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March, 2014

Workplace Bullying - be prepared

Two developments at the end of 2013 have put workplace bullying fairly and squarely on the agenda for 2014.

Firstly, as of 1 January 2014, it is now possible for a worker to make a complaint to the Fair Work Commission specifically about bullying in the workplace. The legislation specifically prevents the employee from making a claim for compensation: the purpose of the claim, which will usually be against the alleged bully as well as the employer, is to seek a "stop bullying" order.

Secondly, in November 2013, Safe Work Australia issued a guidance paper regarding prevention of workplace bullying. This will be the background for future bullying issues in the work, health and safety system.

For both purposes, the definition of bullying (which has, in the past, been a notoriously vague concept when used in a legal context) is the same: repeated unreasonable behaviour directed at a worker or group of workers. "Worker" and "workplace" have the same broad scope which is familiar from WHS legislation. The bully could be a fellow worker, a manager, a customer or other visitor to the workplace.

Reasonable management action carried out in a reasonable manner is not bullying. So for feedback, performance management or other disciplinary processes, the focus will be on whether the action was reasonable in itself, and conducted reasonably as well.

Of course, it also makes good business sense and is good HR practice to manage any workplace situation which might amount to bullying. But these new developments mean closer scrutiny of employers and workplace culture. Employers, like good scouts, need to "Be Prepared". What does that entail?

- You need to revisit policies and procedures around issues such as discrimination, harassment, codes of conduct and work health and safety, to ensure that bullying is specifically forbidden at the workplace.
- You need to ensure that you have an appropriate grievance procedure to deal with bullying as well other forms of impermissible conduct at the workplace.
- You need to ensure that staff, and supervisory and management staff in particular, are trained to be aware of, and to respond to, bullying in the workplace.

If you would like to know more, or need help with developing policies and procedures or with training, contact:

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Changing Hours of Work: New Consultation Requirements

Effective 1 January 2014, all modern awards include an additional obligation to consult with employees (and their representatives, if any) about any change to rosters or hours.

The new consultation clause is included in identical terms in all modern awards. Its operation is, of course, limited to employees covered by a modern award.

The obligation is similar to the obligation to consult employees regarding major workplace change (which most commonly comes into operation when redundancies are proposed).

In the context of changes to rosters or hours, the obligation arises where an employer proposes to change an employee's regular roster or ordinary hours of work. The obligation is to provide the employee or employees affected and their representatives (if any) with information about the proposed change (e.g. the nature of the change to the roster or hours and when that change is proposed to commence), to invite the employees affected to give their views about the impact of the proposed change including any impact in relation to family or caring responsibilities, and to give consideration to any views expressed. This does not, of course, require that those views must be accepted, but they should be considered in good faith, and accommodated if practical.

The requirement to consult does not apply where the employee has irregular, sporadic or unpredictable working hours, and it remains to be seen exactly what situations will be regarded as "irregular, sporadic or unpredictable'.

The new provisions are to be read in conjunction with any other applicable award provisions about work scheduling and notice requirements.

It would, of course, be routine for most employers to communicate with employees about the changes to hours and when such changes should commence. The gist of the provision is that rather than telling an employee what the changes will be, changes should be communicated as a proposal with scope for response, and indeed the obligation could be read as including an obligation to actively enquire about how the change might affect the employee's family or caring responsibilities, rather than stating the position and leaving it to the employee to raise that issue. What might be required in that regard would depend on how significant the proposed change is: if it involves weekends, or early or late hours, or hours which affect the ability to collect children from school or childcare, then it will be necessary to ask the employee what effect the proposed change will have.

Although there is no obligation for this consultation to be accompanied by written notice or records, a prudent employer would note on the personnel files of the affected employee at least brief details of communication and response, and any subsequent change to hours or rosters.

The potential consequence of failing to consult with an employee as required would be prosecution by the Fair Work Ombudsman for breach of an award condition. In practical terms, this is most likely to happen in cases which appear to be gross exploitation of, or oppressive behaviour towards, an employee. However, failure to comply with the requirements of the award may arise as part of other employment disputes and would be a disadvantage to an employer in that context.

If you need any further information regarding consultation obligations please contact:

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Change to Superannuation Compliance Rules

Effective 1 January 2014, the superannuation clause in modern awards changed to require an employer's default superannuation fund to offer a "MySuper product".

MySuper products are intended to make selecting default products more efficient for employers and members. Each MySuper product offers a single, diversified investment strategy and standardised fees, with a view to making funds more easily comparable. Specific performance benchmarks will be imposed on trustees of MySuper products, and they will be subject to APRA supervision.

It is therefore important that employers confirm whether any default superannuation fund they use in fact offers a MySuper product.

Where default funds are named in awards, the Fair Work Commission will undertake and review those funds to ensure a MySuper product is available.

If you need advice on the superannuation you offer your employees or any other employment law advice contact:

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Changes in the Department of Immigration

As expected, the Department of Immigration has undergone some major changes since the change of Government in September last year.

Following the swearing-in of the new ministry led by his honourable Mr Tony Abbott on 18 September 2013, there have been a number of Government changes within the Department. The Administrative Arrangements Order issued by the Governor-General confirms the following changes to the Department's responsibilities:

- The Department has been renamed the Department of Immigration & Border Protection (DIBP);
- The new Minister for the newly renamed portfolio of Immigration & Border Protection is Mr Scott Morrison MP. Senator Michaelia Cash is the Assistant Minister;
- The Department will now manage entry, stay and departure arrangements for non-citizens, border control (including border control other than quarantine and inspection), citizenship, ethnic affairs and customs;
- Settlement and multicultural affairs functions have been transferred to the renamed Department of Social Services;
- The Adult Migrant English Programme has moved to the Department of Industry; and
- The Australian Customs and Border Protection Service is now a portfolio agency within the greater Immigration and Border Protection portfolio.
- The Department will also contribute to Operation Sovereign Borders, as well as the joint agency task force, which has been established to combat people smuggling and protect Australia's borders.

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Changes in the Department of Immigration cont.

Visa Application Charges (VACs)

A reminder that as of 1 September last year, all Visa Application Charges increased by 15%. The only visa subclasses that were not affected by this increase were Student (Temporary) and Tourist visas. This is in addition to the new Visa Pricing Model that was introduced on 1 July 2013.

What does this mean for you?

The application process for visas remains complicated despite the further increase to Visa Application Charges. If you are enquiring about or applying for a visa, it is important you speak with an experienced registered migration agent. They will be able to assist you with the process and ensure the application proceeds smoothly.

For more information on the recent changes to the Department or for any visa related enquiries, please contact:

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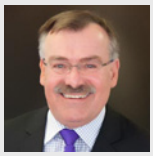
Our Employment Law and Business Migration Team



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