



Effective Workplace Solutions

WORKPLACE MATTERS JANUARY/FEBRUARY 2014

To All of My Valued Clients

Happy New Year and all the best for 2014.

Welcome to the first of my regular newsletters from *Effective Workplace Solutions*. *Workplace Matters* will be a regular point of communication with all of my clients providing up-to-date workplace relations news and issues and how they may impact upon your business

**New Bullying and Harassment Laws—
Are You Ready??**

**High Court takes
common sense
approach to
ComCare case**

**Enterprise
Agreements – A Few
Tips**

**EFFECTIVE WORKPLACE
SOLUTIONS**

(02) 6676 3445
0407 920 840
greg@ewsolutions.com.au

ewsolutions.com.au



New Workplace Bullying and Harassment Laws – Are You Ready?

The issue of bullying and harassment in the workplace has now been heightened with the changes to the *Fair Work Act 2009*. Bullying and harassment and the legal treatment of such matters has for some time been “hidden” within the provisions of the relevant State workplace health and safety legislation; on the basis that bullying and harassment is a psychological hazard and comes within the domain of providing a healthy work environment.

However from 1 January 2014, there are now provisions within the *Fair Work Act 2009* which allows the Fair Work Commission (FWC) to deal with complaints of bullying and harassment in the workplace. These changes now provide employees with another avenue of complaint against the employer or another employee.

Employees who believe they have been bullied can make application in the FWC for a remedy. FWC must address an application within 14 days of the date of lodgment of the complaint however there is no time limit on when applications may be made from the date that the alleged bullying incident/s may have occurred.

The FWC may determine if conciliation, mediation or arbitration is an appropriate process to resolve the issues, and much depends upon the circumstances of the claim. In making such a determination the FWC may make orders upon the parties to do one or a number of things including but not limited to:

- Requiring the person or persons to stop the bullying and/or harassment;
- Regular monitoring of employee/s behaviour;
- Ensuring compliance with an employer’s workplace bullying policy or review of a policy; or
- Information, support and training to employees.

It should be noted that the FWC cannot entertain or order monetary compensation as a remedy for such a claim.

However this does not prevent an employee for making a further complaint under WH&S legislation or workers compensation claim.

Strategic Approach

It is strongly recommended that employers should take the following steps to attempt to ensure that bullying in your workplace does not occur, and if there is a complaint you are best equipped to defend any claims or complaints against you

1. Review current policies and procedures in place to combat bullying in the workplace. Such policies should be clearly communicated to all employees including management and supervisors.
2. Management and supervisors should be well equipped and trained in handling bullying complaints effectively.

How can *Effective Workplace Solutions* Assist?

Effective Workplace Solutions can assist employers in **drafting and implementing comprehensive bullying and harassment policies and procedures** or simply reviewing your current policies to ensure that they are compliant and meet the Safe Work Australia *Draft Code of Practice for Preventing and Responding to Workplace Bullying*.

We can also conduct **training sessions for employees, supervisors and managers on workplace bullying and harassment** and how best to deal with these issues and complaints.

ComCare/Hotel Room Case – High Court Takes the Common Sense Approach

In probably one of the most bizarre and newsworthy cases in Australian workers compensation history, the High Court has finally determined that the injury suffered by an employee in the course of a sexual encounter in a hotel room whilst away on work related travel was not compensable. In doing so the High Court has overturned previous decisions which upheld the employee's right to compensation.

The High Court was asked to address the question as to whether the injury (no matter what caused it) within the "course of employment" if it occurs "during an interval or interlude within an overall period or episode of work"

The High Court determined that one of the crucial questions to be asked is:

When an activity was engaged in at the time of injury, the question is: did the employer induce or encourage the employee to engage in that activity?

If the answer is "No" then the injury is not within the course of employment.

In this case, although the employee was in the hotel room because her employer induced or encouraged her to be there, her mere presence was not what caused the injury to occur. It occurred because of an activity she engaged in without her employer's inducement or encouragement. The injury therefore was not within the course of employment, and compensation was not payable.

So finally we have a "common sense" outcome to a bizarre case, and in my mind dubious claim. But at what cost to the parties and the community?

WEBSITE LAUNCH:

Mid February 2014

Enterprise Agreements – A Few Tips

Have you considered heading down the path of an Enterprise Agreement (EA) in your business? They can be an effective tool both in terms of providing flexibility and stability in labour costs as well as having a positive impact on your workplace culture. This can be achieved through the quality of the document itself and through the negotiation process. Here's a bit about the process and a few tips:

What is an Enterprise Agreement (EA)?

An enterprise agreement is a document that sets out the terms and conditions of employment that has application to your workplace only. The agreement may be agreed to by the employees or the Union on behalf of the employees. The agreement must pass the Better off Overall Test (BOOT) as required by the *Fair Work Act 2009*.

What's involved in the process of establishing an EA?

Now that you have decided to attempt to put in place an enterprise agreement there is a process and strategy to be established. It's simply not a matter of drafting a document and hoping that the employees or the Union will agree with it and then put it in place. The process and strategy will be designed to try and get support from as many employees as possible to enable to get a positive vote of approval from the workplace. Ideally, the enterprise agreement should be developed and negotiated in a consultative approach with the employees or a representative group of employees (Consultative Committee) at the workplace.

Enterprise Agreements are more than just a document which sets out the terms and conditions of employment. They should be designed to provide terms and conditions that will suit the circumstances, the operations and the exigencies that exist and are peculiar to your business. Ultimately the agreement should provide benefits, both long and short term to the organisation as well as the employees. Ideally the document and the process involved in developing the document may lead to a change in the workplace culture at the organisation.

Here are a few tips to consider when developing an EA:

- Try and be innovative;** look at including matters such as training policies and incentives, devise a more appropriate classification structure that would better suit your circumstances, implement consultative committees and examine the use of self-directed work-teams are simply examples of the types of issues that can be included in agreements.
- Having said that, make sure the agreement is **not “pie in the sky”** and make sure that the provisions are **practical and able to be implemented**.
- Don't be introspective** look and research the successes (and indeed the failures) of other businesses, and look at what is being achieved in other industries to see whether the same sorts of arrangements can work in your business.
- Make the agreement attractive to employees.** Agreements apply to all parties not just employers. The agreement should be designed to retain and attract quality staff.
- But don't focus solely on employee pay increases to make the agreement attractive; believe it or not, **most employees work satisfaction is not necessarily contained in the pay packet**.

How can Effective Workplace Solutions Assist?

Effective Workplace Solutions can assist employers in the strategy development, drafting, negotiation and lodgment of Enterprise Agreements

SAFETY ALERT – CLEANING OF BEER LINES

Those clients in the hospitality industry should be aware that WorkCover NSW has issued an urgent **Safety Alert** to remind employers of the safety hazards associated with cleaning beer lines.

The Safety Alert comes after a worker in NSW suffered burns and facial injuries whilst cleaning the beer lines. Beer line cleaner was blown back into the face of the employee after filling a pressurised keg with the cleaning fluid.

This safety alert serves as timely warning to all employers in the hospitality sector to ensure that they undertake a proper risk assessment in this area and all areas of their business.

In the case of the cleaning of beer lines, employees should be properly trained in the correct and safest procedure, be supplied with the required PPE and ensure that the SDS details are current and understood by the relevant employees.

If you require further assistance or advice, please contact *Effective Workplace Solutions*