



by Freya Marchant
freya@collinsmay.co.nz
 DD: 576 1409

Lloyd Collins
lloyd@collinsmay.co.nz
 DD: 576 1403

Eugene Collins
eugene@collinsmay.co.nz
 DD: 576 1407

Amy Haste
amy@collinsmay.co.nz
 DD: 576 1412

Simone Seddon
simone@collinsmay.co.nz
 DD: 576 1411

Caitlin MacDonald
caitlin@collinsmay.co.nz
 DD: 576 1413

Laura Hood
laura@collinsmay.co.nz
 DD: 576 1417

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First Covid-19 Employment Decisions

Two recent decisions from the Employment Relations Authority ("the ERA") confirm that the unprecedented circumstances created by the Covid-19 lockdown does not mean employers are exempt from following the law.

Raggett v Eastern Bays Hospice Trust t/a Dove Hospice [2020]

During the lockdown Dove Hospice closed its retail stores. At the commencement of lockdown Dove Hospice advised its employees that they would be paid 80% of their wages. A couple of days later individual employees received letters which proposed a restructure of their positions.

In April various employees received further correspondence advising their positions were being disestablished. These employees were given eight weeks' notice of termination with the first four weeks being paid at 80% of their normal pay and the remaining four weeks at the amount of the government wage subsidy.

Following these actions a group of employees lodged a claim with the ERA arguing they had never agreed to be paid anything less than their normal wages. The ERA agreed that Dove Hospice was not permitted to pay a rate that differed from the rate stipulated in workers employment agreements.

The ERA did not accept the argument put forward by Dove Hospice that because its employees did not perform services or work under their employment agreement during lockdown, it was released from its obligations under the Wages Protection Act.

Sandhu v Gate Gourmet New Zealand Ltd [2020]

Gate Gourmet provides inflight catering and was classified as an essential service during lockdown. It remained open with skeleton staff during lockdown despite business deteriorating significantly.

The company told its employees they would be paid 80% of their normal wages provided it received the government subsidy. Employees were also told in order to bring their pay up to 100% they could use one day each week of their annual leave entitlements.

On 1 April the new minimum wage requirements came into force increasing the minimum wage. Gate Gourmet told its employees that only the employees who were actually working would receive the minimum wage increase.

The ERA rejected Gate Gourmet's view that it was only required to pay the minimum wage increase to employees who were actually working and that if employees were not working, they were not obligated to pay them anything.

The ERA determined that if staff were ready, willing and able to work in an essential business, Gate Gourmet was obligated to pay its employees at least the minimum wage.

If you are unsure of your rights or obligations, whether an employer or employee, contact one of our team for advice.