Dunrite Construction is to also pay $2,250 for the daily tariff, and $71.56 for the filing fee.

Ms O'Connor v Dunrite Construction (2017) Limited [2020] NZERA 435; 21/10/2020; PV Keulen

Genuine redundancy but failure to meet obligations

Ms Nel was employed as a barista by CA31 Limited (CA31) from July 2018 until her dismissal due to redundancy in August 2019. Ms Nel claimed she was unjustifiable dismissed and sought compensation for the hurt caused and her entitlements due when her employment ended including notice period and holiday pay.

CA31 did not file a statement in reply or relevant documents as directed. The Authority understood that the financial circumstances of the business caused its closure and the information provided by CA31 was considered in determining the employment relationship problem. The investigation meeting was held by Zoom and proceeded in the absence of CA31.

In July 2018 Ms Nel started working for CA31 as a casual barista after finishing a barista training course. In November CA31 provided Ms Nel a written employment agreement, which she duly signed and returned. She was told her hourly rate of pay would increase, was provided with full time hours, and promoted to front of house manager. CA31 did not give Ms Nel a copy of the employment agreement again. Information provided to the Authority by Ms Nel and CA31 indicated the business was facing increasing difficulties during the period Ms Nel was employed.

The information from CA31 indicated for some time it was dealing with claims for rent arrears from the landlord of the property they rented and in July 2019, CA31 was on notice and possession of the premises would be exercised which occurred on 16 August. On the same day Ms Nel received a group text message from the director apologising and advising that the café had been closed permanently and as the company was no longer financial, no further wages would be available. Ms Nel understood that to be notice that her employment had ended. In a further text message exchange with the director, she requested her final pay and a copy of her employment agreement which was promised along with an offer of a reference. The employment agreement was not provided. The text messages also included an exchange which Ms Nel felt was unfair and unnecessary in the circumstances. In evidence Ms Nel accepted the business closed because of financial difficulties and that those difficulties caused her employment to end.

The information before the Authority established the pressure on CA31 from its landlord to pay rent arrears was not new and was mounting, CA31 had received at least two weeks' notice of repossession action before it occurred on 16 August. In such circumstances a fair and reasonable employer would have given Ms Nel at least contractual notice of the closure of the business and outlined the reasons why the business was closing, and her job was to end. Such notice and information would have given her time to consider the reasons she was about to lose her job, ask questions and seek advice.

During the notice period a fair and reasonable employer would have provided Ms Nel access to her employment agreement and would have provided termination pay and access to a calculation of such based on duly maintained wage, time, holiday and leave records, none of which occurred in circumstances where it reasonably could have.

The Authority determined Ms Nel was dismissed from her employment by way of redundancy and her dismissal was unjustified. Though it was accepted the reason for the closure of the business was genuine, the complete lack of process and the unfairness occasioned to Ms Nel as a result gave rise to a finding of unjustified dismissal.

The Authority was satisfied Ms Nel experienced harm and was entitled to an award to compensate the humiliation, loss of dignity and injury to feelings consequent to her dismissal. CA31 Limited was ordered to pay Ms Nel wage arrears of $708 for one week's notice, compensation of $12,000, and holiday pay of $1796.

Nel v CA31 Limited [[2020] NZERA 412; 13/10/2020; M Urlich]

Drug allegations and privacy breaches

Mr Cadigan was employed by Paul McDonald Earthmoving Limited (PMEL) as a Machine Operator and Supervisor from early 2016 until his employment ended on 2 July 2019. He claimed he was unjustifiably dismissed or in the alternative that he had been constructively dismissed. He also made a claim for breach of privacy and sought a penalty for not being provided with an employment agreement.

Initially, Mr Cadigan started working for PMEL in early 2016 as a casual Digger Operator. As PMEL gained more ongoing contracts, Mr Cadigan's hours and responsibilities increased. He was offered a quarterly bonus from 1 April, 2018 but the arrangement was not recorded in writing at the time.

