

EMPLOYER POLICIES AND PROCEDURES TO PREVENT UNFAIR DISMISSAL

In brief - Good policies can protect your business in the event of litigation

Employers who are faced with unfair dismissal complaints or other litigation are in a better position to defend themselves if they can demonstrate that they have well-written, up-to-date workplace policies and have trained their staff on those policies.

Fair Work Commission decisions illustrate importance of workplace policies

Businesses operate in a dynamic and complex legal environment that is constantly changing. It is imperative that modern businesses have well-written policies and training programs that ensure uniformity and properly govern workplace behaviour. At the same time, the policies must be consistent with the values of the organisation and compliant with constantly changing legislation.

Recent decisions in the Fair Work Commission illustrate the importance of not only implementing well-written policies and procedures, but also providing training to employees on those policies and procedures to manage workplace behaviour.

Lack of social media policy leads to successful unfair dismissal complaint

In the case of [*Linfox Australia Pty Ltd v Glen Stutsel* \[2012\] FWAFB 7097](#), Fair Work Australia determined that Linfox failed to have a social media policy in place to govern

the conduct of its employees on social media websites such as Facebook and Twitter. The company was found to have unfairly dismissed Mr Stutsel.

Mr Stutsel had written derogatory comments on his Facebook account about two of his managers. When the managers visited Mr Stutsel's Facebook account and complained to Linfox, an investigation was conducted and Mr Stutsel was terminated for serious misconduct.

If Linfox had had a social media policy at the time of the misbehaviour and that policy had been clearly communicated to Mr Stutsel, his conduct may not have occurred or Linfox may have been justified in dismissing him.

Well written and communicated policies help employer defend unfair dismissal complaint

The recent decision of [*Kostantina \(Deana\) Hatzisevastos v Iron Mountain Pty Ltd* \[2015\] FWC 770](#) is an example of an employer being able to rely upon its well written and communicated policies and training program to succeed in defending unfair dismissal proceedings.

The Fair Work Commission determined that Ms Hatzisevastos was guilty of misconduct by accepting a laptop and a television from a supplier, despite Iron Mountain's Gifts and Entertainment Policy expressly prohibiting such behaviour. In coming to its decision, the Commission noted that the relevant policy was very clear, legal and reasonable,

leaving employees well informed of their obligations.

The Commission also noted the recent Bribery and Corruption Online Training that had been provided to Ms Hatzisevastos prior to the misbehaviour. This training drew her attention to the relevant policy and recorded her agreement that she had read and understood the terms of the policy, including the repercussions of a breach.

The Commission ultimately determined that Iron Mountain had fairly terminated Ms Hatzisevastos' employment on the grounds of misconduct. The termination was found to be fair and reasonable in the circumstances.

Up-to-date policies invaluable when employers faced with litigation

While the above cases highlight the importance of having well-written and up-to-date policies to manage the workplace, they also demonstrate the invaluable protection such policies afford an employer when faced with unfair dismissal claims or other litigation.

The Linfox decision illustrates, among other things, the need to review current policies and introduce new policies as legislation is amended and new technology evolves. The Iron Mountain decision, on the other hand, reinforces the importance of having clear and appropriate policies and significantly, the need to ensure that employees know about them and are formally trained.

Good policies mean good governance

Policies should be reviewed and updated frequently to ensure that they are:

- complete in addressing all current and emerging risks facing the modern business
- up to date with the current legislation and technology
- written in plain English
- directive rather than contractually binding on employees
- provided to employees during a thorough induction and during refresher training at least every six months
- easily accessible and always available on request
- capable of withstanding judicial scrutiny if necessary

Virtual Mgr

We are aware of a product which may provide fully integrated policies, with tracking and employee updates. We have viewed and can highly recommend Virtual Mgr as a solution for your employee policies and procedures. MBA Lawyers have been involved with Virtual Mgr and the drafting of these policies and procedures and therefore are confident that the product will fit your employment requirements.

The Virtual Mgr brochure is attached to this newsletter for your information.

HOW TO CONTACT MBA

ADDRESS:

The Point @ Varsity
47 Watts Drive, Varsity Lakes,
Queensland Australia 4227
P O Box 398,
Varsity Lakes Qld 4227

Contact

Phone: 07 5539 9688
Fax: 07 5538 2651
E-Mail: clayton@mba-lawyers.com.au (Partner)
E-mail: jessica@mba-lawyers.com.au (Associate)
Website: www.mba-lawyers.com.au