



## Fair Work

HR Update 14/10

### **Results are in - Fair Work Commission bullying statistics for January 2014**

In the lead up to the rollout of the new powers for the Fair Work Commission (FWC) to stop bullying at work (1 January 2014), many businesses and professionals feared the FWC would be bombarded with submissions. In addition, it was thought these submissions would have little or no basis in truth, employers would be wrongfully accused and it would cost time and money for the FWC.

The first round of statistics has been revealed and so far it doesn't look like the predictions have happened yet. A total of 44 applications were received in January, six were withdrawn and 100 per cent of matters commenced within the 14 day period. However, these figures do not necessarily predict the ongoing trend, as there are a number of other factors to consider:

- slow months: January and February usually have a lower number of lodgements with FWC
- reduced pool: the State government employees and defence personnel are not covered by these new laws and are not reflected in the results
- damages are not awarded: the FWC cannot award damages for these claims, therefore the motivation to make claims (especially unfounded ones) are greatly reduced
- the goal: the laws exist to stop bullying in the workplace, therefore the complainants must be currently employed and want the bullying to stop.

This doesn't diminish the need for all businesses to ensure they have an effective workplace bullying policy in place and effective training in regards to the policy.

*Source: HC Online, Cameron Edmond, 11 February 2014*

### **FWC bullying laws tested**

It was initially thought by human resource professionals and made clear by the FWC that the new anti-bullying provisions were not designed to be applied retrospectively. However, in a recent application made on 9 January this year, they ruled it appropriate to consider past behaviour, if there was a risk the employee would continue to be bullied at work.

✗ The applicant alleged that they were subjected to workplace bullying behaviour from November 2007 to May 2013 and have been on extended leave after this date. In this case the FWC allowed the applicant to make a submission on past conduct and behaviour as they feared the bullying behaviour would continue once they returned to work. As a result, the FWC reviewed the past occurrences of bullying conduct and decided that there was a risk of ongoing or prospective future bullying and made an order to 'stop the bullying'.

The above case demonstrates the uncertainty of these new rules and how they will be applied in the future, however as more applications and cases are reviewed, it will provide us with a better

understanding of the laws, how they work and the impact they will have on businesses.

*Source: HCA, 19 March 2014*

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Need Brismark's Help!!

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