

## Bird Flu – An Employment Law Perspective

The World Health Organisation has warned that the current risk from avian influenza (“bird flu”) becoming the next human influenza pandemic is high. In the event of an influenza pandemic, one of the major impacts on businesses is likely to be decreased staffing levels.

It is anticipated that employees may be absent from work during a pandemic for three main reasons:

- Because of personal illness, or illness of a spouse or dependant;
- To provide childcare, in the event that schools are closed;
- To minimize the risk of contracting influenza.

With these reasons in mind, the Ministry of Health advises that businesses should plan for up to 50% staff absences for periods of about two weeks at the height of a severe pandemic wave and lower levels of staff absence either side of the peak. This article highlights the potential employment law implications of such absences.

### Sickness

Where an employee is sick, or is taking leave to care for a sick spouse or dependant, the employee will be entitled to take sick leave as usual. Once the employee's sick leave entitlement is exhausted, the employee may request that further leave be taken as annual holidays. Once that leave is also exhausted, unless the employer allows the employee to take annual holidays in advance, there is unlikely to be an obligation on the employer to pay the employee for any further leave. If the illness continues, issues regarding dismissal from employment may arise.

### Childcare

An employee who stays home to provide childcare may be able to continue working by performing his/her duties from home, or during other hours. Alternatively, it may be open to the employee to take sick and annual leave, as above.

### To Minimize the Risk of Contracting Influenza

The parties' respective obligations regarding workplace health and safety are contained in the Health and Safety in Employment Act. In general terms, an employer is required to take all practicable steps to ensure the safety of employees while at work. The breadth of this obligation is considerable. “All practicable steps” includes every precaution “reasonably practicable to take in the circumstances”. An employer's obligation may extend to directing specific employees to stay away from the workplace. In addition, an employee is entitled under the Act to refuse to do work if the employee reasonably believes that the work is likely to cause him or her serious harm.

The extent to which payment is required in these circumstances is best approached on a case-by-case basis. Issues to consider include: the terms of the employment agreement (i.e. are there “force majeure” or “act of God” clauses and do they apply?); the specific circumstances of employment; the employee's entitlement to sick and annual leave; the employer's ability to require the employee to take his/her annual leave on 14 days' notice; whether the doctrine of frustration applies to terminate the employment agreement.

### Planning

Employers will be in the best position to deal with the employment law implications of an influenza pandemic if, through consultation with their employees, they formulate a plan or policy before the pandemic hits.



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Employers should ensure that any such plan or policy reflects guidelines issued by relevant governmental bodies, such as the Department of Labour, the Ministry of Health and the Ministry of Economic Development. It is also important that plans and policies are kept up-to-date. Employers may also wish to take steps to amend existing employment agreements to specifically cover these issues.

If you would like any assistance in amending your employment agreement(s) or advice on your particular situation, please do not hesitate to contact a member of our employment law team. (See our employment law team on previous page)

## International Relocation of Children: When Disputes Arise

### How The Problem Arises

Relocation disputes arise when the guardian who has day to day care of a child wishes to change his/her place of residence, along with that of the child, and the other guardian opposes the relocation. The proposed relocation may be to another country or to another city within New Zealand.

### Example

A typical scenario of a relocation dispute is:

Mary and Hohepa have been married for six years and separated a year ago. They have two children, Tama, 5 years and Annabelle, 2 years. The children have lived with Mary in Hamilton since the separation. Hohepa has contact with the children three weekends out of each month. Mary and Hohepa met in Australia. Mary's family all reside in Australia. Mary now wishes to return to Australia with Tama and Annabelle but Hohepa will not consent.

### The Legal Issues

As Mary wishes to relocate to another country with the children, Hohepa's consent must be obtained.

If Mary and Hohepa are unable to agree on the primary residence of their children, either parent may apply to the Family Court for the Court's direction.

If Hohepa becomes aware that Mary's departure may be imminent despite his expressed opposition to the move, he may file an Application for an Order Preventing the Children's Removal from New Zealand, until the Court determines the relocation issue.

Relocation disputes are dealt with under the Care of Children Act 2004 ("the Act"). The Act provides that the welfare and best interests of the children are to be the primary consideration and gives express guidance as to what matters the Court must take into account. The welfare of each child is different in every case and must be assessed on its merits.

The Act also requires the views of the children to be considered and a lawyer will be appointed by the Court to represent them.

The Care of Children Act places particular emphasis on the importance of children's relationships with both parents and it is therefore important to ensure careful consideration is given to the children's ability to maintain a meaningful relationship with the non-relocating parent before children are relocated overseas.

If the relocation dispute is to be determined by the Court, a hearing will be held. Following the hearing the Court will make Orders. For example, the Court may make a Parenting Order providing for the children to be in Mary's day to day care in Australia and for Hohepa to have contact. Alternatively, the Court may order that Tama and Annabelle not be removed from New Zealand without further Order of the Court.

