

4.9

Legal issues relating to the workplace (1)

Occupational health and safety

Each year in Australia, approximately 600 people are killed at work and about 2500 die from work-related injuries or illnesses. On top of this, more than 650 000 workers suffer some form of workplace-caused injury or disease. A recent safety poster carried the warning, 'WORK IS A HEALTH HAZARD'. This can be only too true.

The workplace continues to be even more dangerous than the roads! Inadequate training, lack of appreciation for the seriousness of health and safety issues, and an attitude of 'She'll be right' all contribute to carelessness. They are the three main causes of workplace injuries and illnesses.

In New South Wales the *Occupational Health and Safety (OH&S) Act 2000* outlines the legal requirements for employers and employees.

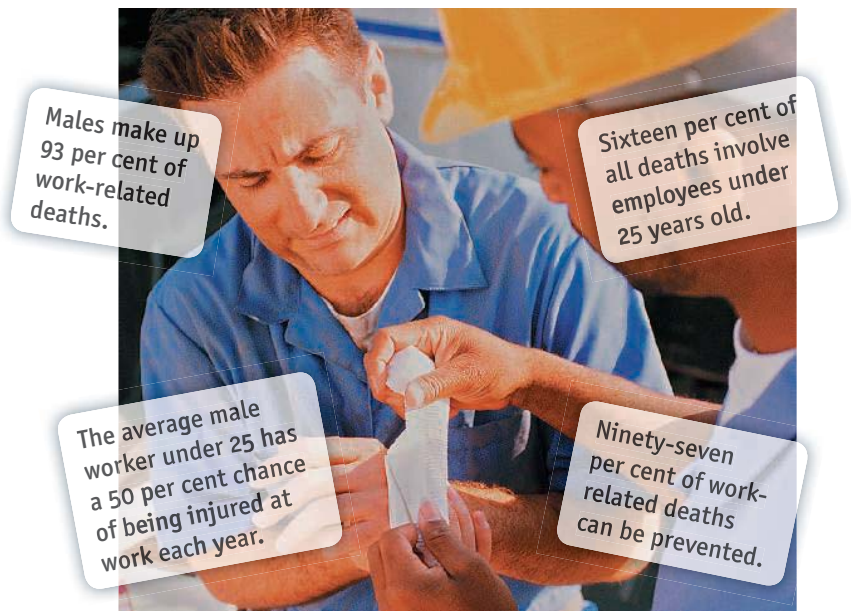
Employers must ensure:

- their workplace is safe
- machinery is regularly inspected and maintained
- protective clothing and adequate training are provided
- committees have been set up to enforce the OH&S rules
- they have a written OH&S policy.

However, safety in the workplace is not *just* an employer's responsibility. It is also up to employees to take steps to ensure their own – and other people's – health and safety. In particular, all employees must:

- comply with safety instructions
- report any situation they think may be dangerous
- cooperate in the investigation of accidents in order to prevent them from happening again.

The New South Wales government agency that is responsible for providing OH&S advice to employers and employees, and conducting inspections of workplaces, is the WorkCover Authority of New South Wales.



Workplace health and safety in Australia: some disturbing facts

Bullying in the workplace

One in six students are bullied every week in Australian schools. Not much seems to change when they join the workforce, with figures suggesting that 85 per cent of workers suffer or witness bullying in the workplace. It is a serious issue both for schools and workplaces.

The more noticeable forms of workplace bullying are intimidation, humiliation, verbal abuse, slamming doors, pushing, touching or fondling, and threatened or actual violence against an employee – in short, any repeated actions likely to generate a risk to health and safety. Australian companies are paying dearly for bullying in the workplace. Recently, a company was ordered to pay \$350 000 to an employee for his medical bills, loss of income, and pain and suffering. As a young apprentice he faced continual harassment, including being rolled around the factory inside a large drum, and having his genitals smeared with grease. The judge found the company instilled a 'culture of intimidation'.

There are also subtle forms of bullying such as excluding or isolating employees or assigning meaningless tasks unrelated to the job.





Unsafe work practices

Activities

Understand

- 1 What do the letters OH&S represent?
- 2 Examine the cartoon of an office scene above. Make a list of all the unsafe practices that you can find in the drawing.
- 3 Identify the three main causes of workplace injuries and illnesses.
- 4 Use the following pairs of words in a sentence:
 - bullying/workplace
 - company/responsibility.
- 5 Give one example, within a school setting, of subtle bullying and another of more noticeable bullying.

