

Siouxsie Wiles decision a wake-up call for all employers with public-facing staff

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Michael Andrew

The Employment Court has upheld a complaint that the University of Auckland breached its contractual obligations to protect one of its academic staff, Associate Professor Siouxsie Wiles, from abuse and failed to act in good faith when dealing with her concerns.

In a decision released earlier this week, Judge Joanna Holden said the university was too slow in putting in place measures to support and protect Wiles from the increasingly extreme harassment she received during the covid-19 pandemic, when the microbiologist became a prominent media commentator in support of the government's policies. The court ordered the university to pay Wiles \$20,000 in damages.

The abuse included threats of violence and "doxing", where her telephone number, email address, and home address were posted online. She and other academics consistently raised concerns about the harassment with the university, which she claims didn't do enough to ensure her safety.

In a three-week employment court hearing last year, Judge Holden had to determine whether Wiles was unjustifiably disadvantaged in her employment, whether the university breached its contractual obligations or statutory obligations of good faith and what remedies Wiles was entitled to.

Wiles initially raised a personal grievance in the Employment Relations Authority because of what she considered to be the university's poor response to her concerns in 2021. This was bumped up to the Employment Court due to the urgent nature of



Siouxsie Wiles

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the matter and the questions of law that were likely to arise.

In her determination, Judge Holden declared the university had contractual obligations to take all reasonably practicable steps to keep its employees safe at work and to avoid or minimise harm, including mental harm, caused by hazards in the workplace.

"Employers must eliminate risks to health and safety so far as is reasonably practicable and, if it is not reasonably practicable to eliminate those risks, to minimise them so far as is reasonably practicable."

The judge found that although the university did take steps to protect Wiles – such as hiring an external firm to audit the systems it used to keep staff safe and implementing its recommendations – these were deemed insufficient or too slow, and not reasonably practical.

"The university should have moved more quickly to put measures in place to protect and support Associate Professor Wiles and her colleagues, obtaining expert assistance as required," Judge Holden said.

"Instead, while university personnel were sympathetic, they still seemed reliant on Associate Professor Wiles and her colleagues to suggest actions they would like the university to take."

The determination also considered the university's response to Wiles' concerns, which suggested she moderate her public commentary on the pandemic to mitigate harassment.

The judge said this was not reasonable and the university should have put in place a proper strategy to support affected staff to continue with their public activities around the pandemic.

"I also find the approach adopted by the university in the period leading up to the lodging of Associate Professor Wiles' personal grievance on 12 July 2021 amounted to an unjustifiable disadvantage. Associate Professor Wiles was entitled to expect the university to have put together a plan to keep her safe as she went about her work and to have supported her as she did so."

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A central question of the determination was whether the university had breached its statutory duties of good faith and to be a good employer during its management of Wiles' concerns.

At one point, the university attempted to make a distinction between her normal academic duties and her media commentary and appearances, and attributed partial blame for the abuse to these "outside activities".

Judge Holden noted the "aggressive" correspondence of Wiles' superior, Professor John Fraser, who implied the abuse she was receiving was a result of the public discourse that she was undertaking at her own discretion, particularly on social media.

These activities were outside of her role with the university, Fraser implied.

"His reference to 'Brand Siouxsie' and to her being a celebrity speaker reinforces the sense that, in his view, Associate Professor Wiles was making herself a target for abuse because she was undertaking public discourse outside her work for the university and in ways that were not in accordance with 'normal academic discourse,'" the judge said.

The judge said Fraser's implied criticism that Wiles was not commenting in a scholarly manner was misplaced, noting that his views were affected by Wiles' popularity.

This correspondence and subsequent "aggressive" letters from other staff members "marked a shift in attitude" of the university toward Wiles, which was not consistent with the contractual obligations to be a good employer, the judge said.

Judge Holden also noted the degree to which Wiles' outside activities, including her social media posts, had been scrutinised relative to other public-facing academics.

"Despite promoting Associate Professor Wiles' public work on covid-19 matters, there is a sense in the correspondence it sent to her that the university considered that she bore some of the responsibility for the negative backlash that her work produced. Rather than assisting Associate Professor Wiles to deal with the situation she was in, the correspondence from the University exacerbated her distress."

Ultimately, Judge Holden determined that the university breached its express and implied contractual obligations to protect Wiles' health and safety, breached its statutory duties of good faith and to be a good employer and breached its contractual obligations to be a good employer, including its failure to act in good faith.

The judge said Wiles was due compensation for the unjustifiable disadvantage she suffered and general damages for breach of contract.

While she noted that the university's approach was "deficient in that it was reactive and not expansive enough", it did make



Catherine Stewart

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efforts to comply with its health and safety obligations within the confines of its existent health and safety framework, for which it should be commended.

Because the breach of its statutory duty of good faith was not deliberate, serious and sustained, a penalty under s 4A of the Employment Relations Act 2000 did not apply.

"Those factors, together with the circumstances in which the breach occurred, mean I do not consider this case is one for which a penalty for breach of contract is warranted."

Precedent

Employment lawyer Catherine Stewart, who acted for Wiles throughout the proceedings, says the determination sends a strong message to employers, particularly when managing public-facing staff.

"It most definitely sets a precedent for the benefit of New Zealand employees. The implication [about] Associate Professor Wiles' public commentary and outside activity was completely rejected by the court. Her public commentary was roundly seen to be within the scope of her work.

"Employers should take heed that if an employee's public commentary is part of their job, and if doing that work puts them in a dangerous situation, then the employer must ensure that the health and safety obligations are met. Those obligations are engaged as soon as an employee undertakes that work.

While this ruling was particularly relevant for universities and other institutions with prominent, public-facing employees, the way the University of Auckland treated Wiles throughout the saga was relevant to all employers when dealing with staff issues and communications, Stewart said.

"She was subjected to internal investigations and an increased scrutiny of her activities as opposed to other academic staff in similar situations. Then there were the 'aggressive' letters from her superiors that raised her celebrity status. All this does raise important questions about the way employers treat their employees and the kind of language to stay away from."

Commenting to other media, Wiles said she felt "vindicated" by the determination. "It's kind of an amazing result really. It's what this was all about and it even upheld my personal grievance which was the document which I guess started the whole legal proceedings," she told *Stuff*.

Wiles also noted that if the Vice-Chancellor hadn't rejected the personal grievance claim, then perhaps she would not have had to go to the Employment Court for a decision.

"The other thing I feel quite vindicated about is that the judge accepted that the university's conduct made everything worse and so that was really important to me because I definitely felt like I was being singled out and that's what the judge found."

Siouxsie Wiles v The Vice-Chancellor of the University of Auckland [2024] NZ EmpC 123 ■

Read the decision [here](#) ■