



Effective Workplace Solutions

WORKPLACE MATTERS

NOVEMBER/DECEMBER 2014

To All of My Valued Clients

Welcome to the November/December Edition of *Workplace Matters* and it's that time of the year again when Christmas festivities are now well and truly underway. They call it the "silly season" and probably for good reason! In this edition I have included some tips on the handling of staff functions and avoiding the fall-out that often occurs.

I take this opportunity to thank all of my clients for a great 2014 and into 2015 EWS continues to grow in terms of our services and client numbers. We are in the process of up-dating our website and we'll advise you of those changes as soon as they have been completed. Have a Safe and Happy Christmas and we look forward to continuing to provide you with our professional and personalised service in 2015.

We wish you a very Merry Christmas and a safe and Happy New Year to all of our valued clients.

Greg Arnold

Principal Consultant



**Social Media
policies – will they
stand up to an unfair
dismissal case?**

**Silly Season parties
– a few tips**

**Enterprise
Agreements – EWS
part of FWC study**

**Flexible Part-time
arrangements for
Clubs**

**EFFECTIVE WORKPLACE
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**Merry
Christmas**

AND THAT'S WHY THEY CALL IT THE SILLY SEASON

SOME TIPS TO AVOID THE FALL OUT FROM STAFF FUNCTIONS

Christmas functions are great for team-building and rewarding staff, and a chance for staff and management to relax and un-wind and celebrate the successes (or otherwise) of the past 12 months.

However, when staff and management 'let their hair down' in the spirit of the season, especially when alcohol is involved, anything can happen and, unfortunately often does! *Effective Workplace Solutions* offers some advice to get through the silly season unscathed.

Harassment and WH&S

Unfortunately employers can be held to be vicariously liable for inappropriate statements and conduct that occurs at work-related Christmas celebrations. Such conduct can amount to sexual harassment or other forms of harassment (such as racial harassment). Particular danger areas include 'Kris Kringle' gift giving, joke staff 'awards' and skits/performances that may offend certain groups.

Employers also have responsibilities to ensure the safety of all employees at work-related Christmas functions, by taking steps to prevent inappropriate conduct, including:

- ensuring responsible service and consumption of alcohol together with appropriate quantities of food and non-alcoholic beverages
- having a code of conduct and drug and alcohol policy in place prior to Christmas functions and reminding employees of those policies before the function
- training employees and managers in relation to the standard of conduct required at work functions
- making appropriate transport arrangements if alcoholic beverages are served
- having appropriate monitoring and supervision at the party
- having a complaints process
- taking appropriate and timely action if issues arise.

These steps are designed to ensure compliance with WHS obligations, and mitigate against workers compensation claims, breaches of WHS obligations, and other harassment claims.

Clear policies

It is also important to have clear policies and procedures governing the conduct, behaviour and expectations of employees at Christmas functions, to enable the employer to take disciplinary action against non-complying employees in appropriate cases.

Prepare

It is important for employers to prepare for Christmas functions because it is easier to take appropriate steps before the function to avoid Christmas party fiascos than having to deal with any aftermath.

Note: These steps and policies and procedures can be applied to all staff and corporate functions, not just Christmas parties, and it is highly recommended that a broad policy relating conduct at staff and corporate functions that applies equally to management and staff be included in your Staff Manual.

For further information about this issue, introducing appropriate policies or Staff Manual, or you need advice on the fall-out from a staff party, please do not hesitate to contact us on (02) 6676 3445 or email us.

SUCCESSFUL ENTERPRISE AGREEMENTS

EFFECTIVE WORKPLACE SOLUTIONS AND MURWILLUMBAH SERVICES CLUB SELECTED FOR FWC PROJECT

As reported in the last “*Workplace Matters*”, EWS had assisted Murwillumbah Services Memorial Club (MSMC) to continue to establish enterprise agreements that were innovative and were beneficial to the Club and the staff.

We are pleased to advise that the Fair Work Commission is recognising this great work, and the Club is now the subject of a research project highlighting the benefits of enterprise agreements in the workplace and the innovative provisions that have been put in place at the Club.

The research project is due for release late 2014 or early 2015, and we’ll provide our clients with more details as soon as the project is finalised and released.

Our Services

- **Unfair Dismissal Matters**
- **Underpayment of Wages Claims**
- **Enterprise Agreements (EA’s) and Individual Flexibility Agreements (IFA’s)**
- **Policy Formulation and Staff Handbooks**
- **Dispute Mediation and Resolution**
- **Strategic Organisational Change**
- **Workplace Health and Safety – Advice and Auditing**
- **Injury Management and Workers Compensation**
- **Employment Contracts**

SOCIAL MEDIA POLICIES

WILL THEY STAND THE SCRUTINY OF AN UNFAIR DISMISSAL CASE?

Late last year, the Fair Work Commission Deputy President Sams upheld the termination of an employee of Credit Corp Group Limited.

The employee had posted comments critical of another organisation on its Facebook page and then posted sexually inappropriate comments on his own Facebook page. From his comments on their Facebook page, the other organisation traced the employee back to his and advised his employer off about the offensive comments. The employee had done so on a day off work and claimed he thought his Facebook page was private, however DP Sams found his conduct amounted to a "repudiation" of his contract of employment with Credit Corp. The fact he had made the comments in his own time was of "no consequence" and it was likely he could have been validly dismissed even if Credit Corp had not had a workplace code of conduct.

