

90 Day trial Period

Employers have been including the 90 day trial period in their employment agreements since 2011. Despite the length of time that has since passed the 90 day trial period continues to be both controversial and the subject of interpretation and analysis.

What is clear, is that the Court strictly interprets and applies the provisions in the Employment Relations Act dealing with the 90 day trial period.

The Employment Court recently considered Mr Hall's case.

Mr Hall came to New Zealand from England to work for a construction company in Christchurch. Mr Hall raised a personal grievance against his employer, Smith Crane and Construction Limited following his being dismissed under a 90 day trial period in the employment agreement.

The Employment Court noted that the effect of the trial period provisions is that an employee must be one who has not previously been employed by the employer. Mr Hall commenced working for the company in January 2014 and became an employee at that point. However, the employment agreement which he signed in incorporating the trial period was not signed until February 2014. At the time of signing Mr Hall was an existing employee. As a result the trial provision was not signed in accordance with the mandatory requirement that Mr Hall had not previously been an employee of the company. The trial provision in the agreement was therefore, not valid. Mr Hall was awarded over \$30,000 in lost remuneration, \$7,000 compensation for humiliation, loss of dignity and injury to feelings, incidental costs and legal costs.

How can we help?

Ensuring the terms of an employment agreement, including a 90 day trial period are both drafted and exercised correctly is essential. Graeme Withers and Julie Withers of Graeme Withers Law are very experienced lawyers. For personal, prompt and professional advice please call us (04) 478 4888; (027) 7155421 or email us info@witherslaw.co.nz
Please visit our website www.witherslaw.co.nz

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