

PRIVATE PRACTICE

Don't forget about your obligations as an employer under the Privacy Act 1993, warns Ashley Ayton. Failure to do so may result in both the Employment Relations Authority and the Human Rights Review Tribunal ordering an employer to pay compensation.

EMPLOYERS MUST COMPLY

with their obligations to their employees under both the Employment Relations Act 2000 and the Privacy Act 1993. If not, the employer may be ordered to pay compensation to their employee by both the Employment Relations Authority and the Human Rights Review Tribunal (HRRT).

Ms Watson was the subject of complaints by other employees of Capital and Coast District Health Board (CCDHB). The complaints related to her style of communication.

While CCDHB investigated the complaints against her, Ms Watson initially received paid special leave. However, part way through, CCDHB stopped paying Ms Watson.

After it completed its investigation, CCDHB decided to take no further action against Ms Watson. The parties began discussing arrangements for Ms Watson's return to work.

Ms Watson's preference was to return to her previous workplace (Ward 2). CCDHB did not agree, and prepared a return

to work plan on the basis that she would work on Ward 1.

During the investigation, Ms Watson wrote to CCDHB to complain that her line manager, Ms Slade, was harassing her. Ms Watson said that Ms Slade had arranged or at least encouraged seven other staff members to make harassment complaints against her, as part of a strategy to have Ms Watson dismissed.

CCDHB gave a copy of Ms Watson's written complaint to Ms Slade who, in turn, provided detailed written feedback and was interviewed by CCDHB's investigators.

Ms Watson asked for a copy of Ms Slade's written feedback and the investigator's interview notes, but CCDHB refused to provide the documents.

Ms Watson commenced proceedings against CCDHB in the Employment Relations Authority on the basis that she had an employment relationship problem, and the HRRT on the basis that CCDHB had interfered with her privacy.

The Authority found that (a) the decision to stop paying Ms

Watson without consulting with her was unjustified and (b) the refusal to allow Ms Watson to work in Ward 2 amounted to her being unjustifiably suspended.

It ordered CCDHB to pay \$9000 as compensation: \$2000 for the distress caused by the decision to end payment of her special leave, and \$7000 because of her removal from her usual place of work on Ward 2. It also ordered that CCDHB reimburse Ms Watson for unpaid wages following her suspension from Ward 2.

The complaint in the HRRT was that CCDHB had interfered with Ms Watson's privacy by refusing to disclose the personal information contained in Ms Slade's response to her complaint and the interview notes.

CCDHB argued that it was required to withhold that information on the basis that to do so would result in the unwarranted disclosure of the affairs of another individual (ie, Ms Slade).

The HRRT did not accept CCDHB's argument and found that CCDHB had interfered with Ms Watson's privacy. It ordered

CCDHB to pay \$5000 to Ms Watson. This was on the basis that, in withholding the material from her, Ms Watson had lost the benefit of having those documents to assist with her claim before the Authority.

It also ordered CCDHB to pay \$10,000 in compensation for hurt and humiliation as a result of the non-disclosure of the personal information to Ms Watson.

The HRRT emphasised that the harm being compensated for in the HRRT was, in relation to both the loss of benefit and hurt and humiliation, different to the harm that Ms Watson had already been compensated for by the Authority. For this reason, there was no double recovery.

Watson v Capital & Coast District Health Board [2015] NZHRRT 27 (7 July 2015)

Watson v Capital & Coast District Health Board [2015] NZERA Wellington 47



ASHLEY AYTON is a solicitor at Heaney & Partners in Auckland. This article was written with help from Paul Robertson. Visit: www.heaneypartners.com

HEANEY & PARTNERS

BARRISTERS & SOLICITORS

QUALITY OUTCOMES

to School Trustee Liability & Employment Disputes



PAUL ROBERTSON | Partner: direct dial: (09) 367 7004 email: paul.robertson@heaneypartners.com www.heaneypartners.com

Phone: (09) 3030 100 Fax: (09) 3677 009 Level 13, PwC Tower, 188 Quay Street, Auckland PO BOX 105391, Auckland. 1043. DXCP18503