

Changes to the Fair Work Act

Industrial Relations
Human Resources



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Changes to the Fair Work Act

As of 1 January 2014, changes to the following areas of the Fair Work Act will take effect:

- . New anti-bullying measures – employees who believe they are being bullied at work are able to apply to the Fair Work Commission (FWC) for an order (legal requirement) to stop the bullying.
- . Changes to right of entry – these changes have an effect on the rights and powers of officials of organisations who have entry permits to enter businesses i.e. union officials
- . New consultation terms – all awards and agreements will now have to include a term that requires employers to genuinely consult with their employees about changes to their regular roster and ordinary working hours
- . New timeframes for unlawful termination applications – the timeframe has been reduced from 60 days to 21 days to align with the unfair dismissal and general protections dismissal claims.
- . Updated superannuation terms – changes made include compulsory superannuation terms in modern awards (specifically regarding employer default funds and the need for them to meet the MySuper criteria)

Source: CCIQ – IR Alert January 2014

Is your business ready for the new anti-bullying laws

As mentioned previously, one of the major changes to the Fair Work Act involves the inclusion of anti-bullying laws. In the Fair Work Act there will now be an all-encompassing law that makes bullying conduct unlawful with a right to redress workplace bullying through the FWC.

While the laws have now commenced we are all in the dark on how this law will be implemented and the possible consequences to businesses.

The intention of the law is to enable a ‘worker’ to make an application to the FWC for orders to ‘stop bullying’ the applicant in the workplace by an individual or group of persons. In terms of orders that the commission can make, the employer of the worker will be party to any bullying claim, as will the alleged bullies, and will be subject to any orders made by the commission. The following information will provide some idea as to the process that may be followed:

- . If a claim is made, the FWC must start to deal with an application within 14 days
- . If bullying has occurred and there is a risk that it will continue, the FWC can make an order to prevent the worker from being bullied (what that looks like is unsure at present)

. The FWC cannot order the payment of a pecuniary amount. If the FWC makes an order and the employer does not comply with the order, the worker can apply to the Federal Court or Federal Circuit Court to enforce the order

. If the Federal Court or Federal Circuit Court determines that the employer has contravened the FWC order it can impose a civil penalty on the employer (maximum penalties on a corporation is \$51k and \$10k for an individual)

So, how can you prevent a bullying claim happening?

In an attempt to avoid such a claim it is important for businesses to have an effective workplace bullying policy in operation and all employees trained in relation to the policy. The policy needs to clearly outline the legal requirements regarding bullying in the workplace, the expected and inappropriate behaviours and the consequences of bullying within the workplace. It is also important to have a good conflict resolution or grievance procedure in place to ensure all employees are aware of how they can report any occurrence of bullying and how the business intends to handle such situations.

Please Note: If you receive any communication from the FWC regarding a bullying application, please contact Brismark immediately, so we can assist you with the process.

If you require assistance in developing your own workplace bullying procedure and associated training, please contact Lisa Dwyer on 3915 4222 or esm@brismark.com.au

Source: HC Online, Cameron Edmond, 21 November 2013 & 30 January 2014