



## Working in Wine™

Employment information provided especially for the New Zealand wine and liquor industries  
by Battersby HR Consulting, Human Resource professionals

December 2009

The information contained in this newsletter will be of most interest to those who are involved in employing others.

**News from Immigration Department**  
**Car Cell Phone Use**  
**Holidays Act Review**  
**New from winejobsonline.com Resources page**  
**From the Courts – costly for employers!**  
**Social Media**  
**Christmas/New Year pay**  
**Handy Holidays calculator tool**  
**Immigration Advice/ International Harvest workers**  
**A Christmas Gift for you from us**

### Immigration Law Changes - new Obligations for employers

Under the new Immigration Act 2009 it will be an **offence to employ** someone knowing that they do not have an entitlement to work. Therefore employers should make sure they check a person's entitlement to work.

But it is a defence to a charge of that offence that the employer did not know the person was not entitled to work, AND that the employer "took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to do the work."

**Be very careful** when employing overseas workers, even if via a contractor.

### Changes to Immigration's Operational Policy - 30 November

Employers should be aware of a **number of changes** to Immigration New Zealand's operational policy that took effect on November 30. The changes include:

- new Entrepreneur Plus Category, and changes to the Entrepreneur Category
- introduction of a minimum income threshold for Essential Skills work permit holders who want their dependent children to live with them in New Zealand
- changes to generic Working Holiday Schemes (WHS) Policy, and the raising of the upper age limit for the Canada WHS
- additions to the Transit Visa Country Waiver List
- new Vietnam Special Work Policy
- new Philippines Special Work Policy

**For full information, check out the immigration website -**  
<http://www.immigration.govt.nz/>

And, also remember our previous advice to you: There is now a requirement for anyone giving immigration advice to be licensed – employers must be careful just how much they now help jobseekers.

### Cell/Car Phone Use while driving Vehicles

As from 1 November 2009, it is illegal for drivers in New Zealand to talk, send or read text messages on handheld mobile phones, or other portable electronic devices whose functions include being a telephone, while driving a vehicle.

Wise employers will see that they **have a policy in place** for company vehicles and that all employees know about it.

### Enforcement for the ban

An infringement fee of \$80, and 20 demerit points, will be **the penalty** for those breaching a ban on using mobile phones while driving. Enforcement action will be taken where a driver is observed holding a mobile phone in his/her hand while manipulating the keys and/or holding the mobile phone up to the ear while conversing.

### Holidays Act Review nears end

The Employers & Manufacturers Association (Northern) advises that the **review of the Holidays Act** is reaching its end, with recommendations now being formulated for inclusion in the report to be handed to the Minister of Labour in mid December. Details are not able to be disclosed, but changes to Relevant Daily Pay and clarity around the process of selling the fourth week of leave are two expected features.

### New Interactive Website page of Napa Valley wineries

We have found a **great Interactive website page of Napa Valley Wineries** that we have published on the winejobsonline.com resources page. We think it'll be brilliant for NZ winemakers doing a US harvest, but as we have only just found it, it's of little use right now but do bookmark it for next year for any wine people you know doing a US harvest 2010!  
[http://www.napavintners.com/maps/maps\\_of\\_napa\\_wineries.asp](http://www.napavintners.com/maps/maps_of_napa_wineries.asp)

### Also on the winejobsonline.com Resources page - [New Zealand School and Public Holidays 2010 and 2011](#)

A schedule of handy dates for 2010 and 2011 has been uploaded to the winejobsonline.com resources page - Click this link: [UPDATED List of School and Public Holidays](#)

### From the Courts

#### Redundancy genuine, but the process used was flawed despite it following the redundancy clause in the employment agreement

Mr O claimed his was unjustifiably dismissed by his employer when he was made redundant. Mr O alleged there was no warning or consultation regarding his redundancy. Furthermore Mr O claims his employer hired two new employees after his departure. Mr O was **seeking \$10,000** for hurt and humiliation, one week of lost wages, and costs.

Employer claimed the redundancy procedure was carried out according to the redundancy clause contained in Mr O's employment agreement and that the redundancy was genuine.

