

MEDIA RELEASE

Vast majority of redundancies go ahead without proper consultation with the employee

Employment lawyer urges employers to consult employees to minimise risk of litigation

Sydney, 2 December 2008 – The vast majority of organisations in Australia are failing to properly consult with their employees when enacting redundancies, leaving themselves open to potential litigation, according to employment law firm Harmers Workplace Lawyers.

Shana Schreier-Joffe, Partner at Harmers Workplace Lawyers said that while redundancies are by nature fraught with difficulties, genuine consultation can have a significant impact on the outcome for the individuals involved, their managers, co-workers and the business itself.

“Under the new IR laws and modern awards system just introduced to Federal Parliament, consultation will be far more important in more workplaces. Employers now need to realise that redundancies should not be announced out of the blue without any real consultative process,” she said.

By law, consultation must occur when making large scales redundancies if employees are union members or are governed by an industrial instrument such as applicable NAPSA (Notional Agreement Preserving State Awards) or collective agreement which requires consultation. However, Ms Schreier-Joffe argues that all companies should be undertaking proper consultation as a risk-mitigation approach, whether they are legally obliged to or not.

“In my experience, I’d say as many as seven or eight out of ten organisations in Australia do not consult properly with the affected employee/s when making redundancies. In reality, redundancies usually happen very quickly with little chance for employees to properly understand the reasons behind the decision and with no chance for them to respond with reasons against and options for how they might stay on in a different role.

“If employees walk in one morning thinking it’s an ordinary work day, and by mid-afternoon they’re being walked off the premises without any meaningful consultation, then their initial shock and disbelief can quickly turn to anger and a feeling of ill-treatment, which may result in them wanting to take action,” she said.

Ms Schreier-Joffe said that there are some companies that are doing this well and are ensuring that proper consultation occurs.

“When done properly, consultation gives the employer a chance to explain the business and economic reasons behind the planned redundancies, and the criteria for determining which roles are being made redundant over others. It also gives the employee a chance to offer their solutions and alternative options. They may have

valuable skills relevant to another area of the business of which the business had no knowledge,” she said.

Ms Schreier-Joffe advises that genuine consultation, done properly, provides the following benefits:

- The individual/s made redundant cope better with the news, as they understand the business rationale behind the decision and are given the chance to suggest possible alternative solutions
- The risk of litigation is minimised, as obligations are met and the process will most likely lead to a better feeling towards the company by the exiting employee, therefore less ill-will and motivation for claims
- Managers who have the job of informing individuals of their redundancies feel more positive about the treatment shown to the individual, helping them feel less stressed by the process
- Colleagues feel better about the actions of the employer and remain supportive of the organisation and more secure and engaged in their own role
- The company’s reputation remains intact, as it is seen as acting, as far as possible, in the best interests of all of its employees.

Ms Schreier-Joffe said employers should remember that current economic and business preservation reasons for redundancies are likely to be short term. “Keep thinking long term about your business and think holistically about what is best for all your employees and clients in the long-run.

“Be sure to take the high-ground and treat employees being made redundant with respect and care and with genuine consultation. This will help ensure the risk of potential litigation is minimised,” she said.

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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.

Issued by Sefiani Communications Group on behalf of Harmers Workplace Lawyers

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