Think

- 6 What particular age and gender group faces the greatest risk of workplace death or injury? Suggest reasons why accident numbers within this group are so high.
- 7 Imagine that you are a person being bullied at school or in the workplace. Comment on how it would affect you:
 - (a) self-confidence
 - (b) performance.
- 8 Why do you think fines for breaking occupational health and safety laws are so large?

- 9 'I can't be bothered with these health and safety laws. It's up to my workers to operate in a safe fashion. I can't be responsible for their stupidity!' Is this employer right? Give reasons for your answer.

Communicate

- 10 Arrange to interview a member of your school's OH&S committee. Inquire into:
 - (a) the committee's role
 - (b) how 'accidents' and 'near misses' are recorded
 - (c) what authority the committee has in terms of making recommendations.

Investigate

- 11 Research a particular health or safety issue in the workplace. Examples include industrial deafness, asbestosis and repetitive strain injury. Prepare a news item that will be read on the evening news. Read your report to the class.

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- 12 Use the **NSW WorkCover** weblink in your eBookPLUS and research the following:
 - (a) the role of WorkCover
 - (b) how a workplace can be made safer
 - (c) some recent prosecutions.

Legal issues relating to the workplace (2)

Anti-discrimination

Discrimination occurs when a person is treated less favourably because of factors such as gender, age, ethnicity, religion or disability. For many years, discrimination in the workplace was widespread. Women found it difficult to gain promotion, and pay rates for females have been, and still are, below the pay rates for males in comparable occupations. Older employees were sometimes dismissed or forced to retire to be replaced by younger, lower-paid workers. Many migrants and indigenous people found it difficult to secure permanent employment because of their racial backgrounds.

Beginning in the late 1970s, several federal and state laws were passed aimed at ending these kinds of discrimination. Under these laws, it is illegal to discriminate on the grounds of a person's:

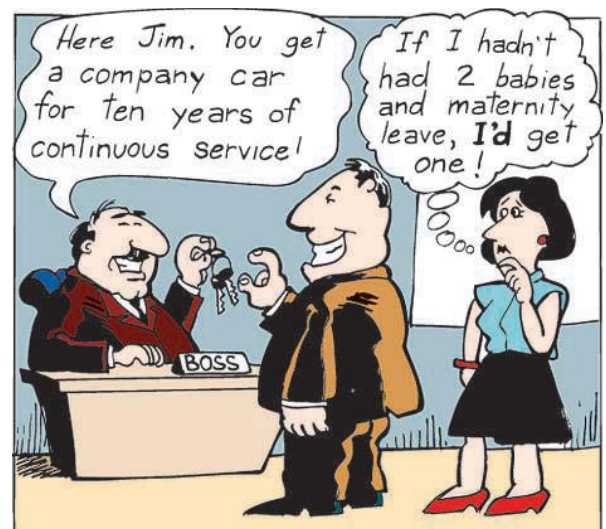
- gender, ethnicity, age or sexual orientation
- physical or mental disability
- religious faith or political opinions
- marital status, family responsibilities, pregnancy or potential pregnancy.



Direct and indirect discrimination

Direct discrimination
Treating a group less favourably than another person or group in similar circumstances

Indirect discrimination
Treatment which seems fair but which has an unequal or unfair impact on one person or a group compared with others

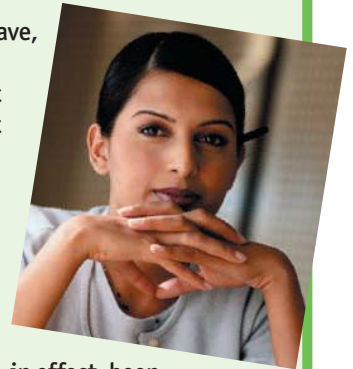


Casestudy

Case study in discrimination: Julia's case

For 10 years, Julia worked as an Accounts Manager at a major company. After becoming pregnant, she applied for 12 months maternity leave. At the time, her boss was not happy with the application for leave and evidence was presented later at a legal hearing that he had stated, 'That's it! I now have three women on maternity leave and I'm sick of hiring and training new staff. I'm only hiring men in future'.

