



MUM'S THE WORD

A recent Employment Relations Authority decision, involving an early childhood teacher who emailed parents using the preschool's database, emphasises the importance of having spelled out an employees' ongoing duty of confidentiality in the employment agreement. Paul Robertson explains.

AN EARLY CHILDHOOD teacher caused grief for her employer by inappropriately emailing all parents. The preschool centre has successfully struck back by obtaining an order preventing the teacher from emailing parents, and requiring her to return any lists of parents' addresses.

THE BACKGROUND

The teacher resigned from the preschool. A week later she sent an email to parents using the preschool's parent email database.

In the email she explained the reasons for her resignation, presenting a view of the facts not shared by the preschool.

In a second email to parents she explained that she had applied for teacher registration and she asked parents to write to the Education Council supporting her application.

The preschool was concerned by the misuse of its parent contact details. It lodged an application with the Employment Relations Authority seeking the

destruction of all copies (hard copy and digital) of the parent contact details.

Initially the teacher defended herself, justifying her emails, saying that she wanted parents to be aware of what was happening.

She explained that parents had enquired about what had happened to her and she needed to clarify the reasons for her departure. She said a message was reportedly written on the whiteboard at the entry to the preschool saying she had left due to personal medical reasons and this had led to at least some parents considering that she was extremely unwell.

Later, the teacher became uncontactable and the Authority was asked to make a compliance order arranging for the documents and information to be destroyed/ deleted.

THE EMPLOYMENT AGREEMENT

Happily, the employment agreement specifically provided

for confidentiality, which the Authority found extended to the email addresses. There was a separate requirement that, on ceasing to be employed, the teacher was to return all such information to the employer.

The Authority had no difficulty in finding that there had been a breach of the terms of the employment agreement, and that it had the power to make a compliance order requiring the teacher to:

- a) comply with the terms of her employment agreement by refraining from using any list of parent email addresses; and
- b) return to the principal all copies of list(s) of parents or their email addresses.

THE LESSON

This decision emphasises the importance of spelling out in the employment agreement the ongoing duty of confidentiality that applies to former employees.

In last month's column, I referred to the powers of the

Human Rights Review Tribunal to make orders and to award damages for breaches of privacy. This decision of the Authority illustrates that it too has the power to protect confidential/ private information.

While the reported decisions focus on complaints by employees, this decision illustrates that employers are also able to take action.

I anticipate that 'forum shopping' between the Privacy Commissioner/the office of the Ombudsman, the Human Rights Review Tribunal and the Authority will be a problem for employers in 2017 as employees and former employees look for the best forum to air their concerns.

Best wishes for Christmas and the New Year.

St John's College Preschool v Nirmala Joseph [2016] NZEA 258

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