

MEDIA RELEASE

Performance management audit vital as mismanaged corporate restructures gives rise to increased legal risk

Global financial crisis and approaching workplace legislation makes now an important time to revise performance management procedures

Melbourne, 30 April 2009 – In the current economic climate, businesses should conduct an audit of their performance management practices, particularly given continuing high numbers of unfair dismissal claims which suggest many employers are still getting it wrong when restructuring and managing their workplaces, according to Harmers Workplace Lawyers. The approaching workplace legislation provides another incentive for a timely review of processes.

Lesley Maclou, Partner at Harmers Workplace Lawyers said: “Employers should take the time now to audit their current performance management processes, identify the weak areas and then make sure the proper procedures are in place to minimise any potential legal issues,” she said.

Ms Maclou warned that the mishandling of performance management processes can present legal pitfalls for employers, with possible claims including unfair dismissal, breach of contract, discrimination or breach of workplace agreement.

“With more than 6,000 unfair dismissal claims brought against employers over the past 12 months, there are clearly too many employers who are not implementing proper performance management practices,” she said.

Ms Maclou referred to the new Fair Work legislation, which will require employers to review all their employment practices, including renewing their performance management practices, for when the new regime comes into effect - partly on 1 July 2009 and the remainder on 1 January next year. She said it was an opportunity for employers to ensure their performance management processes are not just adequate for legal risk management, but importantly, that they are also useful tools to help sustain their business through the current difficult economic climate.

Ms Maclou said employers should address the way employee contracts and policies are drafted and ensure communications are properly managed. “Employers should clarify with each employee their understanding of what constitutes good performance or poor/inadequate performance, and document these expectations supported by ongoing verbal communication and consultation with employees.

“Employers need to ensure they keep all communication with their employees as clear as possible. The performance management process should not only be fair but perceived to be fair by employees.

“Employees need to understand exactly what performance criteria their own performance is being measured against, so transparency is key,” said Ms Maclou.

She also said now would be a natural time for employers to turn their focus to internal processes such as these. “In a prosperous economy there is less incentive to direct valuable management time to individual performance issues. However, in the current economic downturn, employers are well advised to pay more attention to performance management to ensure all employees are making a valuable contribution to the business.”

Practical advice for business to improve their performance management practices:

- Identify and understand employee and employer rights and obligations, including Federal and State legislation, common law, awards, agreements, individual contracts, policies and procedures;
- Identify the work standards expected of employees;
- Always recruit with the aim of finding an employee who will be able to meet the expected standards;
- Put in place probationary periods so that an employee’s capacity to meet the standards can be gauged early on;
- Implement a performance assessment process to identify when those standards have not been met;
- Effectively communicate unsatisfactory performance to employees;
- Take steps to address unsatisfactory performance such as arranging proper induction and training, providing counselling, making adjustments to the position, ensuring regular feedback and two-way communication, coaching/mentoring, arranging team meetings, developing a business culture consistent with the expected performance and developing intra-office relationships to bolster performance;
- Where the steps above fail to address the performance problem, engage in a warning process commencing with informal warnings and moving to formal written warnings;
- Do not use ‘standard’ documents – ensure that contracts, policies and performance appraisal forms are relevant and tailored to the circumstances and requirements of business and employee’s positions; and
- If necessary, terminate employment while ensuring sensitive and sensible exit procedures.

Ends

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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