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Case : LS32467

Status: Closed
Is Case Suspended: No

Incident Details

Business Unit: Labour Inspectorate
Case Type: Complaint
Case Created Date: 30/07/2019 8:20 AM
Case Received Date: 23/07/2019 2:22 PM
Initial Information Source: Complaint - contact centre
Industry Code: O755220 - Embassy operation - foreign government
Breach City: Lower Hutt
Local Council: Hutt City Council
Regional Authority: Wellington
Incident Date From: 25/12/2018
Incident Date To: 23/07/2019
Reported Details: § 9(2)(f) has worked on public holidays and been paid but not time and a half and has not been given any alternate days. 6 Public Holidays have been worked.
Legislation has been given to the employer and they are not interested.
§ 9(2)(f) WOULD LIKE TO BE CONTACTED BEFORE ANY CONTACT IS MADE TO HIS EMPLOYER. IMPORTANT

Case Information and Assignments

Case Name: EMBASSY OF THE REPUBLIC OF KOREA IN NEW ZEALAND
Assessment Phase: Assessment Complete
Case Category: Employment standards complaint
Priority: High
Region: Standards
Team: Auckland
Assessment Synopsis: ZP 1st August 2019:
sent an email to ee inquiring if his employment agreement is based on NZ Employment laws or Korean laws. he replied back saying that the employment agreement is based NZ employment laws. he also mention that § 9(2)(a) he will not be able provide me with the requested information (employment agreement) i asked him for a timeframe within which he can provide me with the information- refer to messages.
Main Issues Identified are:
- EE is not being paid time an half for working on Christmas day 25th December 2018 for 15min
- EE is not being paid time an half for working on Boxing day 26th December 2018 for 15min
- EE is not being paid time an half for working on New Years Day 1st January 20019 for 15min
- EE is not being paid time an half for working on 2nd January 2019 for 15min
EE checked emails from home during the alleged 15min.
In addition to this the ee is also claiming that he has not been provided with days in lieu (alternative days) for working on public holidays.
EE has also alleged that the er is not providing the ee's with 2x10 min breaks. The er is claiming that the 2 x 10 min breaks are a part of the 60 min breaks that the ee's receive.
I have tried to educate both the ee and the er re their obligations mainly so the er. I have advised that the er needs to keep accurate records of the ee's time and wage and holiday and leave balance.
I have also advised the er that they need to provide each and every ee with 2 x 10min breaks and these need to be paid and that these need to be mentioned in the employment agreements. The er has accepted that this was not in the ee's employment agreement and they will be revising and updating all employment agreements to reflect the required.
The er kept pushing back on paying the time and half and provided the ee with time in lieu to the ee for working on public holiday because they have certain internal policies that they need to follow. Part of the internal process requires the ee to fill out a form and submit it to the er. EE claims that this formality has already been carried out and both the ee and er have signed off on this formality. The ee mentioned that apparently the er misplaced this document, however the er has not mentioned this fact during any of our correspondences.
I have now advised the ee to pursue this matter via the Employment Relations Authority.

Breach/Offence Details:

Breach Type: ERA s69ZD - Entitlement to rest and meal breaks
Comments: The er initially did not realize that they now need to provide the ee's with 2 x 10 min breaks and that these need to be paid. The er confirmed that he will be making these changes in the employment agreements.
Alleged: Alleged
Status: Found

Breach Type: HA s50 - Public holidays - Pay at least time and a half for work on public holiday
Comments: The er had not paid the ee time and half for working 25th, 26th December 2018 and 1st and 2nd January 2019. The er has accepted in an email correspondence that they are aware of their obligation to pay the employer but there are certain internal process which the ee needs to follow before the payment is made.
Alleged: Alleged
Status: Found

Breach Type: HA s56 - Public holidays - Alternative holiday must be provided
Comments: The er has not provided the ee with alternative time off, refer to the notes.
Alleged: Alleged
Status: Found

Case Assignment

Role: Assessor
Staff Number: ST0113
Name: ZOYA PARMAR
Assigned Date: 30/07/2019 8:23 AM

Role: Early Resolution Lead
Staff Number: ST0113
Name: ZOYA PARMAR
Assigned Date: 1/08/2019 2:33 PM

Case Workflow Progress

Entry Date: 30/07/2019 8:20 AM
State: ASSESSMENT
Exit Date: 1/08/2019 2:33 PM
Transitioned User: MARK SPENCER

Entry Date: 1/08/2019 2:33 PM
State: EARLYRES
Exit Date: 16/09/2019 3:43 PM
Transitioned User: ZOYA PARMAR

Entry Date: 16/09/2019 3:43 PM
State: CLOSED
Transitioned User: ZOYA PARMAR

Outcomes:

Type: GSR - Unresolved
Details of Closure: The er requires the ee to complete some forms/ documents before they can process the time and half payment for working on a public holiday.

