



THE POST

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ISSUE NO.6, 17 MAY 2013

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?

Payout for Advertising Executive who was replaced

A senior advertising executive has been awarded \$268,000 in damages after the NSW Supreme Court found that his former employer, the Campaign Palace, had hoped he would "go quietly" when he realised that a new senior executive had been hired to effectively take over his role and responsibilities.

Justice John Sackar found that the advertising company repudiated the chairman/executive creative director's contract when its management informed him that he would no longer be the "ultimate creative head" of its Sydney and Melbourne offices. He had filled the role for seven years.

Justice Sackar said that employers have the right to seek to renegotiate contracts, with a degree of "flexibility and 'give and take'" to be expected in the context of employment contracts, but he warned that a "significant diminution in remuneration, status or responsibility" might constitute repudiation if the facts of a case support such a finding.

The damages awarded represented the salary the employee would have earned during his contract's nine-month notice period.

Sham Contracting

In a decision with potential ramifications for the push-selling industry, the Federal Circuit Court has found a kitchenware retailer contravened the Fair Work Act's sham contracting provisions when it purported to engage four sales representatives as "independent agents" in early 2010.

Metro Northern Enterprises Pty Ltd – trading as Nutrimax International – required the representatives to sign an agreement which described them as "agents" and stated expressly that they were not employees.

Judge Shenagh Barnes found the reality did not match the written words, and the company had therefore breached the Act by representing employment arrangements as contracts for services.

The four sales representatives had responded to job advertisements that were expressed in the language of employment, she said.

Judge Barnes said there was no evidence that the representatives operated in a manner consistent with running a business of their own, and any goodwill was generated in Metro's Nutrimax brand.

The Fair Work Ombudsman brought the case before the Courts and it will be re-listed for penalties.

Update on Fair Work Amendment Bill

Labor and Greens members of the Senate's Education, Employment and Workplace Relations Committee have recommended that the Fair Work Amendment Bill be passed, despite noting strong opposition to it by employer groups, while Coalition senators oppose a number of its key provisions.

In the inquiry report tabled on 14 May 2013, the government senators and the Greens' Senator Lee Rhiannon said the bill had received a "mixed response", with employee and worker advocacy groups "generally" in support, while employer groups had "strongly objected".

The bill expands the right to request flexible working arrangements, introduces a new bullying jurisdiction, increases right of entry obligations on employers, includes penalty rates in the modern awards objective, enhances protections for pregnant mothers and creates a new requirement for employers to consult on roster changes.

We will keep you abreast of any further changes to the Bill as it proceeds through parliament.

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.

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