By late May, Mr Cadigan was becoming frustrated at Mr McDonald, the sole director and shareholder of PMEL, who was spending less time in the business. Eventually, he emailed Mr McDonald on 17 June 2019 concluding that unless his concerns were addressed, he would be leaving his employment on 20 December. By 20 June he had received no reply and sent a text. In response Mr McDonald drove immediately to Mr Cadigan's house where he acknowledged some of the points raised but also alleged that Mr Cadigan was taking drugs. Mr Cadigan reacted very angrily, appearing to quit. The following day Mr McDonald told a major client that Mr Cadigan had been dealing drugs in the workplace.

Section 103A requires the Employment Relations Authority (the Authority) to assess whether an employer's actions were what a fair and reasonable employer could have done in all the circumstances at the time. Employer actions must be carried out in a procedurally fair manner in accordance with good faith obligations set out in the Act. The Authority considered whether Mr McDonald's response to the concerns raised by Mr Cadigan were reasonable in the circumstances. It also considered whether Mr Cadigan overreacted to the allegations and then voluntarily resigned.

The Authority determined that although a small employer, PMEL had the resources to seek legal advice. No investigation had been carried out around the drug allegations and there was no evidence of them. Instead, Mr Cadigan had been ambushed with no opportunity for him to seek advice. Mr McDonald had disclosed the allegations to a major client in a way likely to damage Mr Cadigan's reputation.

A constructive dismissal occurs when an employer's conduct compels an employee apparently to voluntarily resign. The Authority found that Mr McDonald's actions were not the actions of an employer wishing to maintain a trusting, ongoing employment relationship. His approach significantly breached good faith and destroyed Mr Cadigan's trust in his employer. In the circumstances, it was reasonably foreseeable to PMEL that Mr Cadigan would resign. While no remedy was sought for the breach of privacy, the Authority deemed the breach to be an aggravating factor in the constructive dismissal.

The Authority found constructive dismissal were exacerbated by the privacy breach and Mr Cadigan was entitled to remedies. The Act provides for the reimbursement of the whole or any part of wages lost. Mr Cadigan's was setting himself up in business and this amounted to $744, which the Authority awarded to him. For the

significant hurt, ongoing humiliation, loss of dignity and injury to feelings he had suffered, the Authority considered Mr Cadigan entitled to compensation of $18,000.

It was in dispute between the parties whether a final bonus payment had been made. The Authority determined that the bonus scheme was still operative. Wording in the document referred to the possibility of the scheme being amended only, rather than cancelled. Neither document referring to the scheme had been signed and it is well established that oral agreements were enforceable where the terms are clear and have taken effect. Mr Cadigan was therefore entitled to be paid the bonus.

The Authority next considered if Mr Cadigan's actions had contributed to the situation that gave rise to his personal grievance and whether any remedies granted should be reduced. Although his written communication was '*immoderate*', this needed to be balanced with Mr McDonald's inappropriate approach. Given Mr McDonald's ineptitude in handling the allegations and the extent of the privacy breach no reduction in the remedies was warranted.

While PMEL failed to provide an individual employment agreement at the commencement of the employment, they sought to rectify this by providing a draft agreement. Accordingly, the Authority did not find the breach sufficiently serious or sustained to warrant imposition of a sanction on an inexperienced employer.

Cadigan v Paul McDonald Earthmoving Limited [[2020] NZERA Dunedin 399; 06/10/2020; D G Beck]

Compliance order sought for record of settlement

ZYI was employed by DPX and they entered into a record of settlement on 21 February 2020. This was signed off by a mediator on 24 February 2020. ZYI said that DPX has not complied with the record of settlement and sought a compliance order and costs.

ZYI sought to amend his claim to include a penalty and interest at the case management conference, however he did not proceed with the amendment as it would have delayed the investigation meeting, to allow time to service of the amended claim. DPX did not attend the case management conference or participate in the investigation meeting but lodged a statement in reply.

The Authority is satisfied that the statement of problem and the notice of meeting were served on DPX. The Authority is satisfied that the record of settlement is final and binding and is enforceable by them. The evidence that ZYI gave at the investigation meeting was that he was still owed $3,200 under the record of settlement. All payments due should have been made by 24 March 2020.