On investigation it was accepted that the employer had hired two new employees but that they were not replacing Mr O's position in the company. The Employment Authority accepted that in the circumstances of this case **Mr O's redundancy was genuine**.

The next issue looked at was the redundancy procedure used by DSI. Although it was accepted **the procedure used was in accordance with the redundancy clause** in Mr O's agreement, the Authority stated it **fell short of the accepted redundancy procedure**.

Mr O **should have been consulted with regarding his redundancy** where he would have had opportunity to suggest redundancy alternatives and had them seriously considered.

Furthermore the reason for Mr O's selection over others should have been made clear and **an opportunity given for him to defend his position.**

Given that there was no compelling evidence of hurt and humiliation given by Mr O, an award of \$1500 was made in his favour..

If you need to make someone redundant at your place, please get **professional advice before** you start the process.

### OSH - NZ Company fined \$36K over hazard

McCain Foods was **fined \$36,000** and ordered to pay \$4000 of emotional harm reparations after a worker had his arm crushed at the company's Hastings plant. Labour Department prosecutor said McCain's had failed to ensure the man's safety, that **he wasn't given sufficient training** and that relevant parts of machinery weren't guarded.

The Judge said that in spite of the man putting his hand where he shouldn't have, it was obvious the company should have been aware of the hazard. While the man's injuries were relatively minor, the risk of harm was great. The Department of Labour considered that the hazard was an obvious one, and **a hazard that wasn't guarded.** "It's been in legislation for over a century that dangerous parts of machinery should be guarded." As well as the fine and reparation, the company had to pay solicitors' fees of \$250.

Ouch.

### Social Media Twitter marketing tool of the future?

Are you caught up in the **buzz of Social Media** – Facebook, Twitter, and the like? At our last count, there were over 130 New Zealand wine people or wine-related businesses tweeting happily away, all caught up in the 140 characters worth of Twitter messaging. It's been reported that businesses need to consider the online marketing potential of micro-blogging site Twitter seriously now Google and rival Bing are incorporating its content into search results.

That is the view of Auckland-based online marketing agency First Rate, which has published lists of the most-followed local Twitter accounts on its blog on the internet. "[Companies and brands] in New Zealand seem to be more engaged in social media - Twitter in particular - than their Australian counterparts," says Grant Osborne, First Rate's director of search and performance. "As a smaller country we get behind our brands, such as [Air New Zealand's] Grab-a-Seat and Vodafone. We have a few voices, such as [communications manager] Paul Brislen at Vodafone who are really driving social media." Osborne says businesses are using Twitter in a variety of ways as a marketing and brand-building tool.

Some companies are simply "pushing" offers and special deals to customers who follow their tweets while others are taking a "more conversational" approach - engaging their followers in a Twitter "community" based around their business and answering followers' questions about their products and services. Samuel Stadler, First Rate's chief operating officer, says that in the past month both Google and Microsoft's Bing search engine have signed deals with Twitter to receive live feeds of what users are tweeting.

**Google** has also launched a new tool, Google Social Search, to capture comments made on Twitter and other social network platforms. "Tweets are now indexed by Google and, secondly, as part of Social Search, when one of your followers turns up in a search from Google the search results will favour content that you have tweeted over standard search result listings," says Stadler. "This means [businesses] cannot afford to not measure Twitter activity. [Through their realtime feeds] Google and Microsoft have placed it as a pivotal part of their information-gathering strategies."

**Winejobsonline.com is tweeting (twittering?)** and we have greatly increased international awareness of what we offer, and hopefully that will have a flow on effect for our clients who advertise, by increasing the number of quality international wine people who look for jobs in New Zealand and visit our website. PLUS we have got to meet some fellow tweeters!! Good fun. Let us know your thoughts.?

### And What About Company time used by employees???

#### Worth it or wasted?

The social-media revolution is seeping into the workplace, and employers are nervous. It's been reported that between 54% and 70% of organisations in the United States have banned social networks at work because of fears about decreased productivity and/or risk exposure.

