



On One Condition . . .

Client Services:

- General advice in relation to all employee-related issues
- Resolving Personal Grievances and Workplace Disputes
- Employment Agreements - drafting and negotiation
- Employment Relations Authority/Employment Court and Mediation Representation
- Employment Relations Strategies
- Training
- Monthly newsletter

A recent Employment Relations Authority decision, **Edwards v Laybuy Holdings Limited**, has shone a spotlight on conditional offers of employment.

Mr Edwards was offered a role by Laybuy Holdings Limited ("**Company**"), subject to satisfactory pre-employment checks. The offer of employment was later withdrawn by the Company because the pre-employment checks were unsatisfactory.

Mr Edwards then raised a personal grievance for unjustified dismissal, despite never actually commencing work for the Company. Mr Edwards argued that because the Company had offered him employment and he had accepted that offer, he had become a "*person intending to work*" and therefore was an employee under section 6 of the Employment Relations Act.

The Company argued that because the offer was conditional upon the completion of the pre-employment checks to the Company's satisfaction, the offer could not be accepted until the conditions were met. The Authority agreed, noting that the Company had not waived the conditions and had in fact insisted the conditions be met.

Mr Edwards was therefore not an employee and could not raise a personal grievance.



BUT: What about the situation where a person has accepted a conditional offer of employment and then is allowed to commence work before the conditions are met?

In this situation, the person is an employee and they are working for pay, albeit on a conditional basis. However, if one or more of the conditions are not met, this can be grounds for dismissal. Whether the conditions are contained in a letter of offer, or in the employment agreement, the employer must act reasonably in applying them. The parties must act in good faith and any dismissal must be both substantively and procedurally justified: the employer must undertake a process before dismissing the employee.

Christmas/New Year Shutdown 2022/2023:



Our offices will be unattended from the close of business on Wednesday 21 December 2022 and will officially reopen on Monday 16 January 2023. We will have a skeleton team working from Wednesday 11 January 2023. For urgent matters during this holiday period please refer to our contact details overleaf.

Fair Pay Agreements: Meetings & Union Access to the Workplace

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Dean Kilpatrick, Jane Taylor, Deborah Hendry or Jane Jarman.**

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With much of the Fair Pay Agreements Act 2022 ("**FPA Act**") coming into force on 1 December 2022, bargaining has already been initiated for a Fair Pay Agreement ("**FPA**") for the hospitality industry. Bargaining is expected to be initiated for several other industries and occupations in due course, including:

- Cleaners;
- Security guards;
- Early childhood centre workers;
- Supermarket workers; and
- Bus drivers.

FPA Meetings

Once the Chief Executive of MBIE has approved an application to initiate bargaining for an FPA and bargaining parties have been formed, employees may arrange FPA meetings. A Union (the employee bargaining party) must give at least 14 days' notice of the date and time of the meeting to each employer who has employees who are eligible to attend the meeting. The Union must also make arrangements with each employer to ensure that the employer's business is maintained during the FPA meeting. Employees may also arrange meetings in related to a proposed variation to an FPA.

Employers must allow each covered employee to attend:

- two FPA meetings in relation to a proposed FPA; and
- one FPA meeting in relation to a proposed variation to an FPA; and
- two meetings in relation to a proposed renewal or proposed replacement of an FPA; and
- A further FPA meeting if the employees have already attended two FPA meetings and the first ratification vote for a proposed FPA is against ratification.

Each meeting must last no longer than two hours. Employees are entitled to their ordinary pay for attending FPA meetings, up to a maximum of two hours.

Access to the Workplace

The Union is also entitled access the workplace without the employer's consent, if the primary purpose of entering the workplace is to discuss with a covered employee:

- an FPA; or
- bargaining for a proposed FPA; or
- a proposed variation to an FPA; or
- a proposed renewal or replacement of an FPA.

These involve discussions related to the following:

- communicating to employees any progress in bargaining for the proposed FPA/variation; or
- seeking feedback from covered employees about any aspect of the proposed FPA/variation; or
- communicating the terms of the FPA; or
- seeking information from covered employees about the implementation of the FPA; or
- seeking feedback from covered employees about key issues relating to the FPA; or
- identifying any issues relating to complying with the FPA or the FPA Act; or
- seeking feedback from covered employees about renewing or replacing the FPA.

The discussions must not exceed a reasonable duration and an employee's pay must not be deducted for the duration of the discussion.

A Union representative may only enter the workplace at reasonable times during any period when any covered employee is at work and in a reasonable way (having regard to the normal business operations in the workplace). They also must comply with any existing reasonable health and safety or security requirements of the workplace. If an employer does not allow the Union to access the workplace in breach of the FPA Act, they may be liable for a penalty of up to \$20,000 (for an individual person) or \$40,000 (for a company).

If you have any questions about Union access to the workplace or about FPAs generally, please give us a call to discuss further.

ER Seminars - 2023

As a few clients have asked when we will be running our popular 2 Day Employment Relations Course in 2023 we have set the following dates:

Wednesday 22 and Thursday 23 March 2023;
Wednesday 21 and Thursday 22 June 2023 (subject to demand); or
Tuesday 12 and Wednesday 13 September 2023

Further information in regard to the course content and registration details can be found on our website – www.mgz.co.nz/training If you wish to enroll simply email your registration and contact details to carey@mgz.co.nz