

MEDIA RELEASE

Employee litigation rises as employers seek to vigilantly protect their assets

1 December 2009 – Employment lawyers across Australia have seen a sharp rise in litigation over the past six months as companies demonstrate an increased determination to aggressively challenge claims from outgoing employees. According to Harmers Workplace Lawyers, this trend is likely to continue, with a predicted increase specifically in restraint of trade litigation.

Shana Schreier-Joffe, Partner at Harmers Workplace Lawyers, said that when economic circumstances were favourable during the boom, companies were more willing to settle claims with outgoing employees on issues such as unfair dismissal and restraint breaches. However, in the midst of the economic downturn, companies have shown that they are prepared to litigate more readily as they actively seek to discourage similar actions from other employees.

Ms Schreier-Joffe said that while employees may still be sceptical about their employment opportunities in the current economic climate, they may be tempted to leave their current employers as the economy continues to strengthen. As this happens, and employees are hired by competing firms, it is likely that there will be an increase in restraint of trade litigation as employers continue to vigilantly guard their assets.

“Tougher economic conditions usually result in an increase in litigation, and that is exactly what we have seen recently. During the boom times, often employers had been willing to sign ‘blank cheques’ in order to settle claims quickly, or they tended to disregard breaches of restraint of trade conditions. Now, however, they appear to be prepared to litigate more vehemently.

She said, “It’s also likely the trend we are seeing in increased litigation for bullying and harassment and discrimination claims will continue in the next few months. For employees excluded from unfair dismissal remedies there is little other recourse available to them other than to bring claims of bullying and harassment or breach of contract.”

Ms Schreier-Joffe said also that 2010 will bring in a raft of workplace legal challenges for employers. From 1 January 2010, the *Fair Work Act*, National Employment Standard and Modern Awards will all have an impact on employment terms and conditions. Those employers previously excluded from the changes at the Federal level, will now be covered by the *Fair Work Act*, as the States other than Western Australia have referred their powers to the Federal Government, from 1 January 2010.. She said employers should also keep an eye on the so-called golden handshake legislation that has been introduced to curb executives payouts on termination, while the harmonisation of OH&S laws will also come into effect by mid-2010.

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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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