



## Compliance Essentials e-bulletin September 2010

Sound policies and procedures are a good foundation for maintaining organisational compliance, also acting as a driver to achieving best practice. In this e-bulletin we highlight some recent decisions that reflect the relevance of implementing good compliance and best practice in the work environment, along with one example of the importance of making a true distinction between contractors and staff.

### **Occupational Health and Safety**

The following Queensland Supreme Court decision delivers a warning to employers to take heed of employees' notifications of workplace hazards.

A Brisbane employer has been ordered by the Queensland Supreme Court to pay \$420K to a worker injured from a fall that occurred when the worker was attempting to sit on a chair that rolled away on a slippery plastic mat placed underneath her chair. The employer is reported to have been insistent on use of the mats at work stations in the workplace, despite receiving workers' complaints that the plastic mats were perceived to be causing a hazard.

### **Sexual Harassment in the workplace**

Whilst issues arising in the David Jones' matter remain unresolved, the ramifications that arise in relation to reputation and damage are clear. Employers in all organisations need to be aware of what is happening in their respective workplace, take employee complaints seriously and be ready to implement effective investigation of complaints where applicable, as demonstrated in the following case.

In *Employment Services Australia Pty Ltd v Poniatowska* the employee had made several complaints of sexual harassment in the workplace; the employer is alleged to have no formal policies and procedures in place for dealing with complaints of sexual harassment. The employee was issued with formal warning notices, allegedly on the back of the complaints, and ultimately dismissed on 'performance' grounds. The Federal Court decision awarded the employee the sum of \$466,000 to compensate for unlawful discrimination.

### **Managing Risk**

Implementing enterprise wide policies and procedures is one of the essential tools for managing business risk.

Recently, in a case in New South Wales, Fair Work Australia found in favour of an employer who had dismissed an employee for accessing the internet during working hours. FWA upheld the employer's process in relation to the employee; the employee was found to be guilty of misconduct – and so fairly dismissed – for contravening previous employer instructions not to access internet sites.

### **Contractor or staff?**

Not making the correct distinction in the status of a worker as a contractor or an employee can result in costly outcomes. This can be a grey area and one that needs to be carefully examined in terms of employer-worker relationships; a 'contractor' with an ABN submitting tax invoices for work performed does not necessarily by-pass employee status as found in *John Barrett v Create (Geelong)*. Fair Work Australia found that the Mr Barrett's dismissal was 'harsh, unjust or unreasonable' (the test for unfair dismissal) based on the actual working relationship between the parties, notwithstanding the fact that Mr Barrett submitted tax invoices.

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