

PEOPLE

BUSINESS

EMPLOYMENT LAW

**Banning orders for migrant exploitation**

In December last year the Employment Court issued banning orders against New Zealand Fusion International Limited and its owner Shenshen Guan for breaches of the Minimum Wages Act 1983 and the Holidays Act 2003.

Background

New Zealand Fusion International Limited owns a holiday park in Reporoa. Ms Guan is sole director and a shareholder of the company. She was finding it difficult to attract employees to work at the park and advertised on a Chinese social media site.

The advertisement caught the interest of two people living in China, Mr Meng and Ms Xueli Wang (also known as Sherry Wang). Both wanted to come to New Zealand for personal reasons. They individually approached Ms Guan and she arranged to meet with them on one of her numerous trips to China. She offered them work in New Zealand.

Bond required from employees

Each offer of employment was conditional on payment of a bond of ¥200,000 (yuan) (around NZ$45,000 at today’s rate). Under the bond agreement the money would be repaid after they had worked for Ms Guan for two years. They were asked to sign employment agreements in China, which they did.

Reason for banning orders

The Court said that banning orders were appropriate because “That is primarily because I have no confidence that Ms Guan would not repeat the cynical behaviour which has brought her before the Court. She did not express any remorse or insight, despite the overwhelming evidence presented. The likelihood of repetition and the severity of the conduct mean that an order is necessary for the protection of future employees and the broader public.”

In terms of the banning order, New Zealand Fusion International Limited is prohibited from entering into an employment agreement as an employer for a period of 18 months. Shenshen Guan is likewise prohibited from being an officer of an employer and from being involved in the hiring or employment of employees.

The banning orders will be notified to the Chief Executive of MBIE and will also be published in the Government Gazette.

The Court warned Shenshen Guan and her company that they faced a maximum fine of $200,000 and a maximum of three years imprisonment if the orders were breached.

Penalties and compensation

The exploitation turned out to be expensive:

* Pecuniary penalties of $300,000 against New Zealand Fusion International Limited
* Pecuniary penalties of $150,000 against Shenshen Guan
* These sums are to be paid to the Registrar of the Employment Court, Auckland, within 28 days of the date of this Judgement. Out of the pecuniary penalties of $450,000, each employee will receive $100,000. The balance of $150,000 will be paid to the Crown
* New Zealand Fusion International Limited must pay one employee compensation of $69,500, a second one $69,000 and the third one $91,850, all plus interest and within 28 days.
* Legal costs are still to be decided.

This article is brought to you by the Window and Glass Association’s free employment helpline 0800 692 384. If you have any questions or would like to discuss the article above, please call Philip or Anthony on the helpline.