**It's been said that** if Facebook were a country, it would be the fourth largest with over 300 million active users registered as at September 2009. The Generation Y-ers are using e-mail and social media to communicate with each other. If employers banned their employees from using this modern method of communication it's been said it would be similar to telling them they couldn't use the phone for personal calls or emails to get in touch with family and friends and could be seen that your business is out of date and out of touch. (The US seem more liberal than NZ employers.) And, nowadays there are such fancy phones that employees would simply access their social-media sites on mobile devices anyway which would create mistrust.

For employees that do abuse their time on social media, employers need to **address the issue** on an individual basis similar to any other performance problem.

On the subject of company time used for personal internet usage, wise employers will **have a sound policy in place** so that there can be no doubt in employees' minds as to when and how they can use company time (or personal lunch times on company computers) for personal use – updating Facebook, checking emails, Trade-Me and the like. Do you have a strong policy at your place?? We can help with that, just ask us!

Debbie Mayo-Smith of Auckland, gives us food for thought when she asks:

#### "Are You Allowing Your Age To Be A Barrier To Better Business?"

Facebook, Google and Yahoo had equal page view statistics in October. Something this size is not a trend. Are you missing an outstanding easy, free marketing, sales and communication opportunity?

Last month I ran a survey with a portion of the readership. "What do you use regularly" was the question. The statistics from 450 responses are:

**LinkedIn** 12.7% Yes

**Twitter** 12.7% Yes

**Facebook** 36.4% Yes.

Why not use the summer break ahead to look and decide if this is for you?

#### Here are five ideas for you.

Become a fan and follow influential people in your industry. Watch what they do, learn from the articles and content they point you to. You'll get a quick succinct education by following and learning from the correct people.

If you are keen and don't have much time – my top recommendation is to follow the [www.mashable.com](http://www.mashable.com) Facebook or Twitter page.

Have a smart phone? Download and use the free LinkedIn, Facebook, Twitter applications so you can learn in your downtime.

Join facebook with a personal page (don't do a business one until you learn and absorb). Become a fan to a selection of brands, products and company pages to find things you can emulate and eliminate.

Why not join both my pages as I'll be doing the same and sharing the knowledge."

Twitter page [http://twitter.com/debbie\\_mayosmit](http://twitter.com/debbie_mayosmit)

Facebook page

<http://www.facebook.com/debbie.mayosmith.motivational.speaker>

And, how is this for a handy little tip for Outlook Users?

#### Fabulous feature in Outlook only 1 in 10,000 would know

When you click open a contact, the general tab is the one you view. There are 4 other tabs: Details, Activities, Certificates, All Fields.

If you click on the "ACTIVITIES TAB" in an Outlook contact (not Outlook Express), it will start listing all the email, task, appointment (etc) activities you have had with that individual - and it shows you what folder they are in. Cool!

By Debbie Mayo-Smith Business speaker bestselling author [www.debbiespeaks.co.nz](http://www.debbiespeaks.co.nz)

Debbie's website and email newsletters are a great source of helpful down to earth marketing advice, so why not take a look sometime and see if it's of benefit to you? You can subscribe to her newsletters and we find them full of handy tips just like the one above.

## Public Holiday entitlements – 2009/2010 Christmas and New Year period

The Holidays Act provides in certain circumstances for the transfer of Christmas and New Year's public holidays. An employee is only entitled to be paid for a public holiday if that day **would otherwise be a working day for the employee**.

If Saturday is a normal working day for an employee, then the Saturday is a public holiday for that employee. If the employee does not usually work on a Saturday, then the following Monday becomes a public holiday. The Holidays Act clearly states that this arrangement does not entitle an employee to more than 4 public holidays during the Christmas and New Year period

Here are some examples to assist you to understand holiday entitlements through this period. **Make sure your payroll person knows what to do.**

	Normally works Monday to Friday	Normally works Saturday
Friday 25 December	Holiday observed; paid day off	
Saturday 26 December	Holiday transferred to the Monday	Holiday observed ; paid day off
Monday 28 December	Holiday observed; paid day off	No entitlement to a paid day away from work
Friday 1 January	Holiday observed; paid day off	
Saturday 2 January	Holiday transferred to the Monday	Holiday observed; paid day off
Monday 4 January	Holiday observed; paid day off	No entitlement to a paid day away from work

If an employee works on the public holiday instead of having a paid day off as in the above example, then the employee is entitled to payment of time and a half for the hours worked on the public holiday and also entitled to another full day off as an alternative holiday.

