



I have more than 25 years' experience and Employee/Industrial Relations, EBA's, unfair dismissals and policies/employee handbooks are a speciality. Qualifications include IR and HR, Training & OH&S systems.

For further information, please see my LinkedIn profile:

https://www.linkedin.com/profile/view?id=122714661&trk=nav_responsive_tab_profile

Please consider me should you require a HR or ER/IR person on a full-time, temporary or contract basis.

Domestic violence (whilst not new) has had been taken to be a serious issue in our community. This article examines two cases from the FWC dealing with **domestic violence (within the constraints of the Fair Work Act)**. Both cases also have in common, the issuing of AVO's and the applicants worked with the person upon which the AVO was taken...but with very different outcomes. Read on:

Termination of employment – resignation or dismissal – alleged dismissal of victim of domestic violence.

In *Ms Leyla Moghimi v Eliana Construction and Developing Group Pty Ltd. (U2015/2893) [2015] FWC 4864. ROE, C. 23 JULY 2015*, the applicant had migrated with her partner from their native Iran. Both obtained work with one employer. Both worked in an open plan office.

On returning from a short holiday to Iran to visit family, the applicant's partner became violent and took away her possessions and evicted her from their family home.

The employer argued that the applicant had "resigned", which was rejected by the FWC.

The FWC also found that the applicant was unfairly dismissed because, whilst offering the applicant the ability to work from home (which she was unable to do), the same offer was not put to the partner, and any event, the AVO provided for the applicant and her partner working in the same working space (subject to limitations) and the two had separate roles and were not required to interact in their daily working lives.

The FWC, in awarding the maximum six month's compensation stated:

*"I accept that there are **limits to the extent to which an employer can be expected to accommodate the private lives of employees**. Ultimately employees have to be capable of performing the **inherent requirements of their jobs**. When seeking to accommodate the reasonable needs of employees the impact on the business will be a consideration. However, I am satisfied that Eliana did not explore all available options and discuss these matters over a reasonable period of time with those affected.*

"I am satisfied that the vulnerable position faced by Ms Moghimi as a relatively recent migrant who was facing a domestic violence situation made the termination particularly harsh.

"Taking all of these factors into account I have no hesitation in determining that Ms Moghimi was unfairly dismissed. The termination was harsh, unjust and unreasonable."

Office romance ends in AVO and termination of employment

In *George Mihalopoulos v Westpac Banking Corporation T/A Westpac Retail and Business Banking. (U2014/9618) [2015] FWC 2087. HAMBERGER, SDP. 5 MAY 2015*, The FWC agreed with Westpac that a manager having an office affair with a subordinate was a conflict of interest and dishonest.

The dishonesty arising from the applicant's denial to his manager that there was a relationship and only when the relationship soured and an AVO was issued, that management were made aware of the issue.

Westpac followed due process in this matter, ensuring that all requirements under the FWA were complied with:

- Letter advising the applicant of a meeting and the allegations and that he could bring a support person).
- The meeting provided the applicant with an opportunity to respond to the allegations.
- A further “show cause” letter was sent to the applicant, providing him with a further opportunity to respond.
- The applicant was then dismissed “with payment in lieu of notice” for serious misconduct.

In considering his decision, the Commissioner stated:

Employers cannot stop their employees forming romantic relationships. However, in certain circumstances, such relationships have the potential to create conflicts of interest. This is most obviously the case where a manager forms a romantic relationship with a subordinate - especially where the manager directly supervises the subordinate. It is virtually impossible in such circumstances to avoid - at the very least - the perception that the manager will favour the subordinate with whom they are in a romantic relationship when it comes to issues such as performance appraisals, the allocation of work, and promotional opportunities.

Employers have a reasonable expectation that employees will disclose any potential conflicts of interest, so that they can be appropriately managed. The obligation of the applicant with regard to disclosing potential conflicts of interest was referred to in his contract of employment and the respondent's conflict of interest policy.

The applicant should have disclosed his relationship with Ms A - at least from the time they moved in together - to Mr Fedder. This would have enable the respondent to put in place appropriate arrangements to manage any potential conflict of interest.

*The issue of **dishonesty** cannot be separated from the conflict of interest. The applicant had a duty to disclose his relationship with Ms A to his manager even before Mr Fedder asked him about it. This failure to disclose was greatly compounded when he lied to Mr Fedder about the relationship.*

I find that the applicant's failure to disclose his relationship with Ms A, especially when combined with his dishonesty in lying to his manager about the affair on two separate occasions, constitutes a valid reason for the applicant's dismissal.

*“There is no doubt that the effect of his dismissal has been particularly serious for the applicant - especially as he has spent virtually all his working life with the respondent. **However, I do not agree that the factors referred to by the applicant outweigh the seriousness of his misconduct.***

“It is important to acknowledge that the applicant held a senior position which required a high degree of honesty and personal integrity. His behaviour - in failing to disclose his relationship with Ms A and then (twice) lying about it to his manager - fundamentally undermined the trust and confidence which is at the heart of the employer-employee relationship.

“Having considered and weighed up all the relevant factors, I am not satisfied that the applicant's dismissal was harsh, unjust or unreasonable. The application is dismissed.”

Fair Work Amendment Bill 2014 Second reading debate 7 Sep 2015 (or are we there yet? - Nope)

Re: requests for extended periods of unpaid parental leave; the payment of annual leave upon termination of employment; taking or accruing leave while receiving workers' compensation; the requirements for flexibility terms in modern awards and enterprise agreements and individual flexibility arrangements made under those terms; the negotiation of single-enterprise greenfields agreements; the transfer of business rules; application for a protected action ballot order; right of entry framework; the Fair Work Commission not having to hold a conference or hearing to dismiss an unfair dismissal application; and interest payments on unclaimed monies.

Until next time...