

Update

Mazengarb's Employment Law

Service 260 — April 2021

Commentary

Employment Relations Act 2000

Part 2: Key provisions

- The UK Supreme Court has held that the claimant Uber drivers were “workers”, within the relevant statutory definition, from the time they logged on to the Uber app to the time they logged off, so as to be entitled to certain minimum conditions, such as the minimum wage and holiday pay (*Uber BV and Ors v Aslam and Ors* [2021] UKSC 5) (see [ERA6.4.4]);

Part 9: Personal grievances, disputes and enforcement

- Where the issue was disputed interpretation of a motor vehicle allowance in a collective agreement, Judge Corkill took account of evidence recording the consensus position of the parties during their bargaining after “[a] potential prejudice was identified, and a relatively simple formula was created to resolve it” (*Commissioner of Police v New Zealand Police Assn Inc* [2021] NZEmpC 8) (see [ERA129.12]);

Selected topic: Contractual Aspects of Employment

- In the context of family arrangements the Courts have recognised that there is a presumption of fact against an intention of creating legal relations (*Dillon v Tullycrine Ltd* [2020] NZEmpC 5) (see [1001]);
- Where a plaintiff was the employer in her personal capacity at the outset of the relationship, but claimed that after incorporation the defendant became an employee of the company, in finding that the plaintiff remained the employer Judge Corkill emphasised that there was no documentation showing compliance with s 63A of the ER Act to verify either a variation of the original agreement as to the identity of the employer or by way of offering a new employment agreement (*O'Boyle v McCue* [2020] NZEmpC 175) (see [1009.1]);
- An employer was held to have been in breach of contract, giving rise to unjustifiable disadvantage, when one of its care workers was assaulted by a service user who had demonstrated an escalating pattern of aggressive behaviour not accompanied by adequate protective measures (*Davis v Idea Services Ltd* [2020] NZEmpC 225) (see [1026.2A]).

Selected Topic: Wages

- The Employment Court, sitting as a full court, held by a majority that the common law test of entitlement to wages through being ready, willing and able to work did not amount to “work” for purposes of s 6 of the Minimum Wage

Act 1983 (*Gate Gourmet New Zealand Ltd and Anor v Sandhu and Ors* [2020] NZEmpC 237) (see [3006.7.5] and [1826]);

- The adult minimum wage rises to \$20 per hour, and the training rate rises to \$16 per hour, as from 1 April 2021 (Minimum Wage Order 2021, LI 2021/24) (see [1806]).

Policing Act 2008

- A rotation of Police employees made in accordance with s 65, where the employee was rotated to a new place of work, was held to be one where that person was required to travel to an alternative place of work for purposes of a motor vehicle reimbursement allowance (*Commissioner of Police v New Zealand Police Assn Inc* [2021] NZEmpC 8) (see [PCA65.5]).

Social Security Act 2018

- The end date of the scheme under which temporary visa holders who cannot return home are eligible for an emergency benefit under s 64 of the Social Security Act has been extended from 28 February to 31 August 2021 (see [SSA20.11.2]);
- Where an appellant's partner was injured whilst working almost full time and he was receiving jobseeker support at half the de facto rate, the Social Security Appeal Authority has confirmed that accident compensation payments to his partner had to be deducted dollar for dollar from his benefit under what is now s 198 so that "when a beneficiary, or their partner and therefore their household, lose work income through injury they get no assistance from the ACC payments" (*Security Appeal Authority Decision SSA 64/ 19* [2020] NZSSA 7) (see [SSA21.9]).

Legislation

Parental Leave and Employment Protection Regulations 2016

The Parental Leave and Employment Protection Regulations 2016 has been amended by the Parental Leave and Employment Protection Amendment Regulations 2021 LI 2021/9.

Public Service Act 2020

The Public Service Act 2020 has been amended by the Public Service (Border Executive Board) Order 2020 LI 2020/307.