"It was inevitable with the seismic shift to the phenomenon of social media as a means of widespread instantaneous communication that it would lead to new issues in the workplace. These include the extent of the use of social media while at work, the content of such communications and whether they be work or non-work related.

Employers have had to respond to the new phenomenon with appropriate policies and codes of conduct — just as they had to respond to employees using work provided computers to receive, store or distribute inappropriate or non-work-related material.

I hasten to add, the applicant is perfectly entitled to hold views about any organisation and to express such views in the public domain; but he is not entitled to do so in a manner which injures his employer's business relationship with that organisation."

Importance of a Social Media Policy

The importance of employers implementing a workplace social media policy was highlighted in another recent case involving Linfox. This time it had learnt its lesson from the previous proceedings and had in place an effective social media policy.

In the previous case in 2012, the employee had posted offensive remarks about his managers on Facebook, resulting in his dismissal. The Fair Work Commission (FWC) reinstated him, accepting his contention that he had thought his Facebook page was private.

However the FWC has commented *"In an employment context the establishment of a social media policy is clearly a legitimate exercise in acting to protect the reputation and security of a business."*

"Is it suggested that an employer can have a policy in place that seeks to prevent employees from damaging the business's reputation or stopping them from releasing confidential information while at work, but leaving them free to pursue these activities outside of working hours?"

If you would like advice or assistance with the implementation of a Social Media Policy that is able to be upheld as providing protection for your business, please do not hesitate to contact us

CLUB INDUSTRY – FLEXIBLE PART-TIME PROVISIONS MAY SOON BE A THING OF THE PAST

Effective Workplace Solutions has received advice which indicates that it appears that the flexible part-time provisions that apply in NSW and the Un-specified part-time provisions that apply in Queensland as currently prescribed in the *Registered and Licensed Clubs Award 2010* (by way of the continuation and transition of the old NAPSA provisions) may not be preserved beyond 1 January 2015. This is because legislation requires that modern awards are unable to maintain differential State provisions beyond 31 December 2014, and at this stage no alternative position has been able to be established or negotiated between United Voice and ClubsAustralia Industrial.

We are however advised that ClubsAustralia Industrial has been in last minute hearings in the Fair Work Commission to attempt to have a stay applied to the current provisions for a further 6 months to allow further time to try and reach an agreement with the Union. We have not been advised of the outcome of those proceedings at this point.

In the absence of these provisions being stayed, the restrictive substantive provisions as currently prescribed in the Award at Clause 10.4 (a) may now have application from 1 January 2015. In essence this means that part-time employees will be required to have a set roster that is unable to be altered from week to week, without the employee's express consent and agreement expressed in writing, even if the alteration is minor and has application for 1 day or shift of the roster.

It should be noted here that if you have an Enterprise Agreement in place, then it is more than likely that you have addressed this area in your EA. If that is the case then your EA will have application and therefore the Award situation will not have an impact from 1 January 2015.

However, the provisions that may apply from 1 January 2015 are as follows; and I have made bolded those areas that, in my view, will create some difficulty for Clubs and create a departure from your usual practices and processes with part-time employees:

(a) Substantive provision

(i) An employer may employ part-time employees in any classification in this award.

(ii) A part-time employee is an employee who is employed in a classification in Schedule C— Classification Definitions and who:

is engaged to work fewer than 38 ordinary hours per week or, where the employer operates a roster, an average of fewer than 38 hours per week over the roster cycle;

has reasonably predictable hours of work; and

receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

(iii) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work either:

specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day; or

specifying the roster that the employee will work (including the actual starting and finishing times for each shift) together with days or parts of days on which the employee will not be rostered.

(iv) Any agreed variation to the regular pattern of work must be recorded in writing.

(v) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.

(vi) All time worked in excess of the employee's agreed ordinary time hours will be overtime and paid for at the rates prescribed in clause 28—Overtime.

(vii) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 10.5.

(viii) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

What are the Alternatives?

If you believe that your Club, or indeed your staff members are going to be adversely impacted by the introduction and application of these restrictive provisions, there are a couple of ways that you can address these issues.

1. There is no doubt that if you are able to negotiate and establish an **Enterprise Agreement (EAs)**, then you will be able to retain the flexible or un-restricted part-time provisions.
2. If you have a handful of part-time staff, you may be able to establish **Individual Flexibility Agreements (IFAs)** with the individual part-time staff members which will contain provisions that will retain flexibility for the rosters of your part-time staff members.

If you require advice and assistance with any of the above, *Effective Workplace Solutions* can help. Clearly the earlier you deal with these matters the better. Please call or email *Effective Workplace Solutions* if you require further advice or assistance with EAs or IFAs, and we can provide advice on the processes involved in both.

*Merry
Christmas*

The text "Merry Christmas" is written in a red, cursive font. The word "Merry" is on the top line and "Christmas" is on the bottom line. There are two holly leaves with red berries: one is positioned to the right of the "y" in "Merry" and the other is to the left of the "C" in "Christmas".