At the end of her maternity leave, Julia's boss informed her that although she could resume work with the company, she could not return to her previous position as Accounts Manager. Instead, the company placed Julia in telephone marketing and it was clear that she had suffered a demotion from her previous position. In Julia's case, the Federal Court ruled that she had, in effect, been dismissed from her previous position and the company had shown little regard for the trust of a valued employee.



The main legislation in this area includes:

1. *Racial Discrimination Act*. This Act ensures that employers cannot specify particular racial or cultural characteristics when advertising a position.
2. *Sex Discrimination Act*. This Act makes it unlawful to dismiss an employee on the basis of family responsibilities that he or she may have (for example, the care of a sick child).

3. *Disability Discrimination Act*. This Act is designed to ensure that, within reason, all people with a disability have equal access to employment.
4. *Affirmative Action Act*. This Act requires businesses to promote equal employment opportunities (EEO) for those groups of people who were formerly discriminated against.

Unfair dismissal

If an employee is not performing his or her job satisfactorily or behaves in an inappropriate manner, the business can terminate the employment of the employee. This is called dismissal. There are three ways in which an employee may be dismissed:

1. *Summary dismissal* is based on a serious breach of the employment contract, such as serious theft from an employer, fraud, intoxication, or assault of an employer.
2. *Dismissal 'on notice'* is based on failure to perform the job adequately.
3. *Redundancy or retrenchment* is dismissal due to the employer no longer needing the employee for economic or operational reasons.

Unfair dismissal occurs when an employee is sacked (or threatened with the sack) and they believe the dismissal is 'harsh, unjust or unreasonable'. Protection from unfair dismissal has been incorporated into state and federal legislation. Under the New South Wales *Industrial Relations Act 1996* an employee who believes they have been unfairly dismissed can apply to the NSW Industrial Relations Commission for reinstatement and/or compensation. The Act's main objective is to create a system that gives employees access to a cheap, simple and fair process of appeal. The federal legislation is very similar to that of NSW except that unfair dismissal protection applies only to businesses that employ more than 15 staff.



A case of unfair dismissal

Activities

Understand

- 1 What is meant by the term 'discrimination'?
- 2 Identify the groups in society which may experience discrimination.
- 3 Briefly outline the purposes of two pieces of anti-discrimination legislation.
- 4 What does it mean when a company claims to be an EEO employer?
- 5 Briefly outline the three ways that an employee may be dismissed.
- 6 Under what conditions is a dismissal considered to be unfair?

Think

- 7 Why do you think anti-discrimination legislation has not always been effective in removing discrimination?
- 8 With reference to Julia's case on page 128, do you agree or disagree with the Federal Court's decision? Why or why not?

Communicate

- 9 Imagine you have just been refused a job because of your gender. Write an email to a friend telling them how you feel about this.
- 10 Read the following story and then answer the questions.

Natashia Frazer and Civic Printers

I had been employed by Civic Printers for 12 years. One month ago my new supervisor warned me that if my work did not improve I may be dismissed. Prior to this I had only received favourable work reports.

One Friday afternoon I was told that someone else had complained about my performance and that I was being dismissed. I was not aware of any other complaint. I had never been given any written advice that my work was unsatisfactory. However, the supervisor's decision was final and I was dismissed. I think it is unfair.

- (a) After reading the story have a class vote to decide whether Natasha's dismissal was fair or unfair.
- (b) Now divide the class into small groups. Each group has to decide whether the termination of Natasha was fair or unfair, and then report back to the class. Discuss the different group responses.
- (c) Take another vote to see if the discussion has made any difference to class members' views.

Glossary

discrimination treating a person less favourably because of factors such as gender, ethnicity, religion or disability

unfair dismissal termination of employment that is considered to be harsh, unjust or unreasonable

Legal issues relating to the workplace (3)

Redundancy and retraining

Redundancy occurs when a job a person is doing is no longer required to be performed, often due to technological changes. Therefore, unless the existing employee can be retrained for another job, they will be made redundant. Redundancy can be either voluntary or involuntary.

