



# cullings

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## Misleading CVs

The recent news coverage about Mary-Anne Thompson, former head of the Immigration Service, revealed that there was no apparent record of her being awarded a PhD by the prestigious London School of Economics. Media reports suggest she had claimed this qualification in previous jobs.

This kind of situation is encountered often enough by employers that **Cullen – the Employment Law Firm** wants to provide some pointers on how to avoid it, and what employers should do on discovering that a CV or interview declaration is not honest.

The first important step in any recruitment situation is to accept that checking CVs and declarations is a necessary part of employing staff. Although checking CVs and references can be difficult, time-consuming and a detail many employers would like to skip over, it is an important step and one which should not be neglected. In some cases, where referees cannot be contacted or information remains unverified, asking a potential candidate for further references may be necessary and prudent. Courts are unlikely to be lenient on an employer who does not take reasonable steps to vet prospective employees.

But what if an employer fails to thoroughly check details and someone already hired turns out to have exaggerated – or outright fabricated – their relevant qualifications? Is there any remedy?

In extreme cases, charges of fraud can be laid against the employee. This happened in 2002 when Canadian John Davy was hired as Chief Executive of the new Maori Television Service. His employment was partly based on his MBA from the Ashland School of Business at Denver State University. This establishment apparently turned out to be nothing more than an online degrees-for-cash scam. A quick Google search shows that the “university” is specified as being not accredited by the Council on Higher Education Accreditation. In other words the

degree is not worth the paper it is printed on. Another clue to the “university’s” poor credentials might be that Denver is a city, not a state, as a cursory Wikipedia search will reveal. Davy was convicted of fraud, sentenced to 8 months in prison, but was deported after serving 13 weeks.

Other recourses when confronted with a fraudulent CV include:

- Contractual Remedies Act 1979 (CRA). Under the CRA an employer can claim damages against the employee because the employee has essentially broken the contract. The misrepresentation must have been causative of the other party entering the contract. Examples: employees claiming extensive relevant experience or fabricating relevant qualifications. Some damage or loss from the misrepresentation must be shown for this remedy to be effective.
- Employment Relations Act 2000 (ERA). The ERA legislates against misleading or deceptive conduct in employment contexts and could be used to take the employee to the Employment Relations Authority.
- Dismissal for misrepresentation – when there is significant and wilful misrepresentation, Courts may agree a dismissal was justified.

## How can employers safeguard themselves?

Ask prospective employees to sign a declaration when they apply for the position. The declaration should make clear that a false CV or other recruitment misrepresentation, if discovered after the employment has commenced, may be regarded as serious misconduct by the employer. This then will provide the employer with the option of a disciplinary process and the result may be dismissal.

**Cullen – the Employment Law Firm** can help draft declarations and assist with any investigation or disciplinary process that might follow the discovery of a false CV claim.

**cullings** is the newsletter of  
**Cullen – the Employment  
Law Firm**

Level 13, Willbank House  
57 Willis St, Wellington  
Phone 04 499 5534  
Fax 04 499 7443  
enquiries@cullenlaw.co.nz  
PO Box 11 218  
Wellington, New Zealand

**Peter Cullen**  
Principal  
peter@cullenlaw.co.nz

**David Burton**  
Senior Associate  
david@cullenlaw.co.nz

**Rachel Burt**  
Associate  
rachel@cullenlaw.co.nz

**Richard Roil**  
Senior Solicitor  
richard@cullenlaw.co.nz

**Charles McGuinness**  
charles@cullenlaw.co.nz

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## CHANGES IN EMPLOYMENT LEGISLATION – KEEPING YOU UP TO DATE

### Minimum Wage

On April 1 this year, the Minimum Wage (New Entrants) Amendment Act came into force, amending the Minimum Wage Act 1983. Its effect is to remove age discrimination by providing that any 16 or 17 year-old is to be paid at the adult minimum wage if they:



- have worked for either 200 hours or three months (whichever is shorter); and
- are not supervising or training other workers; and
- are not subject to the minimum training wage.

There is no statutory minimum wage for employees under 16 years of age. The new entrants' minimum wage rate has been set as \$9.60 an hour before tax as of 1 April 2008.<sup>1</sup>

### Flexible Working Hours

The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 amends the ERA and comes into force on July 1. The Act is designed to make it easier for employees to request alterations to their hours or place of work if they have the care of any person.

