

CMSOLUTIONS PRESENTS

Employee Performance & Conduct Management

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CMSOLUTIONS PRESENTS: Employee Performance and Conduct Management

- The legislation which governs the employment relationship, and how you end it, depends upon which “jurisdiction” applies to your workplace.
 - P&C’s and their employees are governed by the *Industrial Relations Act 2016 (Qld)*
 - Everyone else is governed by the *Fair Work Act 2009 (Cwlth)*
- There are some minor, but important differences between these two pieces of legislation.
- P&C EMPLOYERS ONLY
 - Employees are subject to a three (3) month “probationary period” from the commencement of their employment. During this period the employer may terminate the employee for any lawful reason with no warning, or “procedural fairness”. This period can be extended in limited circumstances.
- ALL OTHER EMPLOYERS
 - **Small Businesses** (less than 15 employees) – Employees are subject to a twelve (12) month “*minimum employment period*”, during which their employment may be terminated without “procedural fairness”
 - **Large Businesses** (15 employees or more) – Employees are subject to a six (6) month “*minimum employment period*”.

WHAT ARE LAWFUL REASONS FOR TERMINATION?

- A termination is for a lawful reason if the reason relates to a person's "conduct", "capacity", "performance", or "redundancy".
- A termination is NOT for a lawful reason if it is for a reason that is prohibited by the legislation (or for a reason that *includes* a reason prohibited by the legislation). These prohibitions relate to the attributes of a person that are protected, such as:
 - A person's,
 - Sex or Gender Identity
 - Race
 - Marital Status
 - Sexual Orientation or Lawful Sexual Activity
 - Lawful Political Affiliation
 - Union Membership (or Union Activity)
 - Family Responsibilities
 - Irrelevant Criminal History (heavily qualified though)
 - Pregnancy and/or Parental Status
 - Religion
 - Having, or Exercising, a "Workplace Right" (such as making a complaint about unpaid wages)

SO HOW DO WE AVOID THE UNPLEASANTNESS?

- The basic principal (which will be repeated by me *ad nauseam*) is that employees must be made perfectly aware of what our expectations are as well as the result of a failure on their part to meet them. This is why a proper procedure is so important.
- It starts at the beginning of employment with the following:
 - Contract of employment which sets out their entitlements and responsibilities;
 - Job description detailing what their role entails, who they report to, and what limits on their authority exist;
 - Policies and procedures which set out the employers ***minimum expectations*** of behaviour and conduct;
 - A Code Of Conduct would be wonderful (but for small employers may not be realistic).

MANAGING CONDUCT AND PERFORMANCE DURING EMPLOYMENT

- There are no “Formal” and “Informal” processes. There is one process that gets steadily more serious if things aren’t improving.
- There are a few minimum expectations of what a fair process should include;
 - The issues of concern should be “Valid”. This means they cannot be minor, petty, irrelevant, or “manufactured”;
 - An opportunity to have a support person present at meetings;
 - Clear examples of the issues of concern (including dates, times, and other identifying information wherever possible) so the employee can reasonably understand what are the nature of the problems/allegations;
 - An opportunity for the employee to respond to the issues of concern (or allegations);
 - Consideration of those responses. This means that you actually listen to what they are saying and think about whether or not the responses are reasonable;
 - A clear communication to the employee of what will happen if they do not meet your expectations in the future.
- The method of conducting the above is not clearly specified as having to be performed in a certain way. Some may give an opportunity to respond in writing, whilst others may require it in person.
- What is certain is that a Warning, or Termination, **MUST BE PERFORMED IN PERSON** and not by email or text.

PERFORMANCE IMPROVEMENT PLANS VS PERFORMANCE APPRAISALS VS PERFORMANCE MANAGEMENT

There are many tools in the drawer that an employer can call upon to monitor, and manage, the performance of their staff

- Performance Appraisals
 - These are formal processes which are conducted ideally on an annual basis;
 - Must be pre-planned;
 - Preparation must consist of careful consideration of all aspects of the employee's performance and "fit" within the organisation;
 - Performance is measured against objective criteria;
 - The employee is invited to comment on the Appraisal and provide input into alternative measures and personal development opportunities;
 - Any specific performance concerns must not be "held back" until the annual performance appraisal.
- Performance Improvement Plans
 - These are a very structured form of "performance management".
 - Work well if they form part of the performance management process and MUST still follow the same principles already stated (right to support person, opportunity to respond).
 - Employee must be given an opportunity to provide input to the development of the plan.

Thank You For Your Participation!



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