BUDDLEFINDLAY

Legal update - Recovering employment related costs

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Recruitment-related costs, and work-related costs such as for equipment and training, generally have to be met by the employer.

A recent Employment Court case, *Labour Inspector v Tech 5 Recruitment Limited*, shows that attempting to recoup these costs from employees could breach the Wages Protection Act 1983 (WPA). The case also shows that care needs to be taken when bonding employees (ie making an employee liable to pay an amount if he or she does not remain employed for a certain period of time). If a bonding arrangement does not benefit the employee, it may be inconsistent with the WPA.

As part of its business, Tech 5 employed Filipino carpenters to work on the Christchurch rebuild. Costs for recruiting the carpenters and bringing them to New Zealand included flights, insurance, immigration-related costs, and 'trade testing' costs. Trade testing was a process Tech 5 carried out in the Philippines to assess candidates' English-language and carpentry skills. Its costs included flights to and from the Philippines for Tech 5 staff, as well as accommodation and facility hire.

Employment agreements offered to successful candidates recorded that the employee consented to Tech 5 deducting $125 a week from the employee's pay in relation to these costs, until $6,650 had been paid. Tech 5 made deductions from employees' pay accordingly. In addition, employees agreed that certain amounts could be recovered from them. This included trade testing costs, if they did not work for Tech 5 for three years (the bond clauses).

The issues before the Court included whether requiring payment for the trade testing costs and imposing bonds in relation to them breached section 12A of the WPA. This section states that an employer may not "seek or receive any premium" for employing a person.

The Court considered that section 12A prohibited employers from requiring a person seeking work to make a payment in return for a job, and from passing on costs of business which would ordinarily be the employer's responsibility. The Court found that Tech 5 carpenters had to agree to the deductions for the trade testing costs if they wanted employment. Also, the trade testing process principally benefitted Tech 5. Other than satisfying Tech 5 that they were sufficiently skilled for employment, the carpenters received no benefit from it. Accordingly, in seeking and recovering the trade testing cost from the carpenters, Tech 5 breached section 12A.

The bond clauses also breached section 12A. In the Court's view, a legitimate bond would usually relate to an arrangement which benefitted both the employer and employee. For example, an employee agreeing to a bond in exchange for the employer paying for a recognised course of training, resulting in the employee being more qualified and the employer having the benefit of that. Tech 5's trade testing process was not such an arrangement.

Tech 5 could, however, require reimbursement for the carpenters' airfares to New Zealand (presumably on the basis that such a cost would not ordinarily be borne by an employer), and for the purchase price of tools which the carpenters would own (as this would provide them with a benefit, and it was customary for tradespeople to own their own tools).

If an employer is considering recovering costs from an employee or bonding, careful consideration should be given to whether the employee will benefit from the arrangement, over and above the benefit the employee has from being employed. If not, and particularly if the cost is normally covered by the employer or has been in the past, cost recovery or a bond may breach the WPA.

Note also that an employer's right to deduct amounts owed from wages is more limited than it was. Even if there is a general right in the employment agreement to deduct amounts owing, the employer must consult the employee first. As before, the employee is able to withdraw consent at any time before the deduction is made.

Minimum employment standards: changes from 1 April 2017

In our December 2016 legal update, we set out the changes to minimum employment standards coming into effect from 1 April 2017 (e.g. agreed hours of work, availability provisions, secondary employment). As we said in that update, if you have not done so already, we recommend you review your employment agreements to ensure compliance with these changes.

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