



What you might consider fair when dismissing an employee - may not be by both society and legal standards

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The Human Resources profession has changed remarkably over the past 20 years. Major improvements to legislation and also learning from past experiences now ensures that when performance managing employees, business owners have a robust set of guidelines to follow.

Here at the Markets this has meant some business owners and managers have had to change the way they manage staff to ensure they are not only following legislation, but also treating all parties involved fairly. However it is still of great concern what some businesses consider a fair, just and responsible way to dismiss an employee.

Some managers and business owners can be of the opinion that 'if they don't like it, they can just leave,' often telling employees in more terse and less socially acceptable terms. Owners have a business to run, and they need staff to perform effectively and efficiently. However, there is a right and a wrong way to go about performance managing, disciplining or terminating an employee.

Case in Point

A small business owner was found to have unfairly dismissed an employee after telling her to 'f-k off'. The employee had held the position of bookkeeper for the business for four years and told the commission the CEO of the business told her to 'f-k off' and 'just f-k off and get out' after a dispute about which tasks she was supposed to complete. The employee left the office as she felt threatened and frightened by his aggressive manner.

The CEO did dispute the claim, saying that during the exchange the employee had said she had 'had enough of this s-t' and 'I'm leaving'. A phone message was left by the CEO on the following day asking the employee to come in to the office to 'finalise things'.

The employee returned her keys to the office and said she was told by the CEO he would finalise the matter the following week and during a later phone conversation he said to her that he considered her termination to be by 'mutual agreement', which she disputed in a letter to him.

The commission ruled that she did not resign her position and was in fact dismissed as, 'where an employer tells and employee to 'f-k off' and then does not take any action to explain or withdraw the expression, it constitutes a direction to the employee to leave the workplace', that is a constructive dismissal. The FWC ordered the CEO to compensate the employee with eight weeks pay, a total of \$4,800, as she was not given 'a fair go all round'.

The CEO later complained that there 'wasn't much of a fair go for me' - indicating that the experience

nearly collapsed his business, caused financial damage as well as preventing him from purchasing a new home.

Do you think the above case was a fair judgement?

Maybe if you think of it like this – what if a manager/supervisor/business owner said the same thing to your son/daughter or wife – would you think it was acceptable then? No matter what performance deficiency was occurring.

The simple fact is the law thinks it is unacceptable. There have been a number of cases recently where employer and employees have sworn at each other, leading to dismissal. It is a fine line whether cases of workplace outbursts should be mediated internally or subject to formal workplace investigations and/or disciplinary procedures. Mediation is a dispute resolution technique used to assist all parties resolve issues and achieve an ongoing working relationship, usually facilitated by an independent and impartial third party. Mediation is often a more cost effective and less time consuming process than formal proceedings and in many cases disputes can be resolved before parties feel the need to consider litigation.

For related articles refer to:

- IRHR 15_01 – Swearing at Work
- IRHR 15_02b – Can an Employee who resigns claim unfair dismissal

If your workplace needs assistance regarding any mediation or formal workplace investigation process, contact Lisa Dwyer on 3915 4213 or esm@brismark.com.au.

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