

December 2011

# HR Market News

**Wheeler  
Campbell**

A RUBICOR COMPANY

## Market Insights

Welcome to our final ezine for 2011!

In the final half of this year we have had the privilege of working with several organisations who are investing heavily in their OD function, and this has been great to see. In a climate of uncertainty and change, it is particularly heartening to observe the positive, long-term approach taken by these organisations.

As a direct consequence of these large programmes of work, the dearth of candidates with experience in this space is increasingly apparent, with candidates who have international experience on occasion filling the gap in the local market.

Regular readers will remember us talking about the consistent demand for HR practitioners at Senior Advisor level, and the challenges of sourcing these individuals – particularly for contract assignments. We anticipate that the continuing transformation of the employment landscape in Wellington will maintain the pressure on the pipeline of talent at Senior HR Advisor level,

across permanent, fixed term and contracting roles.

In our last ezine we introduced Sandra Braithwaite, who has joined us to replace Emma Wehipeihana who is relocating to Auckland in January. We have used this as an opportunity to adjust the consultants' portfolios; partly to take advantage of anticipated changes in the market next year, and partly to play to the strengths of the respective Sandys.

A document outlining these changes is attached to this email, but if all else fails – you can call Wheeler Campbell and just ask for Sandy!

So the Wheeler Campbell HR team will have a new look in 2012. A new look but in appearance only.

The service we provide and the values we hold dear will remain.

Merry Christmas everyone.

## Employment Law Update

**BUDDLE FINDLAY**

### A cautionary tale of trial periods and independent advice

Honick Properties owned and operated farms in the Waikato and King Country. Mr Blackmore was offered the role as Farm Manager for two of its farms. There was no reference to any trial period in the letter of offer but it said a "Federated Farmers Employment Contract" would be "filled out" containing the offer conditions. Mr Blackmore accepted the offer by email on 10 October 2010. After working out the month's notice period in his current position, he moved with his family to the farm.

He started at 7am on his first day at work on 15 November 2010.

Shortly after 8am Mr Blackmore was given a copy of the Federated Farmers' template employment agreement, which contained a 90 day trial period. He was asked to sign it so he could get back to work as there was much to be done on the farm that day.

He was not given the opportunity to take independent advice. Although unhappy with the trial period, he felt he had no option but to sign the agreement. Two weeks before the conclusion of the 90 day trial period, Mr Blackmore was given notice of dismissal.

Honick Properties said Mr Blackmore's personal grievance was barred due to the trial period.

The Employment Court did not agree. It found Mr Blackmore had become an employee of Honick Properties when he accepted the offer of employment on 10 October (or alternatively, when he started work on 15 November) and therefore he had been "previously employed by the employer" (so negating the trial period).

The Court also found that the employment agreement was unfairly bargained for because Honick Properties had failed in its statutory obligation to advise Mr Blackmore of his right to take independent advice and to give him a reasonable opportunity to do so (even though the agreement contained a written acknowledgement that Honick Properties had done so). The Court said that the trial period clause was liable to be deleted as a result.

As a result of the case, employers should take caution when making offers of employment that the offer contains all of the terms and conditions, especially any proposed trial period, and that the employee is told of their right to take independent advice and given an opportunity to do so.

Have a great Xmas and New Year from the employment team at Buddle Findlay!

For more information please contact Peter Chemis (Partner, Wellington) on 04 498 7339 or Sherridan Cook (Partner, Auckland) on 09 357 1858 or visit [www.buddlefindlay.com](http://www.buddlefindlay.com).

To have a further discussion about anything in this newsletter, to share suggestions or for a general chat about anything HR please feel free to contact any of us in the Wheeler Campbell HR team. We would love to hear from you.

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