



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

Level 8
Kirkcaldies North Tower
45 Johnston St, Wellington
Phone 04 499 5534
Fax 04 499 7443
enquiries@cullenlaw.co.nz
www.cullenlaw.co.nz
PO Box 10 891, The Terrace
Wellington 6143
New Zealand

Peter Cullen

Partner
peter@cullenlaw.co.nz

David Burton

Partner
david@cullenlaw.co.nz

Charles McGuinness

Senior Solicitor
charles@cullenlaw.co.nz

Jenny Jermy

Solicitor
jenny@cullenlaw.co.nz

Sheryl Waring

Law Clerk
sheryl@cullenlaw.co.nz

DISCLAIMER: This newsletter is intended to provide our clients with general information. While all statements are believed to be correct, no liability can be accepted for incorrect statements. Readers should not act or rely on this general information without seeking specific legal advice.

The Baker and the Human Rights Act

Sexual harassment claims involving employment relationships are often brought before the Employment Relations Authority. There are other forums where such complaints are resolved. A recent case in the Human Rights Tribunal illustrates this.

The applicant was a café worker who had worked as an assistant for over 13 years at the same café. In April 2008 the café was sold and its ownership/management was taken over by a partnership including the defendant (the partner).

Soon after the change in ownership the partner acknowledged to the applicant that she was one of his best workers, a capable and trusted employee willing to do long hours when required. For about a month the applicant and the partner worked together with no significant issues.

In May 2008 problems in the employment relationship arose. On 3 May the applicant was sitting in the staff lunch room with the partner. They were alone. The partner unexpectedly put his hand on the applicant's right knee. The applicant was surprised and after a second or two moved so as to remove the partner's hand. She then got up, gave the partner a 'funny look', and left.

Following that incident, the applicant began to feel like the partner was increasingly invading her space, paying her more attention than was appropriate, and saying or suggesting things that she was not comfortable with.

Between the incident on 3 May and her resignation on 12 August 2008, several other events occurred that prompted the applicant to bring a claim before the Human Rights Tribunal.

The partner suggested to the applicant that she 'knew she wanted him'. When injured and lying on the floor one day he said that he would be 'better if she was lying next to him'. He massaged her neck and shoulders

without being asked. One time when the song 'Moondance' was playing on the radio he suggested that he would like to be romancing her, as the song lyrics suggested.

The partner constantly put his arm around the applicant and touched her. All of the other café staff who gave evidence to the Tribunal confirmed that the partner often left 'floury hand marks' on the applicant's clothing.

Suffice it to say that the partners unwelcome conduct increased in frequency and became worse. The applicant was made to feel frightened and had to escape from the partner hemming her in, inappropriately touching her, trying to hold her hand, and making exceedingly inappropriate comments on a constant basis.

Even in the face of the applicant making her feelings known, the partner continued his harassing behaviour.



The decision

The partner generally denied that the alleged events had taken place. He said he had been 'misunderstood'.

On this point the Tribunal conceded that while the applicant had conveyed her feelings, the partner had 'no chance of understanding anything subtle'. Nonetheless, the argument that the resulting effects on the applicant were unintentional was no defence to the behaviour.

The Tribunal concluded that ultimately there

The Baker and the Human Rights Act ... continued

had been physical behaviour of a sexual nature that was unwelcome, offensive and repeated. It had a detrimental effect on the applicant. The applicant was made to feel humiliated and suffered depression as a result of the partner's behaviour. It caused her to leave her job where she had worked a long time. Needless to say, the behaviour was unlawful.

The applicant brought her case against both the partnership (the employer), and the individual partner himself. The applicant was successful against both. The Tribunal ordered both to jointly pay to the applicant the sum of \$19,000. In addition, both were ordered to attend training on identifying and addressing sexual harassment in the workplace.

While the actions leading to this claim were directly attributable to an individual, at the end of the day the employer was held to be jointly liable for paying the remedies owed to the applicant.

Welcome, Jenny Jermy

We are delighted to welcome Jenny Jermy into the Cullen fold.

Jenny specialises in employment law and advises a wide spectrum of clients on employment issues. Her areas of work include drafting employment agreements, workplace bullying, wage disputes, redundancies and performance and disciplinary cases.

Jenny is enjoying the practical nature of employment law and is looking forward to the new challenges this year will bring.



Social media and employment – how to recognise and balance the benefits and the dangers

Lunchtime Seminar – 23 June 2010

Most younger people now make use of Facebook and Twitter, and social media generally, both to network and to keep in touch with their friends. The influence of these social tools is spreading beyond young people. The growth of social media is phenomenal. The number of people accessing Facebook is now as great as the number accessing Google.

There are clearly enormous social and business benefits in being active in the social media space. It gives not only individuals, but also businesses an opportunity to network and get their message across.

This seminar will look at the growth of social media and a worker's rights and employer's rights to manage their staff in this context.

Issues covered include:

- A. The disclosure by employees about their own lifestyle and conduct
- B. The disclosure of confidential information
- C. The release of confidential information about the employer's business generally

Peter Cullen will be co-presenting the seminar with Tom Reidy, a director of Catalyst90. A particular focus will be on answering questions and discussing case studies.

Come and learn some of the tricks of the trade

12.15-2pm at NZIM Central, Level 7, Lumley House
3-11 Hunter Street, Wellington
\$12 for members, \$18 for non-members, GST incl

Coming Up...

- *Getting the best out of mediation* – co-presented by Peter Cullen and David Hurley, Mediator **19 July**
- *Getting the best out of employees – The employment relationship and what to put in an employment agreement* **27 September**
- *Managing conflict between employees – Including not losing the good guy/girl* **Date TBC**

To enrol for the social media and employment seminar on 23 June contact:

felicity_bunny@nzimcentral.co.nz or visit www.nzimcentral.co.nz

To register your interest for other up-coming seminars contact enquiries@cullenlaw.co.nz