

## EMPLOYEE RELATIONS UPDATE

January 2004

### SMS CAN BE CONSIDERED SEXUAL HARASSMENT

In our working environment we are constantly faced with different ways of communicating with each other. Whilst workplaces do not officially use SMS via mobile phones as a formal channel of communication, many Employees use it as an alternative form of communication between each other.

Employers need to be aware that even communications via SMS that are inappropriate may be considered sexual harassment. This is evidenced in a recent case in the Australian Industrial Relations Commission (AIRC) in which a termination was upheld due to an inappropriate SMS.

#### **The Dismissal**

An Employee who was working as an Acting Manager at the time of his dismissal was faced with several allegations of sexual harassment towards a female Employee. The incidents that led to the allegations included: the Acting Manager telling the Employee he had a dream about her, slapping her on the bottom, sending an SMS reading "Hey Baby" and another sexually suggestive SMS message.

These incidences led the Employee to share her concerns with a co-worker who then notified the Employer. The Acting Manager was questioned about the allegations. He provided a response admitting to sending the SMS