

ALWU NEWSLETTER

THE OFFICIAL NEWSLETTER OF THE AOTEAROA LEGAL WORKERS' UNION

MEET THE EXECUTIVE 2020/2021



Kia ora koutou! I'm **Wendy Kemp**, Advocacy Officer for ALWU 2020/2021. I'm in my third year practicing law and, having just left a role in a large law firm, I'm excited to begin a new property solicitor position in one of the government departments here in Wellington. The past 3 years have been full of challenges but I've been fortunate to have guidance, support and so much encouragement along the way. I've found it's important in life to find ways to give back when you've had helping hands get through the tough times. The Advocacy Officer position is an opportunity for me to do just that.

I'm looking forward to being a port of call for those in frustrating situations with their employers and helping them find assistance for a way forward. Over time I hope that employers realise legal employees are no longer as vulnerable as they once were, that employees have a strong collective voice backing them and that the base treatment of employee gets lifted across the board to one of respect and value.



Kia ora koutou! I'm **Emily Tyler**, Employment Officer for ALWU 2020/2021. I am a second year solicitor in a commercial firm in Auckland. I am passionate about what ALWU stands for, and believe that everyone is entitled to a fair, safe, and transparent workplace. ALWU provides a supportive community, one whose collective voice means that individual workers do not have to act alone.

In the face of greater uncertainty and job insecurity as a result of the COVID-19 pandemic, it is more important now than ever before to make sure that all legal workers have knowledge of their employee rights and have access to advocacy services. I am excited to work with the Employment Law Committee to continue providing resources on employment law for members, and I especially look forward to acting as a union advocate for ALWU's members. Please reach out to me if you have any questions or concerns. Kia aha!



Kia ora! My name is **Katrina Hope** and I'm grateful to be the Membership Officer for the ALWU executive 2020/2021. I'm Canterbury born and Otago raised and completed both my Bachelor and Master of Laws at the University of Canterbury. I'm currently based in Christchurch and work as a solicitor in general practice. While I am honoured and proud to be a part of the legal profession, I have continued to be appalled by the ongoing issues that many legal workers face including minimum wage issues, harassment and bullying.

The fact that many legal workers face injustice within their workplaces and often have little to no support is unacceptable. This is reflected in the concerning mental health difficulties and retention problems within the legal profession. I believe that the legal profession needs to practice what it preaches and that is why I joined ALWU. This change will be slow, but I am excited and committed to be involved in helping create a safer and fairer culture for all of us. I hope you can join us in bringing this change!

2020: A YEAR IN REVIEW

2020 was a year worth reflecting on. Not just because it was the worst in recent history (remember when we thought 2016 was bad?!) but because ALWU achieved so much.

In 2020 ALWU reached over 900 members across Aotearoa.

ALWU elected a new Executive – 12 members, including two Co-Presidents, Secretary, Treasurer, and a Student representative.

ALWU continued its minimum wage campaign which has seen large law firms in Aotearoa implement systems that have never existed before, including providing “top ups” to employees who have dipped below minimum wage. This campaign also opened up discussions around time recording and what constitutes “work” (hint: partners think “work” is billable time only, ALWU thinks its wider than that).

ALWU responded to Covid-19 and, like the rest of us, this work defined its year. The lockdown required legal workers to adjust to working from home and, for many, accept a reduction in their salaries – without necessarily receiving a corresponding reduction in their hours of work. Many members were made redundant. Many others experienced employment issues in their workplaces.

To increase transparency and ensure legal workers remained informed throughout, ALWU sent regular updates regarding members’ employment rights.

To celebrate the good work that firms were doing to support their employees through the lockdown, and to empower members to engage in conversations with their employers in relation to salary reductions and redundancies in an informed and constructive manner, ALWU collected information regarding employers’ responses to COVID-19.

ALWU put together a report of 40 different law firm responses during this period – including whether a firm took the wage subsidy, whether redundancies occurred, and whether the firms had made any special efforts to assist their staff during the difficult time.



The Report showed the good, the bad, and the ugly. The good included cash payments to cover home office set-up costs and mental health support.

The bad was salary reductions and redundancies. And the ugly was salary reductions as high as 40% from a firm that did not take the wage subsidy and therefore relied on their employees to absorb the economic fallout of Covid-19.

ALWU's Pro Bono Panel offered huge support to members during this time. The Pro Bono Panel offers free employment advice to members, ranging from redundancies to bullying and sexual harassment.

In addition to the advocacy services provided through the Pro Bono Panel, ALWU recognised that there was a need for general employment law guidance focused on the rights of legal workers, and not their employers. To fill that space, ALWU set up its Employment Law Committee.

The Committee assists ALWU by providing general employment law guidance on topical issues, which is provided to all members and guidance to the Executive on legal matters when required.

ALWU launched its Living Wage Campaign. Only three (soon to be four, thanks Meredith Connell!) law firms in Aotearoa are living wage accredited. This is unacceptable given the huge amount of wealth and resources in the legal profession. ALWU published an open letter to the profession to call upon law firms to become living wage accredited and do their bit to ensure workers are able to live fully.

So we have been busy, and the mahi only continues. If you are keen to get involved, please get in touch at contact@alwu.org.nz.

THE CLOSEDOWN PERIOD AND LEAVE IN ADVANCE



FOR CONTEXT:

Your anniversary date is the date on which you have been working for the firm for one year. For the purposes of the Act, this is the date on which you become entitled to your annual leave. Where your first anniversary date is after a closedown period, the processes under section 34 and 35 of the Act are triggered and your anniversary date is moved to the following year.

Four weeks is 8% of the year. This is why, at the risk of oversimplifying, your annual leave entitlement is 8% of the time that you have worked to date.

The employee and employer can agree to also take the closedown as leave in advance, but this means you would start the year with about 11 days of negative leave.

MEME CORNER



The holiday closedown period is generally a great time to relax and enjoy a kiwi summer, but it can also be a frustrating time for those who have been employed for fewer than one year. This is because under the Holidays Act 2003 the entitlement to annual leave arises when an employee has been working for 12 months, so employees working for less than one year are generally not entitled to any leave under the Act. But now an important shift has taken place due to the Employment Court decision in *Metropolitan Glass and Glazing Ltd v Labour Inspector* [2020] NZEmpC 39.

In summary, the case is about the definition of sections 34 and 35 of the Holidays Act, which relate to payment of leave during a closedown period for employees who have been employed for fewer than 12 months.

Prior to *Metropolitan Glass* leave for the closedown was taken as leave in advance. Employees working for less than one year were not entitled to any leave under the Holidays Act. Instead leave was accrued in advance which allows employees to take it during the year and over the closedown period. The decision in *Metropolitan Glass* means that this approach no longer appears lawful. Instead, the following process must be taken (from [67] of the case):

1. Employees who, at the commencement of the closedown period, have been working for the employer for less than twelve months must be paid 8% of their pre-tax earnings to date minus leave taken in advance; and
2. The new anniversary date is then set as the date on which the closedown begins.

Important context for this is that the Holidays Act is quite widely viewed as a seriously flawed piece of legislation. There is a Holidays Act Task Force that is assisting the Government to amend or replace the Act. It is likely that this part of the Act will be amended, as there seems to be broad agreement that being able to take leave in advance, rather than having to have it paid out, would be a pragmatic state of affairs. Para [59] of the judgment acknowledges this and points to that lack of clarity in s 34.

Has your workplace looked into the *Metropolitan Glass* decision and do you believe that you have been paid fairly over the closedown period? Don't hesitate to contact the ALWU at advocate@alwu.org.nz if you need our support.