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Goldstein Ryder Team Update

We would like to welcome a new staff member, Trish Cross, to the team. Trish is experienced in accounts/administration and has commenced a role as our Office Administrator. She will be handling the accounts and administration matters of the firm. We are very pleased to have her on board.

Our Law Clerk Deborah Hendry has recently been admitted to the bar and is now qualified to practice as a Solicitor.

Restrictions on Secondary Employment

On 1 April 2016 the Employment Standards Legislation Bill came into force, amending a number of pieces of employment legislation. The changes that were introduced immediately applied to all new employees employed after 1 April 2016 but only applied to existing staff from 1 April 2017. This enabled a one year transition period for existing employees.

This Bill introduced amendments to the Employment Relations Act. One particular section prohibits unreasonable restrictions on secondary employment (s 67H). The Act states employers can no longer have a provision that restricts or prohibits an employee from working for another person while they are employed unless:

- the employer has genuine reasons based on reasonable grounds for having such a provision; and
- the reasons are stated in the employment agreement.

The Act states that a genuine reason may relate to:

- protecting an employer's commercially sensitive information;
- protecting an employer's intellectual property rights;
- protecting an employer's commercial reputation;
- preventing a real conflict of interest that cannot be managed without including a second area of employment provision.

This list is not exhaustive. Genuine reasons and reasonable grounds will depend very much on your particular circumstances. A blanket ban on secondary employment is highly unlikely to be reasonable.

If you have any questions relating to secondary employment clauses, please do not hesitate to contact us!

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Reduction of Remedies due to Contributory Conduct

When an employee brings a personal grievance to the Employment Relations Authority they may be awarded money for lost wages and compensation for humiliation, loss of dignity and injury to their feelings (remedies). However, if the employee is entitled to a remedy, but they were blameworthy in such a way as to have contributed to the situation that gave rise to the personal grievance, (contributory conduct), they may have their remedies reduced to take into account their part in the situation. The employee's conduct must also have caused the circumstances that led to the dismissal.

In *Xtreme Dining Limited trading as Think Steel v Dewar* an employee was dismissed for serious misconduct because he had stolen petrol by using a company fuel card. The Employment Relations Authority determined that the company had followed an insufficient investigation process, and awarded lost wages and compensation to the employee. The employer challenged the decision to the Employment Court.

The Employment Court looked at whether the Employment Relations Act allows for a "100 per cent reduction" of remedies due to contributory conduct of the employee — whether, if an employee's conduct is bad enough, the remedies they would have been awarded could be reduced to zero.

The Court came to the conclusion that the law does not allow a 100 per cent reduction. The Court said that "a finding of contributory fault of 50 per cent is a significant one." So if an employee's remedies are halved because of their conduct, this is considered a significant reduction.

However, the Court also held that even if the employee has grounds for a personal grievance, contributory conduct may be taken that into account when assessing whether any remedy should be awarded in the first place. In this way, an employee may not be awarded a remedy at all if their conduct is "so egregious (bad) that no remedy should be given". In this case the Court awarded lost wages as the Authority had, but reduced the amount of compensation from \$12,000 to \$10,000.

Summary: if an employee's conduct is bad enough, they may not be successful in their claim. If they are awarded a remedy, it can be reduced because of their conduct, but not completely extinguished.