Unfair Dismissal ~ there are two sides

The New Year has brought with it many changes to the way people do business. We often hear the phrase, “work smarter not harder”. I believe, however, that we need to “work harder at being smarter”. To have a successful business, we still need to work hard........just be really smart about what it is we are actually working at.

With only four weeks of the New Year gone, I have heard a number of reports already of human resource issues affecting the way people are doing business. Unfortunately, a number of these issues have moved from a small dispute to a matter referred to the Fair Work Commission for resolution.

The majority of the issues that have been reported to our College, relate to the unfair dismissal of staff. Now....there are always two sides to every story; some matters relate to employees who have stolen from the company, others to employees who are not willing to work as part of the overall team, whilst others relate to the employer making poor decisions about how to manage their staff. All of the matters ultimately however relate to the alleged unfair dismissal of a staff member.

So what is “unfair dismissal”? According to Section 385 of the Fair Work Act a person has been unfairly dismissed if the Fair Work Commission is satisfied that an employee (who is protected from unfair dismissal) has been dismissed and the dismissal:
• was harsh, unjust or unreasonable, and
• was not consistent with the Small Business Fair Dismissal Code (in the case of employees of a small business), and
• was not a case of genuine redundancy.

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A person is protected from unfair dismissal; that is, they are eligible to make an application for unfair dismissal, if:
1. they have completed the minimum period of employment AND
2. they earn less than the high income threshold (currently $129,300 per annum)

OR
a modern award covers their employment

OR
an enterprise agreement applies to their employment

Within both the property and the finance industries, many of the businesses are regarded as small businesses (that is, less than 15 employees – from a head count perspective, not a full-time equivalent basis). Now this means that an employer can dismiss an employee if they have a genuine case of redundancy or the employee has behaved in a manner of gross misconduct (such as theft, fraud, violence and serious breaches of occupational health and safety procedures).

However, employers need to be very aware that they meet all of the criteria when dismissing an employee. They must have given the employee adequate notice, they must have given the employee the opportunity to improve their work performance (if this is the issue), they must have paid all employee entitlements (including wages, superannuation, and taxes), and they must not be forcing (or constructing) a redundancy when they have full intention to employ someone else into that position.

Naturally, the best way to avoid these unpleasant situations is to take longer over the initial employment process, or, if you have concerns about an employee during the probationary period – either consider extending it or terminate it, and always ensure that you have a solid agreement between both parties that is fair for both parties. This agreement should identify how both parties will behave when the relationship is over.
CERTIFICATE OF REGISTRATION COURSES

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Mon 17th – Wed 19th Feb

Sydney
(Dist Ed + 2 day workshop)
Sat 22nd – Sun 23rd Feb

Newcastle
(Fri 28th Feb)

Castle Hill
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Port Macquarie
(Tue 4th Mar)

Parramatta
Mon 10th – Wed 12th Mar

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Remember, employers have the right to make decisions about how their business will run. However, they also have the responsibility to act in a fair and reasonable manner towards their employees. Employees also have rights and responsibilities and when the balance is right, we won’t end up in the Fair Work Commission.

There is a mountain of information on the Fair Work Commission website at www.fwc.gov.au which outlines the process and warnings surrounding unfair dismissal. This is a must read for both employers and employees.

Good luck with the operation and management of your business.

Til next time,

Wishing you every success in your business ventures,

Rosy Sullivan

The New Year has seen the College hit the ground running with all of our courses being filled quickly and additional courses being conducted to address the overflow. This has created a huge learning curve for our new staff members and lots of work for our production team. The new CPD topics are being well received at training with loads of discussion coming from the asbestos issues and the new swimming pool requirements.

A number of the team are counting down to big holidays that they have planned throughout the year. Megan is the closest countdown with now less than 100 days till she leaves for the World Cup in Brazil – saying that she is excited is quite an understatement.
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Sir Learnalot