



2014 Workplace Law Hot Topics Interview with Joydeep Hor – Managing Principal, People + Culture Strategies

By Ros Chatfield – Touchstone Consulting

Q. What is the biggest HR Risk that you should be attending to right now?

- A.** Bullying! Commencing on 1 January 2014 (and for the first time in Australia) there are now specific anti-bullying laws enabling workers to make a simple and quick application to the Fair Work Commission in respect of claims of workplace bullying. The Fair Work Commission is now granted broad powers to deal with claims and to make any order it considers appropriate (other than an award of a monetary amount) to prevent further bullying. With these new anti-bullying laws in place (combined with the rise in bullying complaints and the growing

popularity of labelling conduct ‘bullying’) it is imperative that employers are on the front foot and putting in place systems together with behavioral training and coaching to prevent and respond to bullying in the workplace.

Q. What is the number one error companies make in executive contracts in Australia?

- A.** Poorly drafted restraints which do not serve their intended purpose and are unenforceable. When drafting restraints it is crucial to understand what the business is seeking to protect (non-disclosure of confidential information, non-solicitation of clients, and non-competition with the employers business), why and for how long. Employers should be weary of standard restraint clauses and always ensure (particularly for key senior and executive employees) that restraint clauses are tailored to capture appropriately the relevant business interests for a reasonable (and justifiable) time and across a reasonable (and justifiable) geographical area.

Q. What is the first question the executive team should be asking of their IR/legal advisors this year?

- A.** How will you manage the potential risk of bullying claims? The executive team should ensure that the business is well-armed to prevent, respond to and managing bullying. This includes updating your workplace bullying policy (to ensure it is consistent with the new anti-bullying laws), undertaking training across all levels of the organisation



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(it is particularly important that managers have been trained in effective management of complaints so as to avoid claims), responding to claims of bullying promptly, investigating complaints and implementing appropriate remedial and/or disciplinary measures.

Q. What rights do we have in respect of company property provided to employees for both personal and business use? What steps should we take to ensure its appropriate use?

A. Any property issued to your employees remains company property and the use of company property can be controlled through policies and procedures, provided company policies and procedures comply with applicable privacy and surveillance laws. Employer's can monitor the use of company property (through computer, video or tracking surveillance) in accordance with a surveillance policy (provided the surveillance policy complies with the relevant legislation). When undertaking surveillance, an employer must also ensure that it maintains the privacy of employees' personal information that may be obtained during the course of such surveillance.

Q. What are reasonable weekly working hours? When do *work hour demands border on bullying?

A. The National Employment Standards define weekly hours in terms of a maximum (38 hours per week for full-time employees) plus reasonable additional hours. Reasonable additional hours will vary depending on the nature of the employee's role and responsibilities, the needs of the workplace, the employee's personal circumstances and any risk to the employee's health and safety, amongst other things. Work hours will border on, or can constitute bullying, in circumstances where an employee or group of employees is targeted, to work unreasonable hours, where the employer can put in place measures to alleviate a disparity in employees working hours but does not, or where an employee is subject to unreasonable working hours as part of a broader pattern of behaviour targeting that individual.

Q. Who owns 'the brand'? How much control can we exert over what our employees say publicly?

A. While the company owns the brand, the proliferation of social media, internet connectivity and mobile computer devices means that employees are becoming informal brand ambassadors with many savvy companies encouraging and supporting employees' use of social media and their networks. When an employee uses a company-owned device and comments on the company or is reasonably connected with the company in comments made privately, the company has the ability to direct and control what employees say. Well-drafted employment contracts and policies define (and control) how, when and where employees are permitted to comment on the company and provide the company with the means to enforce non-compliance.

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