



ISSUE

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a regular newsletter for clients of  
mcphail gibson & zwart ltd

## Can artificial intelligence replace the human element in an employment relationship?

### 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

Generative artificial intelligence is growing at a rapid rate and finding its way into most areas of our lives. It is therefore unsurprising that it is now being applied in all stages of the life cycle of an employment relationship.

A few months ago, we used ChatGPT to generate a case analysis for The Advocate [Issue 336, March 2023]. The results left room for improvement. Since then, AI has expanded its knowledge significantly, by gathering substantial volumes of data from the internet, as well as data that has been input into it.

### Use of AI in recruitment

One of the key functions of AI is its ability to gather and analyse substantial amounts of data, outputting results based on set parameters. It's no surprise therefore that AI is being used in the space of recruitment to scan through large amounts of CVs and applications to refine them to a small manageable quantity that an employer can then review. AI can also create interview questions, and conduct interviews for an employer.

However, the use of AI in recruitment does not come without risk. In particular, there have been previous cases where AI has been used in recruitment, and companies have uncovered inadvertent prejudices and discrimination.

By way of example, in 2017, Amazon trialled an AI hiring tool to recruit candidates. The hiring tool reviewed CVs and observed patterns in successful and unsuccessful applicants over a 10-year period. Due to the industry being predominantly male, the tool ultimately trained itself that male candidates were preferable to Amazon.

For example, the software learned to penalise candidates that included words in their CV such as "women's". The results found the hiring tool systematically discriminated against women that had applied for technical jobs at Amazon.

There are number of potential causes for AI hiring biases including inadvertent bias in the data that is input into the system, the algorithm design, and inherent human biases.

In the Amazon case, incorporating a human element when using AI in recruitment could have meant the bias was recognised and addressed. Humans can also analyse and evaluate soft skills, such as people skills, attitude and how the person will work within the workplace culture, which AI may not be able to do well. Therefore, it is vital that the human element remains in the recruitment process, to ensure the best candidates are selected for roles.

### Managing the use of AI in workplaces

With AI becoming more prevalent, businesses may be considering *how* and *if* it should be used within their workplace. There are a number of important considerations that the use of AI gives rise to in the workplace, such as: privacy considerations, protection of confidential information and intellectual property, and the quality of work that is generated by AI.

Having a policy that covers how AI will be used (if at all) can be beneficial both for employers and employees to set the boundaries for how a business will move forward in the artificial intelligence age. If you would like to discuss the use of AI in your workplace further, please contact one of our team.

## 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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## Legislative Updates

### Fair Pay Agreements

The Fair Pay Agreements Act 2022 was repealed effective from 20 December 2023. As no fair pay agreements had concluded bargaining, there is no effective change in this law being repealed.

### Trial Periods

On 22 December 2023, the Employment Relations (Trial Periods) Amendment Act 2023 was passed. The Act removed the restriction on the use of trial periods to small-medium sized businesses, meaning that an employer, regardless of the number of employees they have, may enter into an employment agreement with new employees that contains a trial period provision. The change is effective from 22 December 2023. There are strict requirements relating to the provision and use of trial periods that must be complied with.

This may be an opportunity to review your current template employment agreements and discuss including a trial period provision with us. If you have any questions, or if there is anything else we can assist with in regard to your template employment agreements, please contact our offices to discuss further.

## Training Calendar 2024

### 2 Day Employment Relations Practice Seminar:

MGZ offer a 2 day course which covers everything you need to know about the employment relationship in a comprehensive and well-structured way.

This course is key if you're looking to improve your understanding of :

- employment law
- pre-employment process and employment agreements
- performance management
- discipline and termination
- leave entitlements
- restructuring

Led by our team of experienced and knowledgeable lawyers, this course is the obvious choice for professional development and upskilling.

### 2024 Dates:

13 and 14 March 2024  
12 and 13 June 2024

### Health & Safety and Wellbeing Seminar

Previously a part of the 2 day ER Seminar outlined above. In 2024 we will be trialling this as a one day stand-alone seminar which, in addition to Health and Safety, will also cover Wellbeing in the Workplace. The seminar examines some of the key definitions and concepts under the Health and Safety at Work Act 2015.

### 12 September 2024

Further details can be found on our website – [www.mgz.co.nz](http://www.mgz.co.nz)

## Staff Update



We are delighted to announce that Jane Jarman has been promoted to Associate. Jane started with MGZ in April 2022 as a Senior Solicitor, and since then has worked proactively across challenging cases achieving positive outcomes for clients. Jane is excited to continue contributing to the MGZ Team as our new Associate.