

September 2011

HR Market News

**Wheeler
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Market Insights

We are not far from reaching the point in the annual cycle where the contracting market winds down in the lead up to the summer break. We are aware of a considerable number of high calibre contractors coming out of assignments (almost exclusively focussed on change management) at the end of September and early October. For those organisations going through, or anticipating, significant change – now is an excellent time to schedule contractor resource in advance. All signals point to 2012 as the year of 'getting things done'. An organisation's ability to respond to this depends largely on the talent available in the market, if an appropriate resource doesn't exist in-house. In our ezine during this period last year we made reference to this same situation. It's as true now as it was then - those with the ability to anticipate staff shortages ahead of time undoubtedly have the advantage in this market.

We would like to take this opportunity to introduce our new Recruitment Associate, Jaarna Hoskins. Jaarna is new to Wellington, having moved down from the Bay of Plenty where she worked at the Waiariki Institute of Technology. Apart from losing several shades off her tan, she is loving life in the Best Little Capital City in the World. We love having her in the team and look forward to introducing her to you over the next few months.

Finally, a word about a special someone in New York. Those of you who are LinkedIn might have noticed Solomon Page's Contract Division has a new Vice President HR. We are delighted for Lynda and not at all surprised that Solomon Page quickly realised they had a super star on their hands. We are looking forward to hearing about her successes in the Big Apple.

Employment Law Update

Trial periods revisited

In the leading case to date on trial periods, *Smith v Stokes Valley Pharmacy Ltd*, the Employment Court took a strict approach to obtaining an employee's agreement to a trial period. As the employee did not sign the employment agreement until the second day of employment, she was held not to be a "new" employee at the time it was agreed. Therefore, the trial period was unenforceable.

The *Stokes Valley* case remains the law but a recent Employment Relations Authority determination (*Symonds v Collins Stainless Steel Fabricators Ltd*) shows that a trial period can be agreed to without the employment agreement being signed before commencing employment. In *Symonds*, the agreement was not signed until two weeks after Mr Symonds started employment but the company had specifically discussed a trial period with him at the time it offered him employment and he had acknowledged his agreement to the clause. Prior to commencing employment, Mr Symonds had also been provided with an employment agreement with the trial period clause highlighted in green and the company had

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chased him for a signed copy of the agreement in the weeks after he started. On each occasion he reiterated that he had no problem with its terms.

Taking these matters into account, the Authority was satisfied that Mr Symonds was fully aware that his employment would be subject to a 90 day trial period. Good faith was also relevant. The employee had a responsibility not to lead the employer to think that he had accepted terms and conditions if that was not the case.

While undoubtedly best practice is to require an employee to sign a written employment agreement containing a trial period before work commences, the *Symonds* case shows that if, despite best attempts, a signature has not been obtained, all may not be lost.

For more information please contact Peter Chemis in Buddle Findlay's Wellington office on 04 498 7339 or Sherridan Cook in Buddle Findlay's Auckland office on 09 357 1858 or visit 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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