

re:source

law news for HR and management professionals

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New year, new rules

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Copyright (Infringing File Sharing) Amendment Act 2011

The publicity surrounding the arrest of Kim Dotcom, founder of Megaupload, for alleged copyright infringements, brings into mind the changes to our copyright laws last year, and the potential risks these pose for employers.

The Copyright (Infringing File Sharing) Amendment Act 2011 came into force last September. Employers fall within the definition of an "account holder" and are accordingly liable for infringing actions of employees while at work.

Infringement occurs by illegal "file sharing", or uploading/downloading material from the internet using an application or network that enables sharing of material between multiple users. It is used for, for example, downloading songs, films, television programmes and software. If this is done in breach of copyright, it constitutes an infringement under the Act.

The Act provides a three-stage notification process for infringements, namely:

- first detection notice for a first infringement
- warning for a second infringement

- enforcement notice for a third infringement

On receipt of a complaint by a copyright owner of illegal file sharing, the relevant internet service provider must identify the relevant internet account holder (the employer) and issue the appropriate infringement notice. These can be challenged if this is done so within 14 days. If the first two stages do not act as a deterrent and a third stage enforcement notice is issued, the copyright holder may make a claim in the Copyright Tribunal against the account holder for compensation of up to \$15,000. A further right, yet to come into force, will empower the District Court to order the suspension of an account holder's internet access for up to 6 months.

What can employers do?

Clearly there is a serious risk to employers of being held responsible for employees' wrongful actions. Vigilance is necessary to minimise this risk as much as is possible. As employers, you will want to:

- ensure that internet policies are in place regarding file sharing, and make sure employees are clear as to the implications of breaching copyright

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- treat any breach of policy seriously and consistently
- make sure your systems contain sufficient protection regarding internet use, including the ability to audit use and block inappropriate websites
- make sure also that your systems allow to identify who is responsible for any instance of infringement
- respond immediately to any infringement notices, and investigate to find out who is responsible (taking disciplinary action may be warranted depending on what has been done and whether it is a first offence)
- if disciplinary action appears warranted, follow appropriate processes to protect against personal grievance claims.
- extend flexible working arrangements including extending it to all employees and removing the existing six month continuous service requirement before an employee can make a formal request for flexible hours
- remove the requirement to conclude a collective agreement when in collective bargaining
- remove the requirement that non-union members are employed under the terms of the collective for the first 30 days of employment
- allow employers to opt out of negotiations for a multi-employer collective agreement
- allow partial pay reductions for partial strikes or situations of low-level industrial action
- review how allegations of constructive dismissal are made

We will be watching for cases in this area as they relates to employers, employees, and their respective obligations, and will report further.

Proposed law changes

Employment law was a feature in 2011's election campaign. The National Party's key promises in this area were to:

- introduce a starting out wage at 80% of the minimum wage for 16-17 year olds for the first six months of work with a new employer, 18-19 year olds who have been on a benefit for more than 6 months before starting work and 16-19 year olds in industry training: this will double the current time period a young person can be on the 80% rate

Only the first of these formed part of the "Post Election Action Plan" set out by National ahead of the election. No legislation has yet been drafted, but it is likely that at least some of the above will be enacted this year. We will keep you informed of developments.

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This paper gives a general overview of the topics covered and is not intended to be relied upon as legal advice