An employee may only make a request if: they provide "care" for "any person" and they have been working for the employer for at least the 6 months previous to the date the request is made. The Act does not define either "care" or "person", instead leaving the categories wide open.

**Cullen – the Employment Law Firm** has reviewed the Act. Issues to be aware of include; any request by an employee, regardless of whether it falls under the new Act, should be considered in terms of the obligation of good faith. Each employee can lodge only one application in any 12 month period under the new Act. Therefore applications should be well thought out and not made without good reason.

An application to vary terms and conditions of employment may of course be made at any time outside of the new Act and would be a

matter for negotiation between employer and employee.

The Act emphasises proper procedure. It sets out the process that must be followed by an employee when making a request and it sets out the process employers must follow when considering or refusing such requests. **Cullen**

**– the Employment Law Firm** has drawn up a useful flow chart of these processes, based on our recent Flexible Working Hours Seminar. To request a copy please email or phone Sue Luckin on (04) 499 5534 or email sue@cullenlaw.co.nz

### Take a Break

Parliament is also currently considering other important employment law changes.



The Employment Relations (Breaks and Infant Feeding) Bill seeks to codify workers' rights to short breaks and meal breaks based on hours worked. It also aims to ensure breastfeeding is promoted and encouraged in the workplace. The intention is to better facilitate mothers rejoining the workforce and to enable their infants to continue to enjoy the health and developmental benefits of breastfeeding. This Bill is currently before Select Committee.

### Holiday Hiccups

Another Bill currently before Select Committee is the Holidays (Transfer of Public Holidays) Amendment Bill. The review follows the recent Supreme Court ruling<sup>2</sup> that public holidays cannot be transferred to different days, even where employer and employee agree. This Bill seeks to amend the Holidays Act to enable workers to have an entire shift covered by a public holiday, even if that shift spans two days, *provided* both employer and employee agree and put the agreement in writing. The Bill will only apply in the limited circumstances where workers' shifts span midnight, so will not allow workers to 'pick and choose' when their public holidays fall.



1 Source: Department of Labour website.



2 New Zealand Air Line Pilots Association Inc v Air New Zealand Ltd [2007] NZSC 89

## Cullen Breakfast Club

### Cullen – the Employment Law Firm

**Firm** is hosting several of the movers and shakers of New Zealand at the Breakfast Club over the next couple of months. This is an opportunity to speak to these people on an informal basis. Chatham House Rules apply.

Past invitees include the Rt Hon Helen Clark, Rt Hon Winston Peters, Hon Dr Michael Cullen, Hon John Key, Hon Pita Sharples, Hon Annette King, Retired Chief Employment Judge Goddard, the previous United States Ambassador Charles Swindells and the current United States Ambassador William McCormack to name but a few.

We are particularly excited to have three MPs speaking to us in an election year. Our next guest speaker is the **Deputy Leader of the National Party, Hon Bill English**. He will speak on *Solutions for New Zealand's Future*. He will welcome questions and discussion.

The next Breakfast Club meeting will be held on: **Thursday 31 July 2008, 7.30am to 8.45am**.

**Normally by invitation only, however, as it is an election year and we have a new venue, we are opening up the Breakfast Club. If you are interested in securing a place, please contact Sue at [sue@cullenlaw.co.nz](mailto:sue@cullenlaw.co.nz) or telephone (04) 499 5534 to secure a place, as numbers are limited.**

Future guest speakers include the Attorney General, Leader of the House, and Minister of Finance, **Hon Michael Cullen** in August and **Kate Wilkinson**, National MP and Spokeswoman for Labour & Industrial Relations, Spokeswoman for Consumer Affairs and Associate Spokeswoman for Justice in September. The details of these Breakfast Club meetings will be announced soon.

## Pitcairn Island: Salt in the wound?

Peter recently wrote in the *Dominion Post* about an unusual case decided in the Court of Appeal in May.<sup>1</sup> In the case it was held that remedies for an unjustified dismissal can be affected by information unknown to the employer at the time of dismissal (and consequently not relevant to the decision to dismiss).

Mr Salt was appointed Commissioner of Pitcairn Island in 1995 by the Governor. He continued in that role until he was dismissed in September 2003 following a failed mediation attempt. His employers felt they could no longer trust him. They based this almost solely on Mr Salt's attitude toward them.

There seems to be no question that the dismissal was unjustified and the Employment Relations Authority determined that Mr Salt was entitled to remedies under the Employment Relations Act. Problems arose, however, when the Authority cut Mr Salt's awards both for reimbursement of wages and superannuation and compensation for "distress and associated matters" by 50%. This was due to evidence of a series of emails which came to light only after the hearing.