Voluntary redundancy occurs when the business wishes to reduce either the size or nature of its workforce and decides how many employees should be 'let go'. Employees are then informed of the situation and given the opportunity to nominate themselves for voluntary redundancy. Employees who choose voluntary redundancy are offered a redundancy package: a payout of a sum of money which is usually very generous. It includes the payout of any unused entitlements such as long service leave and termination pay. If too few employees volunteer, the business may be forced to decide which employees will be made redundant — involuntary redundancy. The involuntary redundancy package is less than the voluntary package.

Comfact

Between 1811 and 1816, during the early stages of the Industrial Revolution, members of organised bands of craftsmen destroyed newly introduced machinery in the Midlands and the north of England on the grounds that it took away their skills and livelihoods. Their leader was said to be Ned Ludd, and the group became known as 'Luddites'. Today, people who resist new technology are called Luddites.

Privacy

When you are employed, chances are that someone is monitoring your performance and behaviour. Many businesses monitor employee telephone conversations, web hits, keystrokes, completion time and emails. Some companies use closed-circuit television cameras to watch employees. Call-centre

operators have some of their phone calls listened to for training purposes. Sometimes employees have to use a log-off code whenever they leave their desks.

This type of monitoring raises a number of ethical issues. Critics claim that a business's right to know is offset by the workers' right to privacy — to be left alone. There is growing concern over invasion of privacy. For example, is it an invasion of privacy if a business:

- performs genetic screening to deny employment to people whose future health problems might disadvantage the business
- demands drug and alcohol testing of employees
- listens to phone calls and checks web hits to determine whether they relate to the job or are being made for private purposes?

Businesses have the right — and, to some extent, the obligation — to protect themselves against theft, misuse of company resources and unsafe work practices. However, these goals should not be achieved at the expense of personal privacy.

Getting the right balance between employer and employee rights can sometimes be difficult.



Outsourcing

Outsourcing is the contracting of some organisational operations to outside suppliers. For example, school cleaning is outsourced to private companies.

Many businesses have rearranged their workforces to employ a minimum full-time staff and to use as many people from outside the business as possible — on a contract, casual or part-time rate, or piecework. Those in favour of outsourcing argue that resources are used more efficiently and it provides employment opportunities. Opponents argue that it results in less job security and lack of employee entitlements.

Piecework

Pieceworkers (outworkers) are people who are paid according to the number of items they make. The advantage of such a scheme is that it encourages effort and rewards those who are efficient. However, it is not suitable for jobs that require time and care.

Recently a lot of piecework in the textile industry has been outsourced. This has resulted in thousands of mainly migrant women throughout Australia being employed by clothing companies at very low piece rates. Many of these companies are producers of expensive 'designer label' outfits. These workers do not have access to normal award conditions, workers compensation, overtime and sickness benefits. They frequently work 70 to 80 hours per week.



Piecework is often used in the textile industry.



FairWear campaign logo

To combat the possible exploitation of outsourced pieceworkers in the fashion industry, the FairWear campaign was created by a collection of churches, community groups and trade unions.

Activities

Understand

- 1 Use the following terms in a sentence to explain their meaning:
(a) redundancy
(b) piecework.
- 2 Explain the difference between *voluntary* and *involuntary* redundancy.
- 3 What are employees who accept voluntary redundancy offered? What does it include?
- 4 Describe the possible impact of outsourcing on employees.
- 5 Imagine you had a job making hamburgers. Would you rather be paid by the hour or a piece rate? Why?

Think

- 6 Under what circumstances could it be acceptable for an organisation to check on an employee's:
(a) criminal history
(b) HIV/AIDS status?
- 7 Substance abuse is becoming a problem in many workplaces where employees experience stress. Should employers have the right to drug test employees? Give reasons for your answer.

Communicate

- 8 Imagine that you have just been made redundant. Predict how the redundancy could affect you. Share your answers with other members of the class.
- 9 You are a business owner with twenty long-serving employees. Fierce competition is threatening the survival of your business. Sales and profits are declining due to the lower production costs of your competitors. You could compete if you introduce new technology; however, this will mean ten employees will become redundant. In small groups, formulate the criteria you will use to decide who should stay and who should go. Present and justify your criteria to the rest of the class.

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- 10 Use the **FairWear** weblink in your eBookPLUS to find out more about the FairWear campaign.

Glossary

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redundancy when a particular job a person is doing is no longer required to be performed, sometimes due to technological changes