They Authority found that DPX did not comply with the record of settlement. ZYI has been affected by DPX's non -compliance and the non-compliance relates to payment of money. The Authority can order repayments by instalments, but only if DPX's financial position requires it.

DPX said that they could pay ZYI $100 per week and nothing further can be done. DPX did not appear or produce evidence in support of that assertion. The settlement required payment in two lots, the first within 7 days and the second within 28 days. The first payment made by DPX was less than 10% of the agreed amount. Further on, smaller payments were made.

Although DPX financial position may have deteriorated suddenly, the Authority cannot make this finding without evidence from DPX to support it. DPX's financial position based on the facts, does not require an order of payments by instalments.

ZYI was entitled to prompt compliance of the full record of settlement and DPX was ordered to pay a further $3,200 no later than Friday 30 October 2020. ZYI was further entitled to costs at $500 plus the application fee. The settlement included an obligation to keep the terms confidential. The Authority attached a copy of section 140(6) of the Employment Relations Act 2000 so that DPX were aware of the consequences they risk if they breach this compliance order.

ZYI v DPX [[2020] NZERA 428; 16/10/2020; P Cheyne]

Employer failed to discuss alternatives to redundancy and failed to provide access to company car

MIJ claimed she was unjustifiably dismissed from her employment with KZT Limited (KZT) in October 2019 and was unjustifiably disadvantaged when she was not allowed the use of a vehicle. MIJ sought permanent reinstatement and sought reimbursement for lost wages, KiwiSaver contributions and holiday pay. MIJ sought compensation of $30,000, compensation for the loss of the benefit of the vehicle and a penalty for good faith breaches.

Over the past three years, KZT had suffered net losses and received quarterly funding, which the funding organisation indicated would end in June 2019. This was unexpected news for KZT which needed to address the level of funding for 2019 and 2020 and then reduce expenditure to operate profitably without the funding. The Employment Relations Authority (the Authority) found KZT had a justifiable reason to restructure.

A change in the structure of MIJ's hours were suggested in an email to her on 21 May 2019 from her Manager. MIJ had not yet returned to work following an accident in the company car, but there was a return to work plan underway by ACC.

On 20 June 2019, KZT updated MIJ on the funding position and the need for change. The Authority was not satisfied that MIJ knew about the financial concerns and possibility of redundancy. MIJ thought the meeting was to discuss rehabilitation and return to work hours. This meeting went from negotiating changing of hours to a formal restructuring. On 10 July 2019, MIJ wrote to the Chair and Board Members of KZT, expressing concern and set out she did not understand how KZT arrived at the restructuring of hours and why this was the only proposal put forward.

The Authority found that the recovery plan, the base document for the restructuring, was never provided to MIJ. The Authority held that failure to disclose the full recovery plan would have almost inevitably had an impact on the fullness of consultation, as MIJ would not have been able to appreciate the changes proposed in their broader context.

A meeting on 15 July 2019 was held to propose alternative hours and a new roster. MIJ sent an email on 17 July 2019 accepting one of the offers and stated she wanted KZT to abide by its commitment to provide her with a company car.

The Authority held that while there were aspects of the process reflecting that of a fair and reasonable employer, had there been further discussion and clarification about alternatives to redundancy, dismissal could have been avoided. Therefore, although the dismissal was genuine in reason, it was procedurally unjustified.

MIJ's employment agreement provided the use of a car subject to a salary sacrifice. MIJ had been happy with the decision for KZT to purchase her car and allow her to use it. There was a small salary sacrifice in accordance with the vehicle policy. The car was subsequently written off and the vehicle was not replaced. KZT stated they were not obligated to provide a replacement vehicle and her salary was restored immediately after the accident. Though the employment agreement stated MIJ "*may*" be offered a vehicle, the letter of offer used the word "*will*" which the Authority put weight upon to imply there would be access to a vehicle.

The Authority found the MIJ's employment was affected to her disadvantage when there was no access to a replacement vehicle after the accident and MIJ did not have the benefit of any insurance pay out to replace the vehicle. The Authority held that the failure to provide access to a vehicle after the company vehicle was written off from the accident, was an unjustified action that caused disadvantage.

