



# The Human Resources Specialists

**17 December 2009**  
**HR KNOWHOW**  
**WHAT'S NEW**

***In this edition:***

- **Proposed change to 'serious harm' definition**
- **Case Law**
- **Annual leave calculations**
- **KnowHow Closedown**

**Proposed change to 'Serious Harm' definition under the Health and Safety in Employment Act.**

A proposal by the Minister of Labour Kate Wilkinson could see a change to the definition of 'serious harm' under the Health and Safety in Employment Act.

The proposed definition aims to provide more certainty around what constitutes serious harm and to ensure that employers do not spend excessive time dealing with minor issues.

Kate Wilkinson has said, "It is important to set a threshold for serious harm at an appropriate level."

The definition will include physical injuries where an employee is unable to perform his/her duties for 10 or more calendar days, permanent injuries, specified events including electrocution or loss of consciousness, and diagnosed occupational illnesses.

The proposed definition will be introduced to Parliament in the New Year and we will keep you up to date with any amendments to the Act.

**Case Law**

In a recent case, *Wulff v Air New Zealand Ltd* an Air New Zealand flight attendant, Randall Wulff, is to be reinstated after he was dismissed after the company said they could not rely on him to follow standard operating procedures.

Air New Zealand dismissed Mr Wulff last year after he sat down and fastened his seatbelt when the seatbelt light came on during a flight, instead of carrying on with his duties. He had also shown his intention to sit down on another occasion.

Mr Wulff said that cabin crew could take a seat when the light came on if they felt unsafe, but that he accepted that taking a seat whenever the light came on was unacceptable. He also said that any injury caused by turbulence would impact on his ability to take leave.

The Employment Relations Authority determined that Air New Zealand "did not have a sufficiently firm foundation for its conclusion that Mr Wulff could not be relied upon". The Authority also said that the concerns of Air New Zealand were legitimate but that the concerns could be addressed while the employment relationship continued.

Air New Zealand was ordered to reinstate Mr Wulff and to pay him loss of earnings from the date of the determination until he was reinstated. Mr Wulff's claim for hurt and humiliation compensation was declined.

Air New Zealand said it was appealing the decision.

Our concerns in this matter are that an Authority member is able to essentially override a company as to the importance of running his/her business in the most effective and efficient manner, having the right to require an employee to comply and being able to rely on that employee to comply.

It is very clear why Air New Zealand has chosen to appeal Yvonne Oldfield's determination.

### **Annual leave calculations**

We are specialists in annual leave calculations and are happy to assist you with these calculations. If you would like our assistance with annual leave calculations please call us on **09 377 9891** or email [kh@knowhow.co.nz](mailto:kh@knowhow.co.nz).

### **KnowHow Closedown**

We will be closed for the Christmas and New Year period from 23 December with the office re-opening on Monday 11 January.

At KnowHow we have been fortunate to work with our clients during 2009, through a period which could be said delivered the most demanding business conditions we have faced as business owners.

Many times during the year we have had conversations with clients about making it through to December 2009 and that we should all feel pretty good if we make it.

2009 has seen all of us tighten things up, possibly become better business people and shown us how important our Kiwi resilience is.

I wish you all well and hope that 2010 is a great year for us all.

From Helen and Jo and from me, we wish a very happy Christmas and New Year to you and your families.

Thank you for all your support in 2009 and we look forward to working with you in 2010.

### **Kind regards**

**Sylvia Wood**  
**Director**

**HR KnowHow – (09) 377 9891**

[kh@knowhow.co.nz](mailto:kh@knowhow.co.nz)

[www.hrknowhow.co.nz](http://www.hrknowhow.co.nz)

**The Human Resources Specialists**

**We provide advice and hands on support for all your Human Resource management needs**

Information contained herein does not constitute a definitive or complete statement of the law. 'What's New' is designed to provide accurate and authoritative information on employment matters. 'What's New' is not rendering legal, accounting or other expert advice. Because employment related matters must be dealt with on a case by case basis the information provided herein is not intended to supplant professional legal and other expert advice being sought in regard to a specific problem