

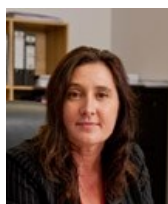
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## New Process for the Imposition of Penalties

Last year, *Borsboom (Labour Inspector) v Preet & Warrington* marked a significant change to the way the Employment Court and the Employment Relations Authority impose penalties.

There were two defendants in this case: Preet PVT Ltd (Preet) and Warrington Discount Tobacco Ltd (Warrington). Preet operated a number of retail stores, and Warrington operated retail dairy outlets, around the South Island. The companies were closely associated and the shareholders and directors of both companies were the same at material times. Both companies had significant penalties imposed as a result of multiple breaches of employment law statutes in respect of multiple employees.

### Breaches

There were multiple breaches of section 6 of the Minimum Wage Act, Holidays Act, and the Employment Relations Act. These breaches were serious in view of the amounts involved, their repetitive natures and their continuation over a significant period of time. They were aggravated because of attempts to conceal them.

Each company employed principally young Indian nationals on temporary work visas to staff their stores. There were five former employees that these breaches related to (two for Preet and three for Warrington). Because the employees' immigration visas were tied to their employment, the companies "wielded a significant degree of control over whether the former employees were able to remain in New Zealand lawfully." The companies made it clear that they held this power over their employees and used the former employees' immigration status to threaten them when they tried to raise any concerns.

The stores were open seven days per week for long business hours. The wages paid were \$8.00 or \$8.50 per hour paid in cash. The former employees often could not take breaks because they would be the only employee in the store. They did not get their statutory entitlements when they worked public holidays. The former employees were required to work up to 95 hours per week; one former employee was required to work more than 100 hours per week. All had worked trial periods with no remuneration at all. One former employee did not receive any pay for three weeks. Two former employees had their pay cut as a unilateral disciplinary measure. All former employees were pressured not to take sick leave and when they did take it they were not paid for it. The companies kept no or very inadequate wage and time records.

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# New Process for the Imposition of Penalties continued...

## Process

The Authority ordered that Preet pay \$10,000 in penalties and Warrington pay \$15,000 in penalties (\$5,000 per employee). The Labour Inspector appealed to the Employment Court because the amounts of the penalties were “disproportionate and inadequate” in the circumstances. The Court noted that with an increase in penalties in legislation comes the intention of Parliament that the Court and the Authority will also significantly increase penalties imposed for breaches of that legislation.

The Court adopted a four-step process to determine the quantum of penalties that should be imposed:

**Step One:** Identify the nature and number of statutory breaches. Each breach must be identified separately. Then identify the maximum penalty available for each breach. Consider whether global penalties are appropriate.

**Step Two:** Assess the severity of the breach in each case to establish a provisional starting point for each penalty, including an adjustment for aggravating and mitigating factors.

**Step Three:** Consider the means and ability of the person in breach to pay the penalty reached under Step Two.

**Step Four:** Consider whether the provisional penalty reached after the first three steps is proportionate to the seriousness of the breach(es) and harm done. This step ensures that the imposition and amount of a penalty is just in all the circumstances.

After the application of this process, the Court ordered Preet to pay \$40,000 in penalties and Warrington to pay \$60,000 (\$7,500 was to be paid to each employee).

## Recent Goldstein Ryder Case

We recently acted for an employer who had failed to provide written employment agreements to staff and failed to keep holiday and wage records, as well as wages and time records. The Authority applied the four-stage process and imposed a penalty of \$25,000 against the company.

## Notes

Remember, it is very important to:

- Provide written employment agreements to all employees;
- Ensure employees are given their minimum statutory entitlements, especially relating to breaks, wages, and leave; and
- Keep accurate records of time sheets, wages, and leave.

**Changes at Goldstein Ryder! - meet our new team members on the next page!**

## Meet our new team members

The team at Goldstein Ryder has already started growing, with two more people joining our team.



New graduate **Deborah Hendry** joined our team in January 2017.

She is working closely with both Jeff and Linda at the moment. Gaining skills and experience from two very knowledgeable Employment Lawyers will be a great way to start of her Legal career.



In April 2017 **Danielle Mills-Godinet** will be joining our team.

Danielle is an experienced solicitor with a demonstrated history in law. She is skilled in Employment Law, Dispute Resolution, Mediation and Legal Research. She will be meeting new clients and will also be available to answer any general employment law queries you may call us about.