The Authority found that there was a breach of good faith and considered two points in their decision not to award a penalty. Firstly, that the compensation award would overlap a penalty to a degree. Secondly, that there were unusual circumstances in this case with the conduct of MIJ after the redundancy decision. The Authority was not satisfied that MIJ adhered to her responsibility in her employment agreement to act in a way that promoted and protected the KZT's business, reputation and relationship. Subsequently, the Authority did not award a penalty for the breach of good faith.

MIJ sought permanent reinstatement to her former position with KZT. The Authority heard a lot of evidence from various staff at KZT and clients of KZT. Ultimately, the Authority found that there would be a health and safety risk should MIJ be permanently reinstated due to the level of distress and dysfunction. The Authority did not

think the employment relationship could be re-built and it was therefore not practical or reasonable to order MIJ permanent reinstatement.

MIJ was unjustifiably dismissed and unjustifiably disadvantaged. The application for permanent reinstatement was declined. KZT was ordered to pay MIJ $25,442.76 for lost wages, $763.28 for KiwiSaver, $2,035 for holiday pay and $25,000 for the unjustified disadvantage and dismissal. There was no award for the penalty for breach of good faith. Costs were reserved.

MIJ v KZT Limited [[2020] NZERA 395; 05/10/2020; H Doyle]

KiwiSaver obligations not met

Mr Gore was employed by Color IT (2010) Limited (Color IT) for approximately eight years until 28 March 2019. At the time Mr Gore's employment began he enrolled in KiwiSaver. Sometime in early October 2011, Color IT ceased making KiwiSaver contribution deductions from Mr Gore's fortnightly wages. Color IT said that was due to an administrative error caused by their external payroll service provider. The effect of the action caused the employer's KiwiSaver contributions to be halted as well.

The error went undetected until November 2014. The parties then discussed what should occur, but the issues were not progressed. After his employment with Color IT ended, Mr Gore sought advice on the matter and shortly afterwards a statement of problem was lodged with the Authority.

The Authority and the parties engaged in several case management conference calls following receipt of the statement of problem in August 2019. Initially Mr Gore claimed for remedies associated with an unjustified disadvantage personal grievance and sought a penalty. Both the claims were effectively withdrawn where each was raised outside the statutory timeframe for which each claim should be made.

In accordance with the Employment Relations Act 2000 ,Mr Gore's claim for reimbursement of KiwiSaver payments was modified to concern only the payments omitted after 21 August 2013. An investigation meeting was initially scheduled, however following the exchange of information it was agreed the matter could be determined on the papers.

The Authority made orders to resolve the quantum of moneys owed to Mr Gore in regards to his KiwiSaver account. Color IT Limited was ordered to pay the sum of $3,212.55 to IRD for placement into Mr Gore's KiwiSaver account. The sum ordered by the Authority comprised of payments for missed KiwiSaver contributions, missed Government KiwiSaver contributions, and payments for unpaid employer KiwiSaver contributions and interest.

Gore v Color IT (2010) Limited [2020] NZERA 441; 23/10/2020; M Ryan]

For further information about the issues raised in this week's cases, please refer to the following resources:

Discipline

Good Faith

Restructuring and Redundancy

Individual Employment Agreements

Privacy

Full and Final Settlements

KiwiSaver

Employer News

Government extends business debt relief to October 2021

To assist with the ongoing economic recovery from COVID-19, rules allowing affected businesses to put their debt on hold have been extended by 10 months.

“New Zealand’s economy is recovering better than we expected, but the impacts of the pandemic are far-reaching and some businesses need continued support to keep trading,” Finance Minister Grant Robertson said.

“To help companies that are struggling due to COVID-19, we are keeping the business debt hibernation scheme open until 31 October 2021.

“The Government introduced the scheme earlier this year as part of relief measures aimed at cushioning the economic impacts of the pandemic. The scheme allows businesses that meet the necessary criteria to place their existing debts on hold for up to seven months.

“This is intended to give businesses time to explore options for continuing to trade, when they might otherwise have been liquidated by their creditors,” Grant Robertson said.

