

OUR NEW LOOK!

The July 2008 edition of *InTouch* forms the first in our renovated quarterly employment newsletter series. We hope you like our new look as much as we do! *InTouch* continues to provide timely and pertinent employment law and human resource information in a crisper format. If you'd like to receive *InTouch* even sooner, see the back page to subscribe to these and other employment law updates from us by email.

WHAT'S YOUR PERSONALITY TYPE?

MYERS BRIGGS TYPE INDICATOR (MBTI)

Sheena and Tracey recently attended a week long training course in Wellington and became accredited users of the Myers Briggs Type Indicator. This tool, based on over 50 years of research assists in:

- Understanding yourself and your behaviors;
- Building more productive and profitable relationships;
- Appreciating others so as to make constructive use of individual differences;
- Valuing different approaches to problems in different ways as healthy and productive for organisations;
- Communicating more effectively and solving organisational or personal problems;
- Improving teamwork;
- Understanding and adapting to different management styles;
- Conflict resolution; and
- Determining possible careers for youth and those looking to change.

More than 3.5 million people take the MBTI annually worldwide. Such longstanding use shows that MBTI is popular, accurate, economical, proven by its translation and validation in 19 different languages.

What's it all about?

The MBTI is a model of personality (based on Carl Jung's theory) that identifies your personality preferences. We can use the analogy of handedness. You have two hands and you use them both, but most people are either right-handed or left-handed. That is they have a natural inclination or preference for one hand. In a similar way you have many facets of your Myers Briggs personality; you use them all, however you have a natural preference for certain ways of thinking or behaving.

Four Letters

Myers Briggs Personality Type is based on 4 preferences which once chosen by you translates into a personality type 'code', of which there are 16 different combinations. Once you establish your possible type there are descriptions of how types generally behave and from there you decide which one is the best fit. The term *best-fit types* refers to the ethical code that MBTI facilitators are required to follow which states that the person taking the indicator is always the best judge of their preferences. The MBTI doesn't dictate the way in which you behave and we all behave different ways in different situations. The indicator concerns itself with our inborn preferences and your behavior often, but not always, indicates what those preferences are.

Team Building

As mentioned above, MBTI can be used as a tool to improve teamwork. Specifically it can assist teams to build greater understanding between individuals, to appreciate each others differences and to help with recognition of what each person brings to the team. Furthermore it can help people to change their behavior to work or play better with others!

If you are interested in learning more about the MBTI and how it can be used to benefit your organisation, please contact either Sheena or Tracey.

TO USE, OR NOT TO USE?...RESTRAINTS OF TRADE

WHAT IS A RESTRAINT OF TRADE AND WHEN SHOULD I USE ONE?

Restraint of Trade clauses are becoming more common in highly competitive industries where propriety interests need to be protected. Employers may want to think seriously about inserting such a clause into the employment agreements of their key and senior employees, if they have not already done so. Restraint clauses seek to restrain employees from:

- Carrying on business in the same industry or occupation while they continue to be employed by the current employer;
- Canvassing the employer's customers to be customers of the current or future business of the employee or his/her future employer;
- Competing against the employer after the current employment ends, either by opening their own business or working for a competitor; and/or
- Soliciting staff of the present employer to join the employee in their new employment/business.

Without a restraint in an employment agreement, an employer would struggle to prevent a former employee from establishing their own business in competition with them. **However**, it is important to note that where a restraint does form part of the employment agreement, although not illegal, often they are void and unenforceable. An effective restraint must be reasonable, clear and specific so that employees are more likely to abide by them and courts are more likely to enforce them.

THE TEST OF REASONABLENESS

A reasonable restraint contains the following criteria:

- A proprietary interest capable of protection. For example, a trade secret, a trade connection and/ or confidential information;
- A reasonable expectation that these activities be restrained;
- A sensible period of restraint; and
- A practical geographical and/ or population limit to the restraint.

Several factors are taken into account by a Court when determining the reasonableness of a restraint. These factors are assessed at the time the parties entered into the agreement. Some of these considerations are:

- *The party's relevant positions at the time of entering into the restraint* – Were the parties in equal bargaining positions?
- *The importance of position and/or nature of employment;*
- *Duration and/or geographical area of the restraint* – What is the significance and reasoning behind the time frame identified, and/or the region or area of the restraint?
- *The parties' view of reasonableness* – What does the employer want to protect?
- *Whether the employer offered something of value or compensation* ('valuable consideration') against the restraint.
- *When the parties entered into the restraint* – An employee has a greater freedom of choice and bargaining power when first negotiating an employment agreement, particularly at the commencement of employment. Their bargaining power is generally considered to reduce at subsequent negotiations, and therefore providing 'valuable consideration' may be necessary to balance this;

Overall, what is a reasonable restraint will be determined in the circumstances of the case.

