

Caught with a hand in the cookie jar

As times get tougher, there is potential for trusted employees to extract more from an employment relationship than they are entitled.

Theft is more than just stealing money out of the petty cashbox – it can come in the form of theft of time (e.g. excessive internet use), theft of resources (e.g. intellectual property), and theft of company property (e.g. inventory).

An employee committing theft offences is not only breaching employment law but also criminal law. When these two laws overlap things can get tricky, so an employer's reaction to such alleged serious misconduct such as theft, is key.

Employers have a duty to conduct their own investigation into allegations of serious misconduct, and in most circumstances it is CRUCIAL that this



happens before the matter is turned over to the Police – particularly if the employer would prefer some level of confidentiality. The employer cannot apply for name suppression in criminal proceedings; all they can do is ask the Police to do this on their behalf. Whether Police do this or not is at their discretion.

Another problem is that once the matter is with the Police it is outside the employer's sphere of control, thus potentially restricting the employer's ability to investigate and question the employee's wrongdoing themselves.

There have been several cases where the Courts have prohibited (by way of court injunction) an employer from questioning an employee about matters subject to a criminal process in an

attempt to protect the employee's right to silence and a fair trial.

So, what could this potentially mean in practice?

- a.) You cannot investigate the alleged serious misconduct in the employment context.
- b.) You cannot conduct a disciplinary meeting or dismiss the employee who may be on suspended pay for many months until Police prosecution is completed.
- c.) You are still bound to act in 'good faith' and honour the employee's terms and conditions as laid out in their employment agreement.

What can you do?

The good news is that generally you can conduct your own investigation before referring the matter to the Police. The bad news is, if handled incorrectly, it could prove to be very costly when the employee is suspended on pay for a lengthy period of time pending the outcome of the criminal process.

If you find yourself in a sticky employment situation, call on Grow Human Resources BEFORE dialling 111.

Employment Agreements

We have recently identified that many of our clients do not have Employment Agreements in place. The Employment Relations Act requires written employment agreements (individual or collective) to be provided by an employer prior to an employee commencing work.

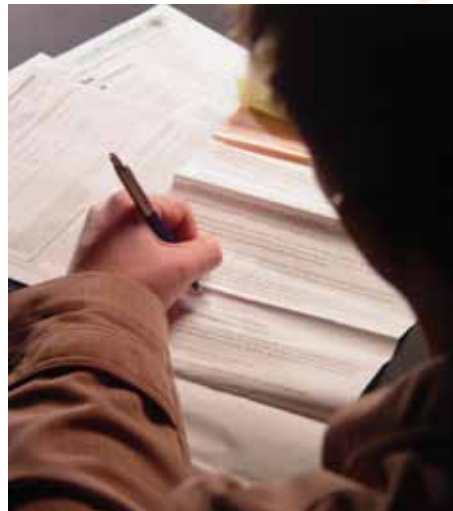
Failure to have agreements in place could incur a penalty of up to \$10,000.00, although we are not seeing penalties this severe awarded.

More importantly, the absence of an employment agreement can translate into a 'silent stance' in a number of common situations.

For example, an employer whose business was affected by the economic downturn wished to restructure his business, but did not have employment agreements in place with his staff members.

One employee challenged the restructure, and this went on to the Authority. Because the employer was silent on redundancy compensation and could not agree an amount with the affected employee, the Authority imposed a remedy of paid redundancy

compensation based on a formula of 4 weeks salary for the first year of service and 2 weeks salary for every year of service thereafter.



In this case a well-worded agreement could have negated the need to pay anything. An expensive learning curve!

Not only does a written employment agreement put you on the right side of the law, it also protects the employer's interests and removes confusion between the parties. Often business owners try to save a few dollars by going online to develop their own, or copy another organisation's agreement from templates.

We would strongly recommend against this as these agreements tend not to allow for significant managerial prerogative and often contain inappropriate clauses that may create unnecessary costs to an employer.

A few hundred dollars spent on an employment agreement is far less costly than the stress and headache further down the line.

