



THE POST

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WELCOME TO "THE POST". YOUR E-NEWSLETTER DESIGNED TO KEEP YOU UP TO DATE WITH WHAT'S HAPPENING IN EMPLOYMENT LAW & INDUSTRIAL RELATIONS.

WHAT'S MAKING NEWS?

PERFORMANCE MANAGEMENT IS NOT ADVERSE ACTION

The Federal Court has ruled a company did not breach the Fair Work Act's general protections provisions when it performance-managed and disciplined an employee after he made a written complaint about his managers. Justice Michael Barker, on appeal, upheld an earlier Federal Magistrates Court decision to reject the retail store manager's adverse action. He also upheld the lower court's finding that the store manager was not constructively dismissed.

The Good Samaritan Industries employee lodged a written complaint in 2010 against his divisional operations and retail operations managers, who he believed were forcing him out of his job.

The employee alleged that actions taken by the Company that followed - warning letters, a possible transfer, requiring him to sign a performance management contract, refusal of time-off-in-lieu, and persistent monitoring that he believed undermined his authority – amounted to adverse action.

The said the final straw was his suspension with pay in June that year. He resigned six weeks later. On the evidence presented, there was "no basis upon which the Court below or this Court on rehearing could or should draw the inference that at material times the [Company] had decided to squeeze the [employee] out of his employment because he had made the complaint on 6 April 2010," Justice Michael Barker said.

EMPLOYEE TERMINATED WHILE ON COMPASSIONATE LEAVE

The Federal Magistrates Court has ordered a livestock employer to pay \$32,872 compensation to a feedlot manager who was dismissed while on compassionate leave.

The former manager, on a salary package of \$91,130 gross, took compassionate leave in July 2011 to mind his two small children when his wife's father died. He claimed the director of the company contacted him that day, demanding to know where he was, and saying: "I do not f..... care mate. I'm trying to run a business not a nursery", when he explained the situation.

The manager claimed he wasn't given any reasons or warnings about his performance, but was told: "Things are going to get quiet out here and someone has to go".

The Company argued before Federal Magistrate Norah Hartnett that it dismissed the manager summarily for breaching OHS procedures by bringing his daughter to the feedlot area (the worksite included a high level of grain truck traffic and other industrial machinery), putting the business and the child's life at risk.

The Court believed the employee's evidence over the Company's in what can only be said to be two totally different accounts of the events surrounding the termination.

The federal magistrate found that the company had taken adverse action against the manager by dismissing him summarily without any reason or warnings about his performance, while he was exercising his workplace right by taking compassionate leave.

UNPAID WORK STUDY

Significant numbers of Australian workers are performing unpaid work - much of it likely to be in breach of the Fair Work Act - with young and migrant employees particularly vulnerable, the country's first major report on the subject has found.

"Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia", by Adelaide University Law School Professors Andrew Stewart and Rosemary Owens, concluded that unpaid work existed on a scale "substantial enough to warrant attention as a serious legal, practical and policy challenge in Australia".

If you require further information on employee issues or termination matters affecting your business, please give one of the team at **Waring Legal** and **Waring Employment Advisors** a call on the numbers below.

Address: PO Box W43, Parramatta
Westfield, NSW 2150
Phone: 02 9635 4424
Fax: 02 8313 2125
Mobile: 0448 140 976

WARING LEGAL & WARING EMPLOYMENT ADVISORS WILL BE CLOSED FROM 21 FEBRUARY 2013 TO 4 APRIL 2013. MANAGING DIRECTOR, MATTHEW WARING, WILL BE CELEBRATING HIS MARRIAGE TO HIS LOVELY PARTNER AND WILL BE OVERSEAS DURING THIS PERIOD. SHOULD YOU REQUIRE ANYTHING, PLEASE EMAIL US AND WE WILL DO OUR BEST TO REPLY AS SOON AS POSSIBLE.