This issue relates to internal process which the Labour Inspectorate does not have any jurisdiction to investigate, which is why i have advised the ee to pursue this matter via the ERA (Employment Relations Authority).

Disclosure

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Case Note : CN0001

Details

Sensitive: No
Date Obtained/Sent: 23/07/2019 2:22 PM
Type: Complaint
Title: Originating Complaint details from record: CP02317
Details: s 9(2)(f) has worked on public holidays and been paid but not time and a half and has not been given any alternate days. 6 Public Holidays have been worked.
Legislation has been given to the employer and they are not interested.
s 9(2)(f) WOULD LIKE TO BE CONTACTED BEFORE ANY CONTACT IS MADE TO HIS EMPLOYER. IMPORTANT

Disclosure

Export Category: Case Note

Multimedia

Unique ID:	679802
Reference:	1
Disclosure Type:	Full
Name:	TIKAComplaintRecordInfo.pdf
Source:	TIKA Complaint RecordCP02317
Description:	Automatically generated from the TIKA Complaint record: CP02317

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Case Note : CN0002

Details

Sensitive: No
Date Obtained/Sent: 30/07/2019 8:26 AM
Type: Progress Summary
Title: REASON FOR DELAY IN CASE CREATION - CSA INCORRECTLY TICKED EXPECTING CALLBACK.
Details: ALSO - EMPLOYER IS A FOREIGN EMBASSY, MEANING WE MAY NOT HAVE JURISDICTION. CHECK THE EMPLOYMENT AGREEMENT COVERS NZ LAW.

Disclosure

Export Category: Case Note

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Location : LOC0001

Location Details

Sensitive: No
Case Role: Breach Location
Address 1: Floor 11
Address 2: 2 Hunter Street
Address 3: Wellington Central
Address 4: Wellington
Country: New Zealand
Postal Code: 6011

Disclosure

Export Category: Location

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Organisation : ORG0001

Details

Sensitive: No
Case Role: Employer
Trading Name: EMBASSY OF THE REPUBLIC OF KOREA IN NEW ZEALAND

Phones:

Type: Mobile
Number: s 9(2)(a)

Disclosure

Export Category: Organisation

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Person : P0001

Details

Sensitive: No
Case Role: Complainant
Surname: s 9(2)(a)
First Name: s 9(2)(a)
Gender: Male
DOB: s 9(2)(a)

Addresses:

Address Type: Home Address
Address 1: s 9(2)(a)
Address 2: [Redacted]
Address 3: [Redacted]
Country: [Redacted]
Postcode: [Redacted]

Phones:

Type: Mobile
Number: s 9(2)(a)

Emails:

Type: Other
Number: s 9(2)(a)

Disclosure

Export Category: Person

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Person : P0002

Details

Sensitive: No
Case Role: Employer
Surname: s 9(2)(a)
First Name: s 9(2)(a)
Gender: Male

Phones:

Type: Mobile
Number: s 9(2)(a)
Type: Mobile
Number: s 9(2)(a)

Disclosure

Export Category: Person

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Decision/Hearing : DHRG001

Status: Closed
Sensitive: No

Details

Subject: EMBASSY OF THE REPUBLIC OF KOREA IN NEW ZEALAND
Type: Self-resolution
Title: GSR Unresolved
Issued Date: 16/09/2019
Notes/Background Information: The er requires the ee to complete some forms/ documents before they can process the time and half payment for working on a public holiday.
This issue relates to internal process which the Labour Inspectorate does not have any jurisdiction to investigate, which is why i have advised the ee to pursue this matter via the ERA (Employment Relations Authority).
Overall Outcome: Unsuccessful
Outcome Notes: The er requires the ee to complete some forms/ documents before they can process the time and half payment for working on a public holiday.
This issue relates to internal process which the Labour Inspectorate does not have any jurisdiction to investigate, which is why i have advised the ee to pursue this matter via the ERA (Employment Relations Authority).

Breaches/Offences

Breach Title: ERA s69ZD - Entitlement to rest and meal breaks
Count: 1
Status: Found

Breach Title: HA s50 - Public holidays - Pay at least time and a half for work on public holiday
Count: 1
Status: Found

Breach Title: HA s56 - Public holidays - Alternative holiday must be provided
Count: 1
Status: Found

Disclosure

Export Category: DecisionHearing