

WITH RICHARD MORRIS FROM LEGAL MINDS

THINKING FAIR WORK

Understanding the new Fair Work legislation is vital for employees, as well as businesses of all sizes.

Most of us will remember that one of the major issues contested at the last federal election was the area of workplace reform, with both the Labour and Liberal parties spending significant sums of money promoting their policies.

Since the election in 2007, Kevin Rudd and the ALP have removed 'Workchoices' and replaced it with 'Fair Work'. But what has really changed?

Apart from some token name changes, there have been significant amendments made to the way many of us are governed at work. If you are employed by a company (as opposed to a sole trader or partnership) or run a business as a company, you need to be aware of these changes, some of which have been effective since 1 January 2010.

Fair Work Information Statement:

From January 1, 2010 any company employing new staff is required by the Fair Work Act to provide a 'Fair Work Information Statement'. This statement provides new employees with basic information on their rights, minimum entitlements and types of employment arrangements. A copy of the document can be located at the Government website 'Fair Work Online', at www.fairwork.gov.au. If you are starting a new job, you should talk to your employer about obtaining a copy.

Small Business Fair Dismissal Code

Another relevant aspect of the new laws, has been the changes relating to the dismissal of employees. Inevitably everyone's employment must come to an end at some stage. This may be because the position that was once required is no longer necessary, in which case an employee may be made redundant, or it may be due to performance issues, misconduct or retirement.

In navigating the new employment laws, small businesses need to be particularly aware of their obligations. Previously under

'Workchoices', employees of companies with less than 100 staff members could not make a claim for unfair dismissal. But now the rules have changed. Small businesses must comply with the newly introduced 'Small Business Fair Dismissal Code'.

The code applies to your company if it employs less than 15 full-time (or equivalent) staff. Employees of a small business still cannot make a claim for unfair dismissal if they have been employed for less than 12 months.

Under the Code, small businesses must be mindful of providing employees with counselling in relation to performance issues.

Your solicitor should be able to advise you, as an employer or employee, on performance management requirements and providing proper procedures to ensure that employees have an opportunity to discuss and to improve their performance, and consider if further training would be of assistance.

More serious issues of misconduct also need to be raised with employees, and investigations into such allegations need to be fair and reasonable.

For more information on the Code and to obtain a copy, head to www.fairwork.gov.au/Termination-of-employment/Pages/Small-Business-Fair-Dismissal-code.aspx?role=employers

You need to be well informed when making decisions about employment. Whether you are running a business or are an employee with issues at work, you should consult your solicitor and financial advisors. Proper advice can and will save you time and money, not to mention protect your rights and interests.

This is best achieved by thinking together with your advisors and acting strategically.

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