### Enforcement Of Orders

When children move outside of the New Zealand jurisdiction, it is important to ensure that Court orders will be adhered to. If they are not, there are enforcement procedures available to the aggrieved party under The Hague Convention. If the children are allowed to relocate to Australia, which is a signatory country to The Hague Convention, the relevant authorities of New Zealand and Australia can assist in the enforcement of the orders. New Zealand became a party to The Hague Convention on 1 August 1991.

If you would like to discuss the issues raised in this article, please contact our family team, or the person in the firm with whom you usually deal.



## Access onto Private Property – Your Rights and Obligations

The Government has indicated it may not proceed with a proposal to provide public access over farms and instead may look at alternatives including negotiation with landowners to improve access.

The news has been welcomed by Federated Farmers who say they will be taking a keen interest in the framework for negotiating rights of access.

### Rights of access

So what are some of the issues surrounding your rights and liabilities with visitors on your land?

Network Utility Operators can request access to private land. They are usually involved in providing services such as gas distribution, telecommunications, electricity distribution, water supply and drainage or sewage systems.

Before entering onto land, a Network Utility Operator should provide information in writing to the owner. This information should include:

- The reason entry is required
- Any rights the landowner may have to object to the entry
- A description of the work to be done on the land
- Who will be undertaking the work
- Confirmation that any damage caused will be remedied or paid for
- A complaints referral procedure

You do have the right to refuse entry to some operators but you must allow others access in certain circumstances. If you are unsure as to which situation applies, seek advice from your lawyer at Galloway Cook Allan.

### Health and safety

The Health, Safety and Employment Act 1992 (“Act”) imposes obligations on landowners regarding access by third parties onto their land.

The focus of the Act is on identification of hazards in the work place. Residential premises are excluded from the definition of workplace so the Act's provisions do not apply to most urban residential properties nor does it apply to those parts of a farm that are used for domestic accommodation.

The purpose of the Act is to ensure that all practical steps are taken to ensure the health and safety for all persons on the property.

Landowners whose properties are a place of work are therefore obliged to take steps to ensure the following people are not harmed by hazards:

- People in the vicinity of the place of work
- Employees, contractors and subcontractors
- People who are on the land with the owner's consent and who have paid to be there
- Customers

There are circumstances where a duty of care is not owed to visitors. This includes people visiting for the purposes of leisure and recreation, and also trespassers.

### Have a plan

As the issues of both access and health and safety are closely linked, it is worthwhile for landowners to have a policy in place to deal with them. In particular, it would be wise to ensure that practical steps are taken to manage any existing or potential hazards on the property.

### Extension of Paid Parental Leave To The Self Employed

A Bill that has now been referred to the select committee proposes to extend paid parental leave to the self-employed. Self-employed mothers who have been working an average of 10 hours per week, during either the previous 6 or 12 months before the expected date of delivery of their child, will be entitled to 14 weeks paid parental leave. A self-employed mother may transfer parental leave payments to an eligible partner.

To be eligible for parental leave payments a self-employed person is required to take a break from his or her work. However, unlike an employed person, the self-employed person can maintain a level of oversight of his or her business during the period of parental leave.

If the Bill is passed it will take effect from 1 July 2006.

### Introducing a New Member of our Legal Team

Ben Powell is the newest member of our legal team. He grew up in Dunedin, and was educated at Otago Boys High School and later at the University of Otago, where he gained a BA in political studies and an LLB. He also spent a year of his studies at the University of British Columbia in Vancouver.

Ben recently completed his legal professionals course and has joined our property team. He works primarily in electricity easements and conveyancing.

A successful cyclist, Ben has represented New Zealand in road, track, and mountain bike racing. He also enjoys snowboarding and motorcycles.



### GCA / BHG Merger Update

It has been a very busy time for Gallaway Cook Allan recently, with the merger of our firm and Blake Horder Gowing in Wanaka becoming official on 3 April 2006. As we will be very soon operating as one office, there has been a lot of training underway to ensure that staff can hit the ground running, so to speak. We will have one centralised client database and be able to assist clients in either office.

We are looking forward to being fully integrated with Blake Horder Gowing and anticipate many benefits for our Central Otago clients. If you would find it more convenient to deal with a solicitor in Wanaka please contact us and we will put you in touch with an appropriate person from that office.

### GCA Website Competition

At the beginning of February we launched our new and improved website. It can still be found at [www.gcalegal.co.nz](http://www.gcalegal.co.nz) but now has more information about our services, staff, and firm culture. We are very happy with the end result and want to share it with you all. If you would like to go into the draw to win a case of New Zealand wine, all you have to do it is answer the following two questions by referring to [www.gcalegal.co.nz](http://www.gcalegal.co.nz)

- 1) How many legal executives do we have profiled on our website?
- 2) How long has partner John Anderson been in commercial law?

You can either email your answers to [alix.cassidy@gcalegal.co.nz](mailto:alix.cassidy@gcalegal.co.nz) or post them to PO Box 143 Dunedin (attention: Alix Cassidy). Closing date for the competition is Friday 21 April 2006.

Good luck and happy browsing!