

# Legal Solutions newsletter

## HR Support and Assistance

Workforce Legal Solutions has the flexibility to provide regular HR support and assistance to our clients.

The service can be provided by either Paula Robinson or Rennis Witham on a regular basis at a preferential rate.

So, if your key HR and legal staff are absent for an extended period, why not consider in-house support as a solution?

## News

### New Guideline on Mental Illness

The Victorian Equal Opportunity and Human Rights Commission has released a new guideline regarding discrimination against people with a mental illness in the workplace.

The new guideline provides practical guidance for employers on how to be proactive in preventing discrimination against employees and job applicants.

*"One in five people experience mental illness each year, which makes it one of the most prevalent forms of disability in the community."*

As the Commission pointed out, employers are not required to be experts on mental illness, but you do need to understand how

it may affect your employees. This includes being aware of how 'healthy' the workplace is and how to ensure that you don't discriminate against employees.

It is against the law to discriminate against someone because they have mental illness, which is covered as 'disability' under the *Equal Opportunity Act*. The guideline also defines what constitutes a 'mental illness' (which, curiously doesn't cover barracking for Collingwood);

- mood disorders (such as depression, and bipolar disorder)
- anxiety disorders (such as phobias, panic attacks, social and general anxiety and obsessive-compulsive disorders)
- psychotic disorders (such as schizophrenia and some forms of bipolar disorder).

The new guideline outlines appropriate measures to prevent and respond to issues arising from mental illness in the workplace.

As the Commission pointed out, the guideline is intended as a guide only and does not cover every possible situation you may encounter. If you have a matter you need to clarify, please contact Workforce Legal Solutions on (03) 9505 6221. We are also able to assist you in updating and developing policies and procedures in line with the new guideline.

The guideline which can be accessed here: <http://goo.gl/YrRA2g>

1

■ HR SUPPORT AND ASSISTANCE

■ NEWS

■ RECENT CASES

■ WORKFORCE LEGAL SOLUTIONS



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## Recent Cases

### **Caryn Kruschel v Blue Dawn Health Care T/A Serene Residential Care Service**

**[2014] FWC 7965**

**13 November 2014**

This is a case of where an 'ouch' can lead to the long and winding road known as the Fair Work Commission.

In this matter, the applicant lodged an unfair dismissal case seeking the maximum allowable compensation after the respondent terminated the applicant's employment over an incident involving a patient.

There are some unusual aspects to this case. Firstly, the actions of the respondent in terminating the applicant were accepted by the Commission in spite of not following 'best practice'. Not only did the Commission find that a key witness was not 'good', but the applicant was denied procedural fairness. Secondly, regarding the incident, the frail 94 year-old patient received no injuries, bruising or swelling. Nor was there any ongoing discomfort or distress beyond her call of "ouch". And finally, even though the Commission concluded there was a valid reason for the dismissal, the applicant still received \$17,142 in compensation.

**The only lesson to be learnt from this case is to hope you don't catch a Commissioner on a bad day. On a serious note, always take care when handling disciplinary matters involving termination after careful consideration of all the facts.**

### **Australian Nursing and Midwifery Federation v Barwon Health**

**[2014] FWCFB 2777**

**8 July 2014**

In this case, the Union sought leave to appeal the decision by Vice-President Watson who found that consultation in good faith as determined by Section 42 of the relevant Enterprise Agreement had

occurred in respect to the Barwon's proposal to reduce the nursing hours in two of its aged care facilities. Whilst the Commission did find 'some aspects of his Honour's reasons for decision were short' they still found the reasons adequate and that no appealable error occurred. The appeal was dismissed.

### **Janelle McCarthy v Aero-Care Flight Support Pty Ltd** **[2014] FWC 7301**

**14 November 2014**

When does an employee's date of termination become effective?

In this case, the applicant lodged a general protections claim alleging that she was dismissed by the respondent in contravention of Part 3-1 of the *Fair Work Act 2009*. The applicant was notified at a meeting on 27 May 2014 that her employment was being terminated with immediate effect, which was confirmed in a letter and email sent to the applicant on 29 May, resulting in her application being filed one day late. (The attached letter to the email was dated 28 May). The respondent objected on the basis that the application was made out of time. So which date applied? The Commission found that "termination of employment takes effect once the employee becomes aware of it" ie 27 May.

## Workforce Legal solutions

Thank you to all our clients for your patronage during our seventh year of business in 2014.

Wishing you all a very Merry Christmas and a Happy and Safe New Year for 2015.





# workforcelegal solutions

Workforce Legal Solutions now offers a recruitment service for senior positions to our clients.

With considerable experience in the health and welfare industry, Workforce Legal Solutions understands the employment related issues facing employers in their recruitment and retention of staff.

We have now developed a “total approach” for recruitment for senior staff appointments to assist employers with the advertisement and recruitment of staff through to the appointment of the successful candidate.

The recruitment services we can provide:

- > Development of advertisement of position and position description
- > Sourcing and short-listing applicants
- > Assistance in the selection panel
- > Reference checking of short-listed applicants
- > Development and negotiation of contract of employment.

**For further information, please contact Workforce Legal Solutions on**

**03 9505 6221 or 0402 477 140**

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