Employers should also note that under the Illegal Contracts Act (1970), the Employment Relations Authority, Employment Court, District Court and the High Court all have the ability to delete or modify a restraint to the extent necessary to make it enforceable (e.g. reducing the duration of the restraint). Even so, it is in an employer's interest to state within the restraint itself that any necessary variations may be made in order to achieve this enforceability. This way a 'close but no cigar' restraint can be remedied, and still binding.

It certainly pays to seek professional advice if you are considering placing a restraint of trade on an employee, especially where genuine business interests need to be protected. Inadequate, unreasonable protection may let someone walk off with crucial assets or advantages at your expense.

OUR NEW WEBSITE

WWW.JCLAW.CO.NZ

Janet Copeland Law launched their website earlier this year. It includes information on the services we provide plus handy links to our recent publications, upcoming events and contact details for our lineup of solicitors at the Dunedin and Invercargill Offices. Visit the JCLaw website to find out more about:

- What employment law advice and legal representation we provide to employers and employees .
- How we can guide you through managing employment relationship problems;
- Links to our topical publications *Inform!* Employment law Update and *InTouch* and how to subscribe to them; and
- Summaries of how we assist you matters such as with that vital employment agreement, how to restructure and execute redundancies in compliance with employment law and collective bargaining.

LINKS TO WWW.WEAREHR.CO.NZ

Our website has recently been totally revamped and we think it looks fantastic. It also has heaps more features than it did previously, including:

- Vacancies page where we can advertise your positions **FREE** and applicants can apply online.
- A 'sought after skills' section where prospective job seekers can register and we can match them to employers who are looking for their skill set;
- News and Information with access to our previous newsletters, resources for employers and legislative updates
- Testimonials from some of our valued clients.

If you are interested in advertising your vacancies on our website please contact one of the team. We'll upload your adverts and automatically forward on any applications that we receive from candidates to an email address of your



FAREWELL KELLY WILLS!

OUR KELLY IS LONDON-BOUND...

We sadly said our goodbyes to Kelly Wills on 23 May 2008. After four and a half years with Progressive Consulting Kelly has headed off on her big OE and we wish her all the best in her endeavors. We're hoping that she won't forget us and will keep us posted on her adventures!



If you have dealt with Kelly in the past please contact Tracey or Lucia for assistance.



REMINDER – BEING FLEXIBLE ABOUT FLEXIBILITY

As detailed in our December 2007 newsletter the new law requiring employers to give serious consideration to employee requests for flexible working hours came into force on **1 July 2008**.

The new legislation provides eligible employees with the statutory right to request changes to their working arrangements if they have the care of *any* person.

Flexible working arrangements can range from flexible starting and finishing times, job sharing, part-time work, compressed working weeks, working in term time only right through to arrangements such as the ability to work from home.



If you receive a request for flexible working hours and would like more information on your role as an employer in dealing with it, the team are more than happy to help with any questions you may have, just give them a call!

UPDATE—INCREASE IN PAID PARENTAL LEAVE PAYMENTS

As of 1 July 2008, the maximum amount of paid parental leave for eligible employees increased from \$391.28 per week to \$407.36 per week. The minimum amount for self-employed people increased from \$120.00 per week to \$122.50 per week.

If you require information or assistance when making or handling a Parental Leave request please contact us.

EMAIL CONSENT—SAVING TREES AND ANTI-SPAM LAW

We make it our business to help you comply with your obligations under employment law and to understand your legal rights. To help us comply with our obligations under the Unsolicited Electronic Messages Act 2007, we would appreciate you taking the time to consent to receiving emails from us.

If you would like to receive emails from Janet Copeland Law and Progressive Consulting, including *InTouch*, *Inform!* and information outlining the services we provide, please indicate your consent by doing one of the following:

- Send an email to progressive@WeAreHR.co.nz with "Subscribe" in the subject line.
- Visit one of our websites www.WeAreHR.co.nz or www.JCLaw.co.nz and fill in your details on the "Featured Content Registration" and/or "Newsletter Sign Up" pages.
- Return the tear off consent slip below with the consent box ticked to Kelly Gough, Progressive Consulting, Private Bag 90106, INVERCARGILL.
- Call us and ask to be put on our electronic mailing list (03 211-0153).

TEAR OFF CONSENT SLIP

I/ We wish to receive emails from Janet Copeland Law and Progressive Consulting Limited that contain information and/or links to information regarding legislative changes, employment law and human resource management and the services they provide.

Person/ Organisation: _____

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Date: _____