Commerce and Consumer Affairs Minister David Clark said preventing insolvencies means retaining jobs and cashflow in the economy.

“Business debt hibernation gives some breathing space to businesses that are doing it tough. It means when creditors start applying pressure, company directors have the support of a tailored mechanism to work through options with their creditors to find a way forward.

“This is a good outcome for not only company owners but also their employees, creditors and the wider economy.

Grant Robertson said debt hibernation is not designed to prevent companies with no realistic prospect of continuing to trade from going under.

“Safeguards are also in place to protect against abuse of the measure, including the requirement for creditors to vote on a business’s proposal.”

New Zealand Government [1 December 2020]

Bill introduced to support workers with 10 days sick leave

The Government is delivering on a key commitment by introducing a Bill to Parliament to expand sick leave entitlements from five days to ten days a year, Workplace Relations and Safety Minister Michael Wood announced today.

“COVID-19 has shown how important it is to stay at home when people are sick. The Holidays (Increasing Sick Leave) Amendment Bill will mean more workers can stay at home if they’re sick, and more sick leave will help support working parents.

“The Bill also keeps the current maximum entitlement of any unused sick leave at 20 days annually, which will help make it easier for businesses to implement.

“We know businesses benefit too when their staff stay at home when they’re sick – it means bugs don’t spread, leading to fewer absences and increased productivity. Respondents to the 2015 American Working Conditions Survey who reported working while sick estimated that this reduced their productivity by around 20 per cent on average, and an Australian study has found the healthiest workers are up to three times more productive.

"While around half of all employers provide the current minimum entitlement of five days, many employers offer ten days or more already, and this will mean no change for them. But five days can be easily used up and employees who have used up their sick leave face a choice between working while sick or taking unpaid sick leave, which is not an option for many.

"Currently the Bill would not give all employees additional sick leave on the same day. Employees will receive their increased entitlement depending on when they started, allowing businesses time to prepare. The Bill also keeps the current maximum entitlement which allows any unused sick leave to be carried over up to 20 days annually.

"As promised, we've introduced the Bill before Christmas and it will go through a full Select Committee process. This will ensure everyone can have their say on how we can best implement this important change," Michael Wood said.

The Bill is expected to pass in mid-2021 with any changes coming into force two months after Royal assent.

To Read the Bill - Holidays (Increasing Sick Leave) Amendment Bill

New Zealand Government [30 November 2020]

Progress on pay equity for DHB staff

Today's initial agreement between DHBs and the PSA on pay equity for clerical and administration staff is an important step toward better, fairer pay for this crucial and largely female workforce, Health Minister Andrew Little says.

If ratified, the agreement between the Public Service Association and the country's 20 District Health Boards provides for an immediate pay lift of up to $2500 per annum for thousands of women and some men working in the sector. Detailed work in coming months will result in further pay increases for many.

"The Labour Government is actively committed to advancing pay equity – better and fairer pay for workforces largely made up of women," Andrew Little says.

"The DHB clerical and administration workforce makes an important contribution to provision of health services to New Zealanders. It's unacceptable their work has been undervalued for so long simply because it was predominantly performed by women.

"I acknowledge the considerable effort by the PSA and its members and the DHBs to reach the point where we now have a plan to address this unfairness. I wish the DHB workers covered by this pay equity claim well as they consider this agreement," Andrew Little said.

Jan Tinetti says pay equity settlements benefit people who have been underpaid due to systemic sex-based discrimination, and those around them.

"Achieving pay equity and putting more money in the hands of the lowest paid workers has a significant positive impact on their lives, and is likely to have flow-on benefits to their whanau and the wider community," Jan Tinetti says.

Today's announcement is the latest milestone in the Government's work toward achieving pay equity such as updating the Equal Pay Act to address the gender pay gap.

This work also includes record pay settlements for a number of female dominated workforces such as the $173m pay settlement for mental health and addiction support workers.

"We still have more to do," says Jan Tinetti.

"That's why Labour has pledged to make it easier for women to gain pay equity in their organisation or across their industry through increased transparency on pay rates.

"Secrecy around pay rates has not served women well in getting fair deals," Jan Tinetti said.

