Pendlebury | workplace law

WORKPLACE LAW UPDATE – MELBOURNE CUP EDITION

October2006
Developments in HR & IR Law in Australia

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YOUR CHANCE TO WIN MELBOURNE CUP BETTING VOUCHERS!

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Welcome to the October – *Melbourne Cup* Edition of Workplace Law Update. This Update is bursting with information, and in particular, I am offering you the chance to win a Betting Voucher for the Melbourne Cup race to the value of $50, $25.00 or $10, with Sydney Bookmaker, Jeffrey Pendlebury.

How to Win the Betting Vouchers?

I am running a sweepstake for the Caulfield Cup run this Saturday, 21 October 2006, at Caulfield. This race is run over 2400 metres, and has been contested by some of the best horses in Australia. It has long been renowned as the "first race" of Australia's most popular betting double, the Caulfield Cup and Melbourne Cup. Its past winners include champions such as Railings, Elvstroem, and Mummify, to name a few.

TO ENTER: All you have to do is reply to me by email by no later than 5.00pm on Thursday, 19 October 2006, advising me of your desire to be included in the sweep.

It costs you NOTHING!

I will then place your name, along with all other entries, into a hat and draw each name with a corresponding horse in the field, on Friday, 20 October, when the field for the Cup is finalised. I will publish a list by email on Friday advising who got which horse, so you will all know who to cheer home on Saturday afternoon. {Only one entry per company please.}

The prizes are as follows:

If your horse finishes in 1st Place - $50.00 Betting Voucher
If your horse finishes in 2nd Place - $25.00 Betting Voucher
If your horse finishes in 3rd Place - $10.00 Betting Voucher

All Betting Vouchers will be emailed to you on the following Monday after the Caulfield Cup is run. They are redeemable only as a bet (they cannot be cashed in) with Sydney Rails Bookmaker Jeffrey Pendlebury on the 2006 Melbourne Cup race on Tuesday, 7 November 2006, at Randwick Racecourse. For those of you who win one of the 3 Vouchers, but are unable to attend Randwick Racetrack on Melbourne Cup day, please advise me in advance of your selection in the big race, and I will ensure your bet is placed with Jeff Pendlebury.

GOOD LUCK!!!!

Other More Serious Matters: Name Change

Recently, the name of my practice was changed to Pendlebury Workplace Law. I hope you agree that this name reflects more clearly the legal service that I provide to clients.

Up Close and Personal – Inspiring Professionals who 'manage people'

I am thrilled to announce that some extremely talented and dedicated Managers, including HR, Safety, Operations, and Administration Managers, have agreed to be interviewed by me, and to feature in my monthly Update over the coming months.

These professionals derive from a diverse range of industries and backgrounds including (just to name a few): retail, public health, online wagering, futures, hotels, recruitment, law and racing.

Please stay tuned as the Up Close and Personal interviews by some very inspiring people will be starting next month!

WorkChoices Update – What You Need to Know

Are you having trouble keeping up with all the workplace law changes?

Well, the Federal Government recently passed **further** amendments to the WorkChoices Regulations. This makes it the third amendment to the Regulations since WorkChoices commenced in late March 2006.

Employers can breathe a sigh of relief, however, because one of the amendments means there will be no penalties imposed in relation to the time and wages record-keeping obligations for another six months until 27 March 2007.

As you will be aware, the Regulations contain extensive provisions relating to the records employers must keep, such as hours worked, as well as information required to be included on employee pay slips. A breach of these provisions can result in a fine of up to $2,750 per breach, by an employer. However, as you will recall, the Regulations gave employers until 27 September 2006 to comply with the new record-keeping requirements, and penalties for a breach could only be imposed **after** that date. Well, now employers have until 27 March 2007 to comply.

Jockey Safety Improved - and the Melbourne Cup

With the nation's greatest race just weeks away, it seemed appropriate to discuss the recent changes to improve jockey safety in the Sport of Kings.

As you may know, jockeys battle to keep their weights at dangerously low levels to secure a ride. Such low weights are a real health and safety issue, particularly in light of younger generations growing taller and larger than their parents. Well, the minimum weights for jockeys in major horse races, including the Melbourne Cup, will be raised commencing in 2007.

The Australian Racing Board will raise the minimum weights in races such as the Melbourne Cup and Caulfield Cup, while all weights on the weight-for-age scale used in events like the Cox Plate will also be raised by one kilogram. Racing NSW Chief Steward, Ray Murrihy, has said that the increased limits are designed to stop jockeys risking their health when trying to lose weight. Murrihy said that:

> *"What we've done is to raise them to a more realistic level, which is more in keeping with what jockeys are able to meet, and meet without terrible dieting or wasting regimes… bearing in mind the general population, year by year, as history tells us, is getting bigger and heavier."*

And, the Jockey Vest gets Approval

The prototype for a new safety vest has also received the thumbs-up from jockeys. Darren Beadman said, *"It is the closest thing to perfect we've had yet and you can tell a jockey helped design it…it doesn't creep up your back and interfere with the skull cap."* Developer Tim Fitzgerald said the next step was to reduce the weight of the vest, which is 800g, about twice that of the current models.

Workplace Surveillance – Recent Decision

Rocky Cicciarelli v Coles Myer Logistics Pty Limited PR973404 (15 August 2006)

The Australian Industrial Relations Commission ("**AIRC**") has ruled that Coles Myer Logistics Pty Ltd ("**Coles**") has the right to use its video surveillance system to check on potential safety breaches. This ruling comes in light of the AIRC decision to uphold the dismissal of a forklift driver who failed to obey a stop sign in a warehouse.

The National Union of Workers' challenged the driver's dismissal, arguing that Coles had reneged on a deal struck in 2000 that the closed circuit television system ("**CCTV**") would not be used for assessing employees' work performance.

The driver, who worked for Coles at its Hampton Park distribution centre, had been previously warned about failing to observe traffic safety rules and was dismissed, without notice, after two warehouse managers saw him fail to stop at the stopping point. Before dismissing the worker, Coles reviewed the CCTV records to verify that the worker had failed to stop.

After assessing the evidence, Commissioner Lewin found that on the balance of probabilities, the worker had failed to stop as required by the site safety rules. The Commissioner noted the driver's two final warnings and said the driver was also aware that continuous adherence to the rules was crucial to employee safety and failure to do so could lead to dismissal. He found Coles had also adhered to procedural fairness protocols.

The Commissioner ruled the dismissal reasonable, but said it was harsh for Coles to fail to provide notice given the driver's long service, which exceeded 13 years. He ordered that the worker receive four weeks' pay (about $6,700), which would have been the normal notice period.

CCTV use - OK

During the hearing, the worker's representative argued that Coles' use of the CCTV system breached the watershed agreement brokered by the Commission when Coles first sought to introduce it in 2000. That Agreement stipulated that Coles would not use CCTV to monitor the real-time work performance of warehouse employees. Coles agreed to only use the CCTV for monitoring security and cases of suspected theft. The worker argued that Coles was breaching the intent of its Agreement with the Union by monitoring traffic movements and safety performance.

The Commissioner said it was intended that the CCTV system not be used "*as a means of surveillance and monitoring work performance as part of the daily supervisory activities of management*". He said the Agreement did not prevent the CCTV serving as a passive record of events, as in this case, and there was no evidence that Coles' management was constantly monitoring traffic performance.

Do you have workplace surveillance systems set up? Are you aware of the legislative requirements governing the use of these systems? If not, feel free to discuss these issues with me for more information.

If you would like more information on any of the issues raised in this Update, please do not hesitate to contact Brooke Pendlebury
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