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Employers warned to check undertakings to employees before adjusting remuneration and incentive schemes

Sydney, 6 May 2008 – With predictions rife of changing economic conditions on the horizon, and a resulting potential increase in companies feeling compelled to adjust their employee incentives and bonus schemes to preserve profitability, employers have been advised to check their employee contracts as well as their undertakings made at the time of recruitment, before taking action. This is especially the case for senior executives with large bonus incentives, where the propensity for litigation has risen steeply in recent times.

This word of caution was sounded by Joydeep Hor, Managing Partner of Harmers Workplace Lawyers, who was addressing a gathering of human resources practitioners in Sydney on Monday.

"The days where companies slash or significantly adjust bonuses and incentives without consultation are numbered," said Mr Hor, saying that such unilateral actions could well increasingly be challenged in courts by disgruntled senior staff members.

"The notion of promises and representations, both formal and informal, could potentially be applied in legal challenges in circumstances where employees believe they had been misled by their employers into expecting certain levels of bonus and/or incentive payments regardless of economic conditions.

He said that while there had only been a small number of matters thus far invoking the relevant section (Section 53B) of the Trade Practices Act (1974) into misleading representations by employers over remuneration and bonus payment expectations, he believed the propensity for employees to launch legal challenges on these grounds could be on the rise.

Mr Hor cited a recent example of a case in which a senior employee of a company took his employer to task over pre-employment representations made by an executive search firm about the probability of large increases in the company's share price and the financial benefits he would receive. The court found the representation to be misleading and that the executive had relied upon them. As a result, the court ordered that the executive be paid the equivalent of 10 months' notice (in excess of $1million) plus interest and the majority of the executive's legal costs.

While the recruiters were not held directly liable, the case has set the stage for the potential for orders to be made against recruiters in the future.

"The legal risks involving senior company executives who believe they have been unfairly treated by their employers are now greater than ever," said Mr Hor, whose firm was recently engaged by one of the parties in a high-profile case involving claims of sexual discrimination by a senior executive.

“One could argue that the exposure from recent high-profile discrimination cases involving senior executives has potentially opened the flood gates for disgruntled senior executives to take their employers to court over issues in which they believe they have been unfairly treated,” he said.

“In a time where companies are possibly considering cost-cutting activities to safeguard their profitability in uncertain times, employers should carefully consider the potential legal risks of these actions, especially in the case of adjusting or reducing remuneration arrangements for senior executives, where the potential for costly litigation has become increasingly commonplace,” he concluded.

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About Harmers Workplace Lawyers
Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia’s leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business’s ‘employment specialist firm of the year’ for the past three years running.

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