An employee is not entitled to an alternative holiday if he or she is not normally employed on the day the public holiday falls, or works only on public holidays.

An employee is **only** entitled to be paid for a public holiday if that day would **otherwise** have been a working day for the employee. An employee is **not** entitled to an alternative holiday if he or she is **not normally employed** on the day the public holiday falls, or **works only** on public holidays. (Casual shop staff for example). **Anyone who works** on a Public Holiday whether it is a normal working day or not, **must be paid time and a half** their usual rate (salaried staff too).

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### Useful Holidays calculation tool from Department of Labour

A handy calculator of sorts, to help you decide **whether an employee is entitled to a paid public holiday, sick day or bereavement leave** day (ie, whether the day would "otherwise be a working day" for an employee) and what an employee should be paid (ie, their "relevant daily pay" for their day off or for working on a public holiday). <http://www.dol.govt.nz/onlinetools/index.asp>

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### Employing International Vintage Workers for Harvest 2010

Wine Marlborough have advised wineries: "If your intention is to recruit staff from overseas for the up and coming Vintage PLEASE ensure all AIP (approval in principal) are lodged ASAP. Immigration have notified that processing time is 6 weeks. Remember Christmas also falls in that time adding to the delay.

If you require assistance or clarification on your situation please contact our office (PH: 03 577 8440) as we have a Licensed Immigration Agent on staff, Anne Hanning."

There are a number of visas that overseas workers can apply for so it might pay to ask for advice. There is now a requirement for anyone giving immigration advice to be licensed so do be careful. (Employers can still give information, but nothing beats professional advice when you're at all unsure.

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### How good are your HR and OSH systems??

If you haven't yet had a Personal Grievance from a disgruntled employee, a fine for breaching one of many employment Acts, or a visit from an OSH / Labour inspector, then you've been lucky so far – but it may be only a matter of time till your luck runs out.

Employment law and OSH compliance can be a **pain in the butt** but they **are** legal requirements and you know you've got to do it - make it easy on yourself by letting us help. We can make the whole compliance process as seamless as a great New Zealand wine, by ensuring your i's are dotted and your t's are crossed. If you've been putting it off because it all seems too hard, **you can now do something about it**. For instance, **have you got an employment agreement and job description ready for your next new employee?**

**It's illegal not to have a written Employment Agreement for every one of your employees...**Part time, Full time, Salary, Wages, Casual, Seasonal – do you really know the difference? Are you employing people on the correct agreements for the work they're actually doing?

#### What about Position Descriptions?

Do you have written **job descriptions** for each role within your company?


#### Policies & Procedures?

Do your employees have **clear guidelines** re your expectations of standards and behaviour? Eliminate the "I didn't know" by covering things like internet and email policies, use of company vehicles, harassment, etc. If the relationship ever sours you'll have this 'pre-nup' to refer to.

#### Occupational Safety and Health - would you be prosecuted?


Do you have a Health and Safety Manual as part of your OSH Management System? **(Do you even have an OSH Management system??)**

What if there were an accident at your place? How much would they fine you?



**OUR CHRISTMAS GIFT TO WINE INDUSTRY EMPLOYERS**  
**A free audit of your existing HR and OSH documentation**  
(Value \$135; no obligation)

Ask Heather – 09 838 1455; [heather@battersbyhr.com](mailto:heather@battersbyhr.com); or Paddy – 09 838 6338; [paddy@battersbyhr.com](mailto:paddy@battersbyhr.com)



**Very best wishes to everyone at your place for happy times with great wines and special people over Christmas and New Year - Cheers! Paddy and Heather Battersby**