

MEDIA RELEASE

Companies reviewing their employment position in light of current circumstances should remain aware of impending IR changes

Sydney, 24 October 2008 – Harmers Workplace Lawyers says that companies reviewing their workforce according to current circumstances should remain aware of industrial relations changes on the horizon.

Shana Schreier-Joffe, Partner at Harmers Workplace Lawyers said that as Australian businesses are being hit hard by world economic turbulence, many companies may be left wondering how they will get through this cycle intact. According to Ms Schreier-Joffe, it is an unfortunate probability that more jobs may be lost, companies may suffer a downturn and that a different business landscape may emerge in time for the Federal Government's Forward with Fairness laws set to come into effect in July 2009, and January 2010.

"This is the time to get all your ducks in a row. The current financial situation demands that companies take stock of their business and procedures. Assessing your employment arrangements now will help to ease the burden of change when the new IR laws are introduced early in 2010.

"Several clients have recently said that they are struggling to carry the cost of their staff. On the flip side, they also say they can't afford the redundancy pay-outs. This is regrettable fall-out from our times of prosperity and robust hiring, when Australian employers were focused on growth without considering or preparing for the possibility of an economic down-turn," she said.

Ms Schreier-Joffe said that this is an opportunity for companies to review their business processes. "For instance, if a company has performance issues, this is a good time to address them. It's also a good time to review employee contracts to ensure that all aspects of employment, including probationary periods and notice clauses are set out clearly so that employers and employees know where they stand."

Ms Schreier-Joffe also said that it is not entirely clear what the laws will entail. However, early comment from Deputy Prime Minister Julia Gillard and policy documentation has revealed some of the key changes that will be made through Forward with Fairness, including the extension of unfair dismissal protection, and compulsory redundancy payments to all employees.

"It is important to do the right thing by your company as well as your employees and a strong contract can certainly help towards protecting everyone's interests during times of economic difficulty. Do what is best for the company and your employees, do what you can to retain your best and brightest and address underperforming areas and ensure policies and procedures are up to date and relevant," she said.

“This is a difficult time, however companies that make wise, long-term decisions now will be stronger and better placed to incorporate and respond to the new IR changes expected in 2009 and onward.

“Keep these in mind when looking at your business, and remain flexible,” said Ms Schreier-Joffe.

Ms Schreier-Joffe said that companies reviewing their contracts at this time should consider the following inclusions:

- **Remuneration** – How your employees should be remunerated, including non-financial incentives that can assist in attracting and retaining employees during difficult economic times.
- **Good fit clauses** – Include a clause in an employment contract that requires an employee to warrant that they are fit for the job. If you later find that an employee misrepresented their experience and capability to do a job, this clause gives an employer rights under the contract to address the situation.
- **Reference to company policies** – Careful thought should be given to the content and wording of company policies, including reference to binding and non-binding policies in the employee contract.
- **Probationary periods** – Employers should clearly set out the terms and length of probationary periods which provides some protection against claims for reinstatement or claims for compensation for unfair dismissal from employees let go during the probationary periods. Employers should also ensure they act to address any non-performance before the probationary period ends.
- **Notice provisions** – It is vital for the employment contract to contain appropriate notice provisions which will allow the company to properly terminate the contract, so as to prevent the possibility of a breach of contract claim..
- **Termination clauses** - If there are certain forms of conduct an employer believes should result in the termination of employment, then it is vital that these be spelt out in a well-drafted termination clause in the contract of employment. Employers do need to ensure, however, that any termination clause does not contain grounds for dismissal that are unlawful.

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Note to editors:

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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