New Zealand Goverment [30 November 2020]

13 parties charged by WorkSafe New Zealand over Whakaari/White Island tragedy

WorkSafe New Zealand today filed charges against 13 parties in relation to the Whakaari/White Island eruption in December last year.

"22 people have lost their lives in this tragic event. WorkSafe is tasked with investigating workplace incidents to determine whether those with health and safety responsibilities met them. This was an unexpected event, but that does not mean it was unforeseeable and there is a duty on operators to protect those in their care."

WorkSafe Chief Executive Phil Parkes says the charges conclude the most extensive and complex investigation ever undertaken by WorkSafe.

"We investigated whether those with any involvement in taking tourists to the island were meeting their obligations under the Health and Safety at Work Act 2015. We consider that these 13 parties did not meet those obligations. It is now up to the judicial system to determine whether they did or not. WorkSafe can't comment on the matters in front of the court.

"This tragedy has had a wide ranging impact on victims, families, communities and iwi. There were 47 people on the island at the time of the eruption, all of whom suffered serious injuries and trauma, and 22 of those have lost their lives. Those who went to the island, did so with the reasonable expectation that there were appropriate systems in place to ensure they made it home healthy and safe," Mr Parkes said.

"That's an expectation which goes to the heart of our health and safety culture. As a nation we need to look at this tragedy and ask if we are truly doing enough to ensure our mothers, fathers, children and friends come home to us healthy and safe at the end of each day."

Notes:

The charges were laid in Auckland District Court.

There are 10 organisations charged under the Health and Safety at Work Act 2015. Nine face a section 36 charge (failure to ensure the health and safety of workers and others) and one faces either a section 36 or a section 37 (duty of a PCBU that controls a workplace) charge. Each charge carries a maximum fine of $1.5 million.

There are three individuals charged under section 44 of the Act which requires directors, or individuals with significant influence over a company to exercise due diligence that the company is meeting its health and safety obligations under the Act. Each charge carries a maximum fine of $300,000.

WorkSafe can confirm that it did not investigate the rescue and recovery of victims following the eruption. On those matters, no enforcement action has been taken.

Those actions may be the subject of other proceedings, such as a coronial inquest.

At the commencement of the prosecution WorkSafe is unable to name any of the parties charged as they have the right to seek name suppression at their first appearance in Court.

The parties we have charged may choose to make themselves known. But to respect New Zealand law, WorkSafe cannot identify who these parties are at this time.

WorkSafe will not release the investigation reports into each charged party until the conclusion of the legal process. It is critical we respect the need to ensure the maintenance of the law, including the proper conduct of court proceedings.

WorkSafe [30 November 2020]

Legislation

Note: Bills go through several stages before becoming an Act of Parliament: Introduction; First reading; Referral to select committee; Select committee report, Consideration of report; Committee stage; Second reading; Third reading; and Royal assent.

Bills open for submissions: 13 Bills

13 Bills are currently open for public submissions to select committees.

Overseas Investment Amendment Bill (No 3) (N/A)

New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill (N/A)

Protected Disclosures (Protection of Whistleblowers) Bill (N/A)

Education (Strengthening Second Language Learning in Primary and Intermediate Schools) Amendment Bill (N/A)

Rights for Victims of Insane Offenders Bill (N/A)

District Court (Protection of Judgment Debtors with Disabilities) Amendment Bill (N/A)

Arms (Firearms Prohibition Orders) Amendment Bill (No 2) (N/A)

Electoral (Integrity Repeal) Amendment Bill (N/A)

Child Support Amendment Bill (N/A)

Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill (N/A)

Crown Pastoral Land Reform Bill (N/A)

Land Transport (Drug Driving) Amendment Bill (N/A)

Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill (N/A)

Overviews of bills - and advice on how to make a select committee submission - available at:

https://www.parliament.nz/en/pb/sc/make-a-submission/

The Employer Bulletin is a weekly update on employment relations news and recently published legal decisions. It is EMA's policy to summarise cases that contain legal issues relevant to employers. The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations. If you would like to provide feedback about the Employer Bulletin, contact advice@ema.co.nz

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