Under the table payments cause problems

By Alan Knowsley

2 Mar 2018

The Employment Relations Authority has rejected a personal grievance claim for unjustified dismissal of a retail assistant. The employee claimed she was on regular hours of employment and when she advised the employer that she was pregnant the employer did not offer her any further shifts.

The ERA found however that the employee was employed on a casual basis and no obligation to accept work when offered and no obligation on the employer to offer any shifts. The claim for a dismissal therefore failed as the employer was not obligated to offer any further work to the employee.

The sting in the tail though for the employer is that the ERA commented adversely on the employer's failure to provide a written employment agreement for the employee, paid the employee under the table and did not deduct PAYE and did not file employer monthly statements with the IRD. The employer also failed to discuss KiwiSaver and did not pay holiday pay or the minimum wage.

No doubt following the decision the employer can expect a visit from both the IRD and the Labour Department with prosecutions the possible outcome. Failing to comply with your obligations as an employer and then getting into a public fight with an employee where the outcome is reported in the media and in official publications is perhaps not the smartest move when attempting to pay employees under the table.

Alan Knowsley
Employment Lawyer
Wellington

$35 loan leads to unjustified dismissal

By Alan Knowsley

9 Mar 2018

The Employment Relations Authority has upheld a personal grievance claim for unjustified dismissal.

An employee had borrowed $35 from his boss and an altercation followed the boss asking to be repaid. The altercation occurred in front of other employees and resulted in the employee going home feeling stressed. The employer then dismissed the employee by text message.

The ERA found that no proper process had been followed in relation to the non-repayment of the loan. If a disciplinary process had been followed it might have resulted in justified disciplinary action against the employee which could have included dismissal, however as no process was followed the employer was not justified in dismissing the employee by text in the way it did.

The employer was ordered to pay the employee three months wages plus $7,000 compensation and other costs. There was a deduction made of 30% for the employee's contributory conduct in relation to non-payment of the loan.

Alan Knowsley
Employment Lawyer
Wellington