



SOLUTIONS *for the* WORKPLACE

JOHN TAMPLIN

INDUSTRIAL RELATIONS NEWSLETTER

Newsletter – 8-08-11/5

- Some questions we get asked: Why have a policy and procedure manual?
- What does the Fair Work Australia Tribunal consider when assessing an unfair dismissal?

SOME QUESTIONS WE GET ASKED

Why have a policy and procedure manual or an employment policy handbook?

THE IMPORTANCE OF ESTABLISHING THE POLICIES AND PROCEDURES OF THE COMPANY

It can be called an employment handbook or a procedures manual or some other title.

What is important is that employers have their employees sign the document acknowledging in writing that the terms and conditions of the manual apply at the Company.

It is our experience that employees when in proceedings such as warnings or disciplinary matters state “I was not aware of the Company ‘Anti-discrimination/harassment’ policy” or “I was not aware of the Leaving the Site’ policy” or “I was not aware of the Company policy on ‘Intimidation’ or the ‘Assault’ policy” that led to my dismissal.

An employee handbook should cover issues such as the following and these are not in order and are some of the issues to be considered however each workplace is different:

- Introduction, Welcome, Vision, Mission Statement and Values
- Code of Conduct Summary
- Breach of Conduct Management
- Summary Dismissal
- Employee Information Guide
- Absenteeism
- Avoidance of Duties
- Dishonesty/Unlawful Activities
- Discrimination/Harassment
- Disobedience/Insubordination/Refusal of a Lawful Direction
- Dress Code
- False or Misleading Information
- Annual leave requests

- Horseplay
- Incidents/Injury and Accidents in the Workplace
- Intimidation/Assault
- Leaving the Site
- Meal Breaks
- Mobile Equipment
- Performance Management
- Personal Items
- Personal Protective Equipment
- Plant and Equipment
- Privileged Information
- Probationary Period
- Removing Stock or Product
- Running/Recklessness
- Mobile Phones
- Unfit for Work/Intoxication, Drugs, Illness and Fatigue

COMPANY POLICIES THAT SHOULD ALSO BE CONSIDERED TO BE MADE APPLICABLE:

- Summary of Core Company Policies
- Safety and Risk Policy
- Commitment to Quality Policy
- Environmental/Waste Minimisation Policy
- Smoking Policy
- Manual Handling Policy
- Protection of Privacy Policy
- Email/Internet Policy
- Emergency Management Policy
- Hazardous Substances Policy
- First Aid Policy
- Injury Management and Rehabilitation Policy
- Training Policy
- EEO/Anti-discrimination Policy
- Personal Protective Equipment (PPE) Policy
- Protection of Apprentices/Trainees Policy
- Contractor Management Policy
- Purchase of Plant Policy
- Dispute Resolution Policy
- Notification of Significant Incidents Policy
- Responsibilities
- Site Specific Safety Rules
- Emergency Management
- Manual Handling
- When Equipment is Damaged, Not Working or Unsafe
- Medical Emergencies
- Fire/Explosion
- Environmental Emergency
- If You Have an Incident/Accident
- Risk Identification/Assessment and Control
- Order and Tidiness
- Site Safety Meetings
- OH&S Committee Meetings

These policies and procedures should be succinct and not be complex for example:

“MOBILE PHONES

The following policy takes effect from _____.

Mobile phones including texting are not to be used during Company paid time unless it is a requirement of the employment of the employee and then can only be used on behalf of the Company and its operations.

Failure to comply with this policy will result in disciplinary action against the employee.

EAR PHONES OR LISTENING DEVICES

The following policy takes effect from _____.

Earphones or listening devices of any description including items such as I-Pods or other MP3 players are not to be worn by any employee during Company paid time unless it is a requirement of the employment of the employee and then can only be used on behalf of the Company and its operations.

Failure to comply with this policy will result in disciplinary action against the employee.”

CAN THE EMPLOYER CHANGE AND VARY THE EMPLOYMENT MANUAL

As an employer you can vary the policies and procedures in an employment manual without having to reach agreement with the individual employees.

That is the employer can continually update the procedures and policies and then advise the employee/s in writing of the changes immediately.

More importantly the employer can rely on the document and its contents as part of their evidentiary trail when defending an application or prosecution against the Company.

Our view is that an employment manual is critical to the operations of a Company.

WHO CAN I CONTACT FOR MORE INFORMATION AND ASSISTANCE?

