

WORKSTREAMS NEWS

April 2006

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Common law, discrimination and unlawful termination claims expected to blow out

The new Work Choices are likely to cause an increase in legal battles between employees and employers. According to Andrew Stewart, professor of industrial law at Flinders University, there will be a big lift in common law, discrimination and unlawful termination claims. National president of the Australian Lawyers Alliance Richard Faulks said it was logical that workers denied established rights under unfair dismissal would seek alternative remedies. Asked about potentially large payouts, he said: "Courts recognise psychiatric injury as a serious disability."

With unfair dismissals limited, the Australian Chamber of Commerce and Industry anticipates workers will "test out" other mechanisms.

ACCI workplace policy director Scott Barklamb said: "It's a reality we have to face and we would like to see it restricted." He said employers expected awards for suffering to be "practical, balanced and consistent with established precedent". Lawyers expect a wave of claims from workers wanting compensation for alleged mistreatment, including bullying. The courts, anti-discrimination tribunals and workers' compensation schemes are expected to experience a significant lift in cases linked to sackings.

Jane Seymour, from Australian Business Lawyers, said sacked employees would rush to alternative remedies after the Government's new laws, introduced this week, had exempted employers with fewer than 100 staff from unfair dismissal claims. "Bullying and sexual harassment are grey areas," she said. "As unfair dismissal dries up, they will be fertile ground for employees looking for new ways to gain compensation."

Ms Seymour said a classic case was the awarding of \$550,000 to a Queensland woman for a depressive disorder after being verbally abused by her manager. While the payout was overturned on appeal because the woman was found to have a pre-existing disorder, Ms Seymour said similar claims were inevitable, with potentially large settlements.

Last month, a security guard at News Limited, publisher of The Weekend Australian, who had been subjected to abusive comments such as "coconut head" and "monkey face", was granted \$1.9 million by the NSW Supreme Court. By comparison, the maximum payment under the workers' compensation scheme for the loss of both eyes is \$250,000. A worker who lost a thumb would receive \$35,000, plus pain and suffering capped at \$50,000.

How should you treat your workers?

Often clients ask us to provide assistance with issues that have little to do with Workers Compensation and Occupational Health and Safety. However, 20 years of industrial experience and many years of academic studies may be useful in providing some helpful hints that you may find beneficial. In an article written by the famous Human Resources professor John Sullivan of the San Francisco University, he states that many managers have the mistaken impression that they should treat all workers equally. "The opposite is true" he says.

Great managers have figured out how to treat top, average, and poor performers "differently." If you want to give your company a competitive advantage and increase employee productivity -- and thus company performance -- you should dedicate more time and resources to the top 20 percent of your employees. In fact, you can increase company revenue by hundreds of thousands of dollars -- literally -- by retaining the top 20 percent, releasing the bottom 10 percent, and replacing the latter with average employees. This doesn't mean you should abuse or ignore the rest of your employees. It just means you shouldn't treat all employees equally.

10 times more valuable

Top performers almost always exceed the performance of average workers by at least 25 percent. It is not unusual in some industries to find that the performance differential between average and top performers is 10 -- that's 1,000 percent! If you invest in an asset (whether that asset is an employee or any other financial investment) that costs 25 percent more but produces 10 times more in output or revenue, you have a net gain -- and an outstanding one at that.

What does it mean for the average manager/employer?

It means that if you want to be fair you have to use what is called the Differential Leadership Method. Treat the workers according to their position at the personal, interpersonal, organizational and development level. Some people want to be closely supervised and task managed, others are independent and want to grow rapidly, whilst others want to "be treated as children" told what to do and kept in the dark. In other words, let's use different strokes for different people and let us reap the rewards.

We are currently put the final touches to a business executive coaching system that is process-driven and practical. If you are interested in discussing this further please ring **Lino Magnano on 0418509743**.

Company fined for exploiting workers

A Victorian clothing company based in Springvale has been fined the second highest penalty under federal industrial law for failing to comply with the Clothing Trades Award. Southern Cross Clothing was fined \$110,550 last week for 14 breaches of the award's outworker provisions, which require companies to be transparent about their contracting chain.

Federal Court Justice Shane Marshall said Australian clothing industry outworkers were often exploited, working for "absurdly low rates" at home. "The breaches were ones which offended an important regulatory regime," he said. "It is a regulatory regime designed to stop the flagrant exploitation of outworkers in an industry notorious for such behaviour."

The company was fined for hiring outworkers without telling them about their legal rights or agreeing to give them award wages and conditions. It also was fined for failing to keep appropriate records on the contracting chain and not disclosing where the work was being done. The company's managing director, David Leongue, said the business closed last year and he had no comment to make. The company made clothes for Designer Kidz, which also could not be contacted.

A spokesman for Workplace Minister Kevin Andrews said the Government had ensured outworkers were protected under the new WorkChoices laws. Slater & Gordon partner Adam Bandt, who represented the union, said the fine showed employers that "despite recent changes, they must obey industrial laws and help stop exploitation of outworkers".

