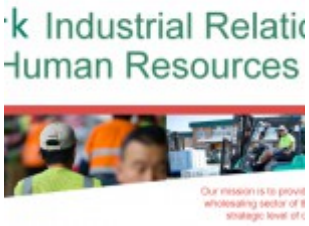

Complying with Immigration Law

IRHR 16_01 C

Complying with Immigration Law

On 1 July 2015, the Australian Border Force (ABF) came into being. Since then, there has been a rise in the number of investigations and enforcement action being taken against businesses that have failed to provide pay and work conditions in accordance with immigration and workplace laws.

Under Australian immigration law, businesses are obliged to only employ staff who are authorised to work in Australia, and to employ those workers in conditions as permitted by their visas ie total hours of work restrictions.

The Migration Amendment Act – a reform of the Employer Sanctions Act – creates a strict liability offence for any business that employs a person, allows a person to be employed, or refers a person for work without work rights in Australia. Employers need to take 'reasonable steps' to verify that a person is authorised to work in Australia. Failing to do so is a breach of these laws.

How can your business ensure compliance?

1. Maintain personal records for all new and existing employees, including:
    1. Australian citizenship (Australian Birth Certificate or Australian Passport), Permanent Residency or New Zealand Citizenship (NZ Passport)

Note: You are still required to complete a verification check of any NZ Citizens, which is explained below

1. A copy of any temporary visa holder's work rights and conditions ie student visa with total hours of work restrictions
2. Conduct regular checks of work rights for each employee who is a temporary visa holder

Note: A good rule of thumb is to review these records every three months for the duration of their employment.

3. Monitor the tasks & duties performed by 'sponsored' temporary visa holders to ensure they are consistent with the occupation for which the visa holder was granted their visa.
4. Ensure that procedures and training provided to relevant persons to maintain compliance with immigration laws are documents
5. Keep documentation related to the verification of individual workers.

Completing Visa Verification Checks

Part of the process of accessing the information required in step 1 & 2 above, may require you to complete a check on the visa status and eligibility to work in Australia. This can be done via the Department of Immigration and Border Patrol's Visa Entitlement Verification Online System (VEVO). Brismark currently

has a business VEVO account and checks all applicants and candidates prior to referring them to businesses.

Consequences of non-compliance

Fair Work Inspectors have the power to check that employers are complying with the relevant legislation. The onus is on the employer to be able to either produce records or demonstrate that steps to verify a person's work rights were taken.

Employers that fail to comply with immigration laws can incur significant penalties, ranging from $15,300 and up to $76,500, for each employee found to be working illegally in Australia. In addition, where an employer is 'knowingly or recklessly' in breach of the law, the executive officers of the business can be fined or sentenced to a period of up to two years imprisonment.

If you need the assistance of Brismark to complete a VEVO check or any questions regarding compliance with immigration laws, contact Brismark Business Services on 3915 4213 or esm@brismark.com.au, we are here to assist you in complying with the legislation.

Note: The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Source: HC Online, by Chloe Taylor, 8 December 2015

What was the biggest legal issue in terms of HR for businesses in 2015?

IRHR 16_01 B

Human Resources – Legal Lessons from 2015

What was the biggest legal issue in terms of HR for businesses in 2015?

The most common legal issue, in regard to HR, was around bullying and harassment in 2015.

Why? Time and resources are increasingly being spent by businesses on both developing strategies to prevent these behaviours occurring, as well as working out how to manage claims sensitively and appropriately when they arise.

What has led to the increased focus?

1. There is greater awareness in workplaces of the effects of bullying and harassment on individuals, teams and company culture
2. Psychological and stress-based illnesses at work no longer carry the stigma they once did
3. The introduction of the Fair Work Commission's specialist anti-bullying jurisdiction in 2014 has provided a dedicated forum for raising and resolving complaints

What lesson can employers learn from some of the cases heard in 2015?

Employers need to be aware that there have been an increasing number of cases where management, including operational managers and company directors, have been found to be personally liable for breaches of section 550 of the Fair Work Act 2009, which deals with 'accessorial liability'. This is where a business or individual is found liable as an accessory to a breach of federal workplace laws.

While company directors and business owners should have been aware for some time that they potentially bear personal liability for compliance breached under workplace relations legislation, a number of decisions in 2015, particularly those arising from Fair Work Ombudsman prosecutions, have seen lower-level managers personally prosecuted and fined for breaches of these provisions.

All managers need to ensure that their management decisions do not contravene legislation, and also take care not to inadvertently involve themselves in a potential contravention. For example, entering into a contractor arrangement with a labour hire company at an hourly rate that does not meet the minimum modern award rate of pay.

The simple solution is to ensure all of your Supervisors and Managers are aware of workplace relations legislation, how this interacts with the day to day running of the business and impacts on their roles and the success of all in the business.

If you are interested in 'upskilling' your supervisors and managers in current workplace relation legislation, contact Brismark Business Services on 3915 4213 or esm@brismark.com.au, we can assist by conducting some training sessions for your business.

Note: The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Source: HC Online, by Chloe Taylor (based on information from Rod Marshall – FCB Group), 15 December 2015

Can you dismiss an employee while they are on leave?

IRHR 16_01 A

Can you dismiss an employee while they are on leave?

Any disciplinary procedures need to be fair and reasonable – but is this ever possible when an employee is on leave? Aside from moral issues, is it ever legally acceptable to terminate someone who is on leave?

While there is no absolute prohibition around dismissing an employee on personal/carer's or annual leave, doing so would put the employer at risk. The question asked would be – why a termination was necessary while the employee was on annual or personal/carer's leave, as it is generally short term?

