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Pre-Employment Checks

You would not buy a house without undertaking a pre-purchase check. So why would you adopt any different approach when employing staff. Researching prospective employees can ensure they meet the requirements of the business and the proposed role.



Pre-employment checks cannot be discriminatory or an invasion of privacy. Pre-employment questions should have a sufficient connection to the role and business. For instance, if you are employing someone in a role that involves the care of vulnerable people, you are entitled to ask if the employee has any previous criminal convictions.

In the case of *Tai v Robinson (t/a Coronation Lodge Rest Home)* [2004] 1 ERNZ 270 an aged care worker was dismissed for not disclosing that she had two previous assault convictions. The criminal charges were sufficiently linked to her duties of caring for vulnerable people and the dismissal was found to be justified. The dishonesty in not disclosing prior convictions could also be something that destroys the trust and confidence in the employment relationship.

The Clean Slate Act 2004 can assist employees whose convictions occurred more than 7 years ago. An employee is responsible for determining whether the Act applies or not.

Robust and thorough pre-employment checks are recommended before hiring staff. This allows employees the opportunity to fully disclose all relevant matters to the employer. It is important to make it clear to employees that their employment is conditional on the pre-employment check being completed to the satisfaction of the employer. An employer could rely on non-disclosed pre-employment criminal conduct to justify dismissal if they only become aware of it once the employee commenced employment.

***** ★ ★ ★ Employment Documentation ★ ★ *****

We have available for purchase documents such as:

- Pre-employment packages;
- Codes of Conduct;
- Employment Agreements;
- Independent Contractor Agreements;
- Volunteer Agreements;
- Secondment Agreements;
- Bond and Training Agreements; and
- The A-Z of Policies



Employees' Conduct Outside of Work

The line between an employee's out of work conduct and their duties to their employer is becoming increasingly unclear. Social media has a large part to play in this. Most employees have almost constant access to social media both at work and at home.

The Courts are looking at whether or not the employer was identified in deciding whether an employee's dismissal for out of work conduct was justified. The Courts review the employee's actions and assess whether they adversely impacted the employer's reputation. The High Court of New Zealand has taken judicial note in relation to sharing material to "friends" on Facebook. The High Court noted that people are aware that shared information will certainly be circulated to other people outside of that person's "friends". There is a permanence to social media comments that is not there for casual conversations by the water-cooler or after work - Judge Inglis in *Hook v Stream Group*.

Employers have a duty to notify employees of their social media policies and rules relating to behaviour both within and outside the workplace.

Goldstein Ryder has drafted a Use of Technology and Social Media Policy that is available for purchase. Contact us to review a copy if you are considering implementing such a policy in your workplace.

Workplace Policies— Consultation Requirements for Employers



As part of their employment agreement an employee is usually required to comply with all of the employer's rules and policies.

Individual employment agreements often give the employer the power to introduce or change rules at any time. This may seem quite straightforward. However, depending on what the change is, an employer may need to ensure they follow proper process. An employee might argue that they are not subject to that policy if a policy is not introduced or altered correctly.

Employees need to be appropriately notified and consulted before an employer implements or alters a new policy.

Consultation is not unduly onerous. 'Consultation' means that employers should provide all affected employees with a copy of the proposed document and seek their feedback. An employer can then implement the policy once they have provided the employee with a genuine opportunity to give feedback. If an employer does not adequately consult with employees they may be at risk of breaching their good faith obligations and invalidating the changes. Employers should keep good records about which employees are subject to which policies.



Goldstein Ryder has joined the social media sphere (@GoldsteinRyder) and will be notifying our followers of recent Employment updates, decisions and headlines. Click [here](#) to follow us on Twitter.

We are happy to provide you with advice on any of the issues contained in this newsletter.

Please feel free to contact our Directors, Jeff and Linda to discuss.



*Disclaimer: This newsletter is necessarily brief and general in nature. You should seek professional advice before taking any further action in relation to the matters dealt with in this newsletter.
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