1 Salt v Fell [2008] NZCA 128

These emails certainly confirmed that Mr Salt had been less than a model employee. He had badmouthed his employers, speculated negatively about their 'agendas', and undermined the relationship several times.

It should be remembered that all this took place at a time when Pitcairn was in the world spotlight as never before, due to allegations of systemic child abuse. Mr Salt's behaviour was therefore even more of a betrayal of trust as he held a key position in the administration of Pitcairn.

The Court of Appeal upheld the Authority's right to cut the awards by 50%, stating that "[an] employee [should] not benefit from his or her wrong simply because it is for a time unknown to the other party". Indeed the majority indicated that they would have awarded Mr Salt even less. The Court specifically noted that this was not a case of cutting an award because of the employee's contributing behaviour, as allowed for under section 124 of the ERA. It was instead founded on a broad discretionary power under section 123 ERA and as "equity and good conscience dictated".

## New but not so new



We are delighted to welcome Rachel Burt back into the Cullen fold. Rachel qualified as a lawyer in 1998

from Otago University and began working at Cullen as an employment specialist in 1999. After a three year stint with us she jetted off to London and worked in employment law in both the private and public sector and qualified as a UK solicitor. While there she also managed to fit in

plenty of travel about the continent and had a little fling with some executive level recruitment and coaching work. Finally seeing the error of her ways, she returned to employment law here in the harbour city and is very happy to again be part of the Cullen team. She advises a wide spectrum of clients on numerous employment issues. She has a special interest in assisting organisations to put protective policies and procedures in place to ensure sound working practices and to avoid future liability.

## Restructuring and Redundancy workshop – Learn the vital business tool

In an economic downturn, businesses may look to restructure and cut expenditure. This can potentially tide business over periods of time when belt tightening is in order. However, poor planning can end up costing a business more in court costs and hassle than is saved by the changes.

To help your business conform to the legal requirements and make restructuring work for you, **Cullen – the Employment Law Firm** is holding a lunchtime seminar on 17 July, focussing on restructuring and redundancy. We will examine the requirements and pitfalls you need to be aware of, give advice on how best to approach your restructuring and answer any questions you may have. If you would like to attend, please call Sue on (04) 499 5534 or email sue@cullenlaw.co.nz to secure a place.

### Cullen Seminar Series

The Restructuring and Redundancy seminar mentioned above is the latest in a series of seminars being run by **Cullen – the Employment Law Firm**. The seminars are all tailored to assist employers to plan and manage their

businesses with an eye to risk avoidance. Our motto is “any problem can be resolved” and nowhere is that more important than in procedurally bound employment law. Come and learn some of the tricks of the trade. 12.15-2pm at the Wellington Chamber of Commerce, Level 28, The Majestic Centre, 100 Willis Street.

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| <p>■ <b>Restructuring and Redundancy – A vital business tool</b></p> <p>■ <b>Disciplinary Processes – Detention or Expulsion</b><br/>– What to do when someone is possibly misbehaving<br/>– How to proceed and best practice</p> <p>■ <b>Managing Poor Performance – Getting the best from employees or getting them out</b></p> <p>■ <b>Employment agreements – Fixed Term, Casual, Permanent – One type can become another!</b></p> <p>■ <b>Difficult Dismissals – Instances of sickness, stress, delay by the employer may complicate dismissal</b><br/>– How to keep things on track</p> <p>■ <b>Restraints of Trade, Intellectual Property and Confidential Information – How to protect your valuable business assets</b></p> | <p><b>17 July</b></p> <p><b>14 August</b></p> <p><b>10 September</b></p> <p><b>8 October</b></p> <p><b>13 November</b></p> <p><b>10 December</b></p> |
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Please enrol me for **Restructuring and Redundancy on 17 July**

NAME:	<input type="text"/>
POSITION:	<input type="text"/>
ORGANISATION:	<input type="text"/>
POSTAL ADDRESS:	<input type="text"/>
BILLING ADDRESS: (if different from above)	<input type="text"/>
PHONE:	<input type="text"/>
EMAIL:	<input type="text"/>

Cheque enclosed for \$109.12 GST incl. (payable to **Cullen – The Employment Law Firm**)

Please post with your payment to Cullen – The Employment Law Firm, PO Box 11 218, Wellington, New Zealand