

## **MEDIA RELEASE**

### **Failure to ‘tell all’ presents legal minefield for employers**

*17 June 2009* – Businesses currently recruiting despite the economic downturn must be particularly careful to avoid exposing themselves to employee claims of misrepresentation by omission. Companies that withhold important information regarding the future plans and direction of the company from prospective employees, in particular any potential restructuring that may occur in the future, or the difficult financial circumstances of the company, may give rise to legal action by misled employees, according to Harmers Workplace Lawyers.

Shana Schreier-Joffe, Partner at Harmers Workplace Lawyers, said that misrepresentation by omission, could affect all companies recruiting in the current environment, and result in legal claims for damages for lost remuneration, commissions or other benefits the employee had been promised, as well as a claim for moneys the employee would have received had the employee not relied on such misrepresentation.

“For example, if a candidate is offered a role overseeing a team of 15, or reporting directly to the CEO, yet three months into the role they discover that their team will be reduced or redeployed elsewhere, or that restructuring will greatly diminish their position in the company hierarchy, then they will understandably feel disappointed and even angered that the role has changed so dramatically from what had been originally presented to them.

“Certainly, if these changes were envisaged by the company at the time of recruitment and not disclosed to the employee, the employee may well have some legal recourse,” she said.

Ms Schreier-Joffe said that despite the economic downturn, many employers still have positions to fill and still face challenges to find the right talent. “However, most employers have been so used to ‘talking up’ their business to potential employees, that they do not realise how important it has become to be candid in the midst of the current economic climate.

“My advice to employers who are currently hiring is that they should err on the side of disclosure with candidates, particularly as soon as it has been determined that a job offer will be made to them,” she said.

Ms Schreier-Joffe said that employers should carefully consider all communications to candidates regarding the role and state of their business, including any discussions or information provided by recruitment agents acting on behalf of the company. “This should include any information provided verbally, in writing or specified within the employment contract.

“While I can understand why employers might be reluctant to openly discuss potential changes that may occur to their business, or the difficult financial position of the company, they must recognise that most candidates are giving up secure jobs

elsewhere on the basis of the role and workplace as described to them during the recruitment process,” she said.

Potential employees need to have all the appropriate information available to allow them to make an informed decision about their careers and employment situation. Otherwise they may feel misguided and misrepresented and may have grounds to seek legal recourse,” she said.

She also suggested that there was no reason employers should hide or try to downplay potential workplace changes, as not all changes are necessarily viewed as reactions to negative business performance.

“There are many reasons why a relatively well performing business might have plans to restructure or make significant changes to their workplaces, whether to create or maximise a competitive advantage or simply adapt and benefit from current market conditions. If explained openly and clearly in line with the direction of the business, flagging any potential changes, this need not scare off the best candidates,” she said.

Her advice to employers currently hiring includes:

- Be upfront as much as possible about the state of the business, the performance and outlook of the industry it is operating in, and any planned or potential changes to the business
- Avoid overstating the role or the performance of the business - be conservative in your estimation of future business performance
- When preparing ahead of any interviews or written materials, carefully consider the wording chosen and ensure they create an objective and accurate picture of the company
- If there are potential workplace changes that are of a particular concern or likely to impact that role, and which may leave the company at risk of litigation, ensure that they are disclosed to the potential employee. If it will significantly impact the role performed by the potential employee or the employee’s ongoing employment, then ensure details are recorded in writing in the letter of offer or contract of employment
- Ensure that recruitment agents do not represent the role or company in a manner than is inaccurate.

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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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For further information, please contact:

Lauren White / Dylan Malloch

Tel. (02) 8920 0700

Email: [lwhite@sefiani.com.au](mailto:lwhite@sefiani.com.au) / [dmalloch@sefiani.com.au](mailto:dmalloch@sefiani.com.au)