Howard government blames bosses

Workplace Relations Minister Kevin Andrews has warned Australian companies that they'll be caught if they invent false reasons to sack employees. Last week, Mr Andrews accused some employers of jumping the gun and using the government's new workplace changes to justify sackings.

He singled out Cowra Abattoir in central western NSW, where 29 workers were sacked and told they could reapply for 20 positions at a lower wage. Backing his minister, Prime Minister John Howard also warned large firms could not just give "operational reasons" to justify dismissals. But the warnings have angered union leaders, who say the workplace changes are being used just as they were intended. Mr Andrews has made clear that companies who invent reasons to sack workers will face the full force of the law.

He said the Office of Workplace Services was investigating the Cowra case.

"To invent an operational reason that doesn't stand up is going to leave an employer in a fairly disadvantageous position, it would be a silly thing to do,"

Mr Andrews said. "If your predominant reason to dismiss someone is to seek to then re-hire them on inferior terms and conditions that can be in breach of the legislation. "People should be aware of the full-range of their rights and obligations and not go off half-cocked." In the meantime the owners of the Cowra's abattoir in central NSW have gone underground after sacking 29 of their workers, refusing to discuss their decision with the media or the local mayor.

The federal Office of Workplace Services is investigating the legality of the abattoir's decision to sack the workers and tell them they could apply for 20 jobs at lower wages.

New law to stop claims "harvesters"

The Queensland government introduced legislation into parliament last week to restrict advertising by non-lawyers who offer free advice about personal injury claims but only want to sell people's case histories to lawyers.

Advertising by these 'claim harvesters' tells people they can get tens of thousands of dollars for injuries sustained in places such as work. Claim harvesters charge lawyers up to \$8,000 for case details. This extra cost is eventually passed on to the injured person, to be paid out of any compensation they receive. The government's Personal Injuries Proceeding (Legal Advertising) and Another Act Amendment Bill 2006 would mean claims harvesters would face the same advertising ban that lawyers face in Queensland. This ban came as a result of legislation passed in 2002.

The government said it is trying to change the U.S.-style 'sue for anything' mentality that has contributed to spiralling insurance costs. "We have taken strong steps to prevent a U.S.-style compensation culture in this state and I do not want claims harvesters getting in the back door," said Attorney-General Linda Lavarch. Under the new legal changes, the Legal Services Commissioner is able to take complaints, investigate and prosecute both lawyers and non-lawyers for breaches of advertising restrictions.

W'Cover premium goes down by 10% in NSW

NSW workers compensation premiums will be reduced by 10 per cent, saving businesses almost \$300 million a year.

After revealing the WorkCover scheme deficit had fallen to \$1.162 billion - \$836 million less than six months ago - the Premier, Morris Iemma, said last week about 250,000 businesses would benefit. He said the reduction, from June 30, was "responsible and affordable".

The business organisation ABL/State Chamber welcomed the announcement as a "shot in the arm" for NSW businesses.

The Opposition Leader, Peter Debnam, agreed. "We've been calling for a year for the Government to cut workers compensation charges by 10 per cent," he said. "It's one of the biggest imposts on businesses in NSW and it's why investment and jobs are fleeing over the border."



Head Office

Address:
Level 1,
19-21 Argyle Place South,
Carlton, Victoria, 3053

Tel: (03) 9349 4655
Fax (03) 9349 3955

Email:
elenad@workstreams.com.au

NSW Office

Unit 20,
45-51 Huntley St
Alexandria, NSW, 2015

Tel: (02) 9516 2033
Fax: (02) 9516 2577

Email:
taniap@workstreams.com.au

ODD SPOT (The Age 11th April 2006)

A legless Berlin man has been told to start a job picking asparagus. The German welfare office has been caught out before. Last year, an armless and legless woman was told she could not get full benefits because she was not disabled enough.

Victorian employers want a premium reduction

VECCI head Neil Coulson has called on the Bracks government to deliver a new premium reduction. "We believe further WorkCover premium cuts are achievable in Victoria," he said. Australian industry group state director Tim Piper said the Government must act to ensure Victorian businesses were not left behind.

"The huge surplus recently announced by the Victorian Workcover Authority leaves the government with no excuse," he said. "As such, we are calling for a further flat 10 percent premium reduction in the next state Budget."

A spokesman for WorkCover Minister John Lenders, Matt Nurse, said Victoria had the second-cheapest WorkCover premiums nationally, even after the cuts in NSW.

Work Choices and WorkCover Seminar

The new Industrial Relations legislation will have extraordinary implications in every aspect of business life, from performance management to disciplinary warnings. Interestingly the legislation may impact on future WorkCover claims. According to WorkCover agents an increase in the number of stress compensation claims is expected. To illustrate the new legislation ACH, WorkStreams and RBD Recruitment invite you to a breakfast seminar to be held:

Friday 12th of May
From 8am to 10am
La Notte Restaurant
140 Lygon Street
Carlton

Guest Speaker
Harriet Shing
Macpherson and Kelley Lawyers

Light Breakfast will be served.
Please RSVP by 8th May on 9349 4800 or 9349 4655