

WORKPLACE SOLUTIONS UPDATE

September 2006
Developments in HR & IR Law in Australia

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SPRING EDITION

Welcome to the September Workplace Solutions Update. This Update coincides with the arrival of Spring, a season perfectly suited to change, growth and learning. I hope that all friends of my practice find this Update informative and interesting.

STOP Workplace Bullies

In the 'perfect' workplace everyone gets along, cares about each other, and is supportive to each other. In the 'real' workplace, personalities clash, tempers rage, competition rules, and gossip and rumour pre-occupy, regardless of gender, profession or industry. Ill treatment in the workplace that is directed and persistent is considered **bullying** by the Mental Health Association of NSW.

The bullying is not necessarily from someone of higher seniority in the organisation, it may come from a co-worker, a client, a supplier, or anyone else a person may deal with through their work. Such bullying in the workplace is a real occupational health and safety issue for employers.

Suite 3208, Level 9
The Tower, 70 Market St
Sydney NSW 2000

T: 02 9231 0250
F: 02 9232 7725
E: info@pendlebury.com.au
W: pendlebury.com.au

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The Sydney Morning Herald newspaper recently published a special report compiled by Nikki Davies dealing with the very serious issue of workplace bullies. How do employers deal with the workplace bully and with the victim of such bullying?

Step One:

Psychologist, Hilary Tupling, advises that initially, the person being bullied should consider the big picture as a first step. The perpetrator is often not deliberately trying to make that workers' life difficult, but is in fact dealing, or not dealing, with their own issues or pressure from above in the organisation. This is by no means an excuse for their bullying behaviour, however it may assist in taking away the sting if the victim considers that the bullying behaviour is not necessarily about them at all.

Step Two:

Tupling acknowledges that some people are just more difficult to deal with, especially if they are in a position of power, with no real accountability for their treatment of others, or with no real feelings of care towards fellow workers. In order to cope, the victims of workplace bullies must learn to take control where they can, and let the system set up through company policies and procedures work for them when they cannot personally take control.

This approach of 'taking control' involves the victim speaking about their concerns with a work counsellor, or trusted co-worker, or even a friend, in order to clarify which parts of the situation are within their control. Tupling also suggests the victim speak directly with the offender, and focus on discussing the actual complaints about their behaviour. However, this may be too confronting for some.

Step Three:

If neither of these options seem reasonable to the victim, or have proved unsuccessful, the next step is to involve the human resources manager or operations manager in the company. The HR manager is responsible for invoking the policies and procedures which exist for the company in resolving complaints of workplace bullying. If such policies and procedures are not already in place with respect to resolving complaints of workplace bullying, they should be implemented immediately.

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Step Four:

There are times when the complaint and issues between the victim and the workplace bully can get out of hand, even for the HR manager, particularly if the behaviours are serious harassment and intimidation. In certain workplaces, it is also difficult for the HR manager to have an effective impact on the problem. In these cases, it is worth considering mediation services through external sources.

If your policies and procedures are outdated or non-existent, please feel free to contact me and we can discuss the implementation of the necessary procedures. If you are considering external mediation sources, please speak with me to discuss further.

[Source: SMH, Weekend Edition, 12-13 August 2006]

Drug and Alcohol Addictions: Who is Responsible?

The Victorian Civil and Administrative Tribunal has refused to dismiss a claim by a gambling addict who alleged her employer discriminated against her by refusing to continue her pay when her sick leave ran out.

Facts:

In 2002, sales representative, Suzanne McDougall fled to Perth to avoid Victoria's many poker machines. Ms. McDougall failed to tell her employer, Kimberley-Clark Australia, her reason for fleeing to Perth. The company refused to transfer Ms. McDougall to the Perth office arguing it had no openings there. Ms. McDougall insisted on remaining in Perth. The company then decided not to continue to pay Ms. McDougall because there was "no intrinsic reason" why she could not work in Melbourne, as she had done since 1985. In March 2004, Ms. McDougall returned to her job in Melbourne.

Ms. McDougall has since claimed that her employer discriminated against her by refusing to pay her while she was in Perth when her sick leave entitlements ran out.

This preliminary decision has far-reaching consequences and makes it clear to employers to be wary of any additions of staff and to treat them as they treat other medical conditions without regard to the cause. The decision could potentially extend discrimination law to smokers, and so I will keep you all updated of the decision of the hearing, which is to be held on 17 October 2006.

Women and the Workplace

Babies are becoming a compelling issue in the workforce. Renata Bliss reported in the Sydney Morning Herald newspaper a few weeks ago that some employers agonise over the cost of a child-bearing workforce. One business owner admitted,

“Maternity leave’s a real pain in the arse for our business. We wouldn’t pay maternity leave, it’s already too costly.”

The owner cites the costs of advertising, losing trained staff and the difficulties of shifting an employee’s workload to more baby-friendly hours. This remains the dominant attitude of 54% of Australian businesses.

However, change is taking place. An example of such change is at Citibank, which says that child-friendly policies make good business sense. Citibank’s Organisation Development Manager, Nikki Grant-Cook, says,

“It’s very important to us to support talent and diversity within our organisation...why would you want to lose that expertise? You want to keep that.”

Not all companies are so supportive. Businesses are still grasping that it is in their interests to adopt maternity-friendly policies. The more highly trained the staff member, the more it costs the organization to lose her. The Equal Opportunity for Women in the Workplace Agency has a calculator on its website (www.eowa.gov.au) to measure the cost of losing women as a result of unfriendly family policies.

Number Crunch

- Women are entitled to 12 months' unpaid maternity leave after 12 months' employment.
- Men get a weeks' unpaid paternity leave or 12 months if they are the primary carer.
- 70.8% of women of prime child-bearing age (25-34 years) participate in the labour force.
- Businesses paying maternity leave have doubled from 23% in 2000 to 46% in 2005.
- The average length of paid maternity leave is 6 weeks.
- Women's participation in the workforce has risen from 44.5% in 1980 to 56.9% in 2005.
- Female participation in the part-time workforce has risen by 67.1% since 1980.

[Source: Office for Women and AAP and HREOC]

Unfair Dismissal Claims: New Remuneration and Compensation Limits

The salary cap for federal unfair dismissal claims has increased to \$98,200 from 1 July 2006, and the maximum compensation that may be awarded has risen to \$49,100.

The filing fee for such claims has also increased to \$51.40.

If you would like more information on any of the issues raised in this Update, please do not hesitate to contact Brooke Pendlebury on 02-9231 0250, mobile 0403 818 912, or by email info@pendlebury.com.au.

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