GrowHR can provide reasonably priced employment agreements to suit any individual employers' needs.



Immigration issues

Businesses who regularly employ people from overseas are being warned that new laws could see them penalised for immigration advice they give.

From May 2009, the New Zealand Immigration Advisers Licensing Act 2007 requires that any person who gives immigration advice to possible employees, where they draw on personal experience that goes

beyond information that is publicly available, must either obtain an immigration adviser licence, or stop giving advice.

The potential penalties for failing to heed to this requirement could result in a \$100,000 fine or a maximum seven years in prison.

Swine flu and how it affects you

The spectre of a pandemic such as swine flu hitting the workplace is a scary one both for employees and employers facing the possibility of lost earnings and productivity.

Employers have a duty to take all practicable steps to provide and maintain a safe working environment for employees. The arrival of this virus presents a timely opportunity to ensure robust health policies and strategies are in place specifically for a pandemic such as swine flu.

There are several issues that arise including whether employees are entitled to be paid and what type of leave can be used to cover their absence. Here are some possible scenarios that employers might face:

- **An employee stays at home because they have flu-like symptoms.** Usual sick leave entitlements will apply. If sick leave entitlements run out, the employer and employee can agree on the employee using their annual leave entitlements or alternative holidays instead.

- **It may be that an employee is not at work because they, their spouse/partner, or a dependant have potentially been exposed to the virus, but are not actually sick.** If this is the case the employee may pose a threat to others in the workplace and the employer may be obliged under the Health and Safety in Employment Act to direct them NOT to come to work. In this case, the employee is not automatically entitled to take sick

leave. They will need to agree with their employer on what basis they are off work. Options such as paid or unpaid leave will be available in accordance with their employment agreement and related workplace policies.

- **An employee refuses to attend work because they fear they may contract swine flu in the workplace.** If the employee or their dependant is not actually sick, they are not entitled to sick leave. It is reasonable to expect employees to attend work where all practicable steps have been taken to protect them and where they are physically able to attend. All practicable steps means everything a reasonable person would do, given the severity of the risks, what's known about them, and the availability and cost of safeguards. If employees are still concerned, they need to raise it with their employer or health and safety representative and work together to resolve the issue.

- **The Ministry of Health closes down a place of work.** Wages are normally payable if an employee is ready and willing to perform work, but whether or not the employer is obliged to pay wages will depend on the particular circumstances of the business closure.

As you can see, there is a lot to consider and employers would be wise to take all the issues into account if managing an outbreak, and look for practical alternative agreements to each individual situation.

Employees who are unable to work because of a pandemic and - as a result - find themselves struggling financially, may be able to apply to Work and Income for assistance.

If you need help developing a Swine Flu policy or require advice specific to your situation, please contact GrowHR.



Personal grievance awards at all time high

The Dominion Post recently reported that new records were set last year for personal grievance awards with a large majority of decisions running in favour of employees.

An estimated 521 personal grievances were heard by the Employment Relations Authority in 2008, and 67% of these were found in favour of employees.

The increase in the number of grievances was mainly due to the number of claims of disadvantage or dismissal due

to poor performance doubling from those in 2007, rather than cases arising from restructuring or redundancy.

The average national compensation award, however, went down by 26% from \$6804 in 2007 to \$5067 in 2008.

About half of last year's cases were taken by employees in their first year of work, and although the law recommended reinstatement to a job as the primary remedy, only 17 out of the 521 employees were reported to claim it.

Hastings City Business Awards



GrowHR is delighted to have been nominated for the Hastings Business Awards.

We have worked hard to develop and maintain a reputation of employing experts, and being responsive, practical, cost effective and supportive to our clients whilst having fun in the process.

The fact that we now do business largely based on referrals, coupled with this nomination, leads us to believe we must be headed in the right direction.

Our thanks to whoever nominated us!



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This newsletter is not intended as specific legal advice, but is to alert our clients to current issues of interest. If you require further information or specific employment advice regarding matters covered, or any other human resource matters, please contact your team at GrowHR.