

Dispatch

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dundas street employment lawyers



Employment Law Obligations in the Covid-19 Landscape

The nation-wide lockdown and closure of all non-essential businesses placed significant stress and pressure on businesses to prepare for closure, ensure the sustainability of their business and to look out for their staff. One of the big questions thrown up by the Covid19 pandemic response and the subsequent lockdown is what, if any, impact did those circumstances have on employment law obligations.

There was serious debate among legal practitioners about this issue, with some lawyers arguing that because workers were not 'ready, willing and able' to work, an employer was not obliged to pay them in accordance with their employment agreements.

At Dundas Street we advised that unless Parliament specifically amended or suspended the law, employment obligations had not changed. Our view was that the intervening lockdown did not necessarily mean that employees were not ready, willing and able to work, where circumstances outside of their control prevented them doing so.

The lockdown ended nearly two months ago, and the first Employment Relations Authority decisions are emerging challenging employment decisions made during that period.

In *Raggett & Ors. v Eastern Bays Hospice Trust* [2020] NZERA 266, the Employer had closed its stores and obtained the Government Wage Subsidy ("GWS"). It informed its staff they would be paid at 80% of their salary until the end of the lockdown, without consultation or agreement.

After going through a redundancy process, a number of employees were made redundant. The Trust provided those affected with an 8-week notice period, twice what they were contractually obliged to do. However, the first four weeks of notice was paid at 80% of their salary or wages and the second four weeks' notice was paid at the amount of the GWS, being \$585.80 per week

The Authority confirmed that the Employment Relations Act had not been suspended, and in particular the provision preventing terms and conditions of employment from being unilaterally varied. The Authority further held that the employees were 'ready, willing and able' to work, but for the intervening event of the Covid-19 restrictions. On that basis, the Trust was found to have breached its obligation to pay salary and wages to its workers during employment, without deduction. Orders for payments are yet to be made.

This decision is likely to be the first of many we expect to see. While we think that the Authority will likely continue to decide cases in the same way, the final legal position won't be clear until the Employment Court has considered these issues thoroughly.

If you have any questions or concerns about your obligations in this respect, please contact us.