Termination while on personal/carer's leave

If an employee is on personal/carer's leave, unless their absence on unpaid personal/carer's leave extends for more than three months or total absences of 3 months in a twelve month period, it is unlawful to terminate them for the reason that they've be absent due to illness.

- ***Case One:*** If an employee is suffering with an illness that means they are away for two weeks, any termination for that absence is unlawful.
- ***Case Two:*** If an employee is suffering from an ongoing illness that means they need months off, once they have been absent for three months the employer could put in a process leading to termination on the basis that they are unable to fulfil the inherent requirements of the role.

In this scenario:

- *the employer must engage with the employee and their doctor – asking for a prognosis ie timeline for possibility of returning to work and normal duties*
- *the employer must assess whether it is possible to keep their job open with a temporary worker – if not possible they could move towards termination*

Note: If you are looking to terminate an employee, who is on long term sick leave, please contact Brismark for advice before proceeding – as it needs to be handled carefully, both from a legal and moral perspective.

Is the termination urgent?

Another question that might be raised, if you terminate an employee while on annual/sick leave, is:

'…why couldn't you postpone the process until the employee returned to work?'

The only circumstance this would be acceptable is if the company is 'closing its doors' ie shutting down completely and no longer continuing to operate. In this situation, all employees would be notified, including those on leave.

What if misconduct is involved?

If a situation arises, while an employee is on leave, that they have been found to have engaged in ongoing misconduct and this conduct could continue to occur while they are away – for example, stealing from business via IT system – the employer could have grounds to start the dismissal process before they return. However, you need to ensure 'procedural fairness', that is providing the employee with an opportunity to respond to allegations and there may be a need for further investigation. Simply terminating without a meeting makes it more likely that the employer is going to miss those procedural steps and the employer could find themselves on the wrong end of an unfair dismissal claim.

As far as is possible, the employer should not interrupt the employee's leave – particularly if it is personal/carer's leave. If you deem there may be a risk to the business, due to ongoing misconduct, look at other avenues to prevent or reduce this risk in the interim and address with the employee on their return.

Termination while on parental leave

Approaching an employee on parental leave is slightly different – primarily due to the length of their leave being more substantial. For example, if there was going to be a redundancy, the employer would have to fulfill two requirements:

1. As per the Fair Work Act – provision that is someone goes on parental leave and there are subsequent changes to their workplace, the employer is obligated to let them know ie downsizing, relocation, merging entities etc

2. If the employee is covered by an award or enterprise agreement they contain a clause requiring the employer to consult with the employee about significant workplace changes

Simply dismissing an employee on parental leave could lead to the suggestion that the dismissal was based on leave discrimination. Where downsizing and redundancies are occurring, there is nothing stopping the employee on parental leave being chosen for redundancy – provided that they are not being chosen purely because they are on leave and the proper processes are followed.

Workplace Injuries

When it comes to workplace injuries, businesses operate under state and territory compensation laws, so this legislation can vary. Some provisions under these laws protect those who are absent due to workplace injury and a specified period after the injury, where the sole or primary reason for the dismissal is because of the employee's absence on workers compensation. The current 'specified period' under Queensland law is 12 months.

If you are in doubt on how to progress in terminating an employee, you can seek expert advice by contacting Brismark Business Services on 3915 4213 or esm@brismark.com.au, before making a decision.

Note: The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Source: HC Online, by Chloe Taylor, 9 December 2015

: Quality Assurance

Why are overhead lights a risk to food safety?

QA 16/01_A

Why are overhead lights a risk to food safety?

Foreign matter contamination can come from many different places within your business and to control these you need to know where potential sources of this type of contamination exist. One of these potential sources could be right above your head – are your overhead lights adequately covered and not presenting a contamination risk?

Why would overhead lights be a risk?

Overhead lights are generally made of several different components, including glass, hard plastic and metal. All of these elements are considered a type of foreign matter if they end up in food product. Light globes can shatter, hard plastic covers can crack and break and metal parts can fall off.

Look into the light

To complete this task is quiet simple. Take a walk around your work area and visually look to see if any of the overhead lights are a potential source of contamination. The types of things to look for include:

- Are the lights covered?
- Are there any cracks or damaged areas in the light covers?
- If the lights are not covered, are the light globes or tubes unbreakable?
- Are the light located in an area that would have a direct impact on your produce, equipment or utensils if a breakage were to occur?

Note: While you are looking into the light – check to see if there is any build up of dead insects, dirt or dust in the overhead light fittings and covers.

Recording your inspection

In the world of food auditing, if it is not written or recorded there is a high chance that the activity is not being completed. Most audit standards, including Coles, Aldi, SQF and Woolworths, require businesses to keep a light register and maintain records of inspections of lights via your monthly GMP checks.

As a starting point, each overhead light source and their status should be identifiable – don't just record that 'ALL' overhead light have been checked and okay. You need to drill down deeper into the location, quantity and type to really capture the status of all overhead lights. Three benefits of checking and recording your overhead lights separately and specifically include:

- The record provides supporting audit evidence that all overhead lights have been checked
- Your risk is better managed when you know the exact location and do a full check rather than half a check
- You will be able to know exactly which overhead light needs fixing and where it is

Does your business have a 'prevention of foreign object contamination' section as part of their Quality Management System. If so, does this include the documentation of your overhead lights and the inspection of these items? If your business needs any assistance with this particular food safety issue or any other food safety issue, contact Brismark Business Services on 3915 4234 or qa@brismark.com.au.

Source: HACCP Mentor, 15 June 2015