If you would like to discuss any concerns you may have in relation to contracts of employment or any other employment related issues you may have, please contact:

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WHAT DOES THE FAIR WORK AUSTRALIA TRIBUNAL CONSIDER WHEN ASSESSING AN APPLICATION FOR UNFAIR DISMISSAL?

The employee commenced employment with the employer in April 2010 on a full-time fixed term contract for one year.

The employee was in charge of a weighbridge and other ancillary duties such as related administrative duties and operational functions. The opening hours of the weighbridge were between 6.00am and 5.00pm during week days and this was covered by 2 shifts and the employee was relieved from work at approximately 2.00pm each day.

The employee on one occasion had his family in the workplace at the weighbridge and he also used the Company computer for his own purposes during working time.

He was dismissed from his employment on 20 January 2011 and subsequently made an application for unfair dismissal to Fair Work Australia which costs approximately \$65.00.

The application went to a conciliation conference where it was not settled and then later to a hearing on 28 July 2011.

The employer in evidence in the witness box advised of the continued late attendance at work of the former employee and of smoking in the office of the weighbridge.

The employer stated in evidence that the employee had been verbally warned as to attendance at work on time. The employer also stated that on another occasion the employee had been warned concerning his future employment due to his late attendance at work in a formal meeting.

The employer stated that on the day of termination the employee was advised in writing that his employment was to end and he was to collect his belongings and leave the site immediately.

After hearing the matter the Tribunal found that there was a valid reason to end the employment because of the continual attendance at work issue but that this was not enough of a reason to dismiss the application for unfair dismissal.

The tests that the Tribunal must apply to be consistent with the Fair Work Act 2009 are further considered in this decision and set out as follows:

Whether there was a valid reason for the dismissal related to the applicant's capacity or conduct.

The Tribunal found that when the circumstances are considered as a whole that there was a valid reason for the dismissal.

Whether the applicant was notified of the reasons for dismissal.

The Tribunal found that in relation to punctuality, the employee had been warned by the employer however he had not been warned about his family's attendance on site nor about the use of the Company computer during paid time.

The Tribunal found that on the evidence those matters also formed part of the reasons for the dismissal and they had not been raised with the employee at any time.

Whether the applicant was given the opportunity to respond to any reason related to his capacity or conduct.

The Tribunal found that the employee was not given the opportunity to respond to the issues of the use of the Company computer during paid time nor the attendance at the work site of his family.

Was there an unreasonable refusal by the employer to allow the applicant to have a support person present to assist in any discussions relating to the dismissal of employment.

The Tribunal found that the employee had not sought to have someone attend and that this issue did not apply.

The Tribunal found that the employee had not sought to have someone attend the formal meetings with the employer.

If the dismissal is related to unsatisfactory performance whether the person had been warned about that unsatisfactory performance.

The Tribunal found that there had been significant inconsistencies in the warning process. It found that the single warning given previously advising the employee that he was to be performance managed and that it was to begin after the first and only warning did not occur as the employee was dismissed.

The degree to which the size of the respondent's (the Company) would be likely to impact on the procedures to be followed as set out in the Fair Work Act.

The Tribunal found that this issue was not relevant in this particular case.

The degree to which the absence of a dedicated human resources management specialists or expertise would be likely to impact on the procedures used by the employer.

The Tribunal found this to be relevant in that the employer had "almost total absence of policies regarding disciplinary action, time recording, the use of computer facilities and the warning and dismissal process actually adopted in this matter."

Any other matters that Fair Work Australia considers relevant.

The Tribunal found that the dismissal and other matters including the process adopted by the employer and the processes used were disproportionate to the employee's conduct including the effect of the dismissal on the employee given that he had relocated his family to take up the work and position for the Company".

The Tribunal found that, on balance, that the dismissal was harsh, unjust and unreasonable and awarded the employee \$4,789.00 in compensation.

Phillip Anderson –and- Acquista Investments Pty Ltd and Veolia Environmental Services Pty Ltd [2011] FWA 4560

The Issues

While the Company had a legitimate reason to dismiss the employee the procedures it adopted and implemented failed the tests that are applied by the Tribunal which it must apply as they are set out within the Fair Work Act 2009.

Our View

The need for documents setting out policies and procedures for a Company is a significant issue irrespective of the size of the Company as is the need to comply with the processes and provisions of the Act.

It must be kept in mind that the employee filed the application for unfair dismissal for approximately \$65.00 and that the costs to the Company in defending the matter would have been in thousands of dollars not including the impact on its operations while the defence is being prepared and the days of hearing would cost more money.

The evidentiary trail is critical as is the use of policies and procedures and employees signing off on them.

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