



## **Employment Law Issues that can arise in a State of Emergency**

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### *Introduction*

On 04 Sep 2010, a significant earthquake struck the city of Christchurch, an event which was then repeated on 22 February 2011. After both events, a state of emergency was declared in Christchurch.

The force of both earthquakes and their aftershocks seriously damaged or destroyed property and infrastructure items such as sewer, water and power. People lost their homes, and their drinking water. They also lost that day-to-day sense of security, which has not returned as the after-shocks continue to roll in.

In this last earthquake, people have lost their lives.

Further, the impact on the Christchurch CBD has been more far-reaching than the first earthquake. A significant number of buildings have either been destroyed or will be destroyed as they are no longer structurally safe.

With this background, it is unsurprising that there are many legal issues facing the employment relationship which are not easily resolved. Many of the solutions will need to be situation dependent and it is important to get legal advice before any steps are taken.

### *Employment Law Issues*

- While unlikely, check Employment Agreements for clauses covering emergency situations: look for a “Force Majeure” clause.
- Health and Safety:
  - Employers are required to provide a safe work environment. The law requires employers to identify, isolate and minimise risk. What is reasonable will be specific to each situation.
  - Caution should be taken in expecting employees to return to work, especially if it is at their “own risk” in entering a building.

- Relevant factors to determining a safe work environment will include:
  - Civil Defence warnings against or refusal of access to workplaces: *“Don’t travel on roads unless an emergency”, “Don’t come into these areas”, “Do not enter this building”*, Areas cordoned off by civil defence.
  - City Council certifications for entry: red for no, green for yes (as far as the Council can see), and yellow for restricted use. Neither green nor yellow mean the premises are safe for employees and information should be obtained from structural engineers employed by the building owner.
  - Building structurally safe but premises unsafe: fire systems not in operation, emergency exits/stairwells damaged, gas leaks, electrical damage, live electrical cables, unstable machinery, no basic sanitation (running water/toilets), damage to internal walls, broken glass, spills and contamination, other hazards on the floor. If necessary expert assessments or additional safety equipment should be obtained in order to identify, isolate and minimise risk.
  - Psychological impact of earthquake on employees (see below).
  
- Stress and Distress
  - It is important for both employers and employees to understand the psychological processes around trauma and the natural responses of different personality types.
  - Employers need to consider and manage their personal feelings including their own fear and distress as well as any emotional response to staff who are prioritising their families, unable to cope or simply taking advantage of the situation.
  - Employers should communicate with employees about how the business has been affected and business requirements.
  - Employers should also consider employee assistance programmes, group sessions with a counsellor, and other support.
  - Employers should be ready to absorb the fact there will be downtime as employees return to work and discuss the event and its aftermath however there should be some management of this.
  - Employees need to consider their emotional response and be prepared to have discussions with employers about the business and the ability to return to work. They need to consider the applicability of sick leave and bereavement leave.
  - Employees need to be ready to manage changes to the work environment and the impact of the event on workplace colleagues.
  - Both employers and employees need to anticipate the possibility of sudden resignations. Employers need to consider keeping jobs open in the event the resignation was a premature response. Employees need to be aware of their contractual notice periods in their employment agreements
  
- Wages and Salary
  - If an employee is ready, willing and able to work, but the business and/or its premises is not operational, technically the employee is being refused access to the place of work and they should be paid.

- However, if the business is not earning income, has no applicable insurance arrangements, and cannot pay staff then the employer needs to discuss and reach agreement with employees, the agreement to be recorded in writing as soon as possible.
- Options can include:
  - Agreement in respect of sick pay/holiday pay: normal entitlements apply. Employers can require employees to take non-accrued annual leave on 14 days notice
  - Agreement to take leave and making up time at a later date
  - Agreement to unpaid leave: after the first week, entitlement to holiday leave is affected by the amount of unpaid leave time.
  - Reduced pay reflecting government assistance packages or insurance payouts
  - Reduced hours of work
  - Direction of employer to work on other activities or work from home: eg clean up, ringing clients, locating new premises, making insurance claims etc
  - Secondment to other businesses
- Restructuring or business shut down
  - The usual processes apply to redundancies
  - While there may be an argument that the employment agreement has been frustrated by the total destruction of the business, consultation remains a fundamental obligation, including providing affected employees with all the information upon which the decision is to be based. The reasonableness of the consultation process will be situation dependent and will take into account total/partial destruction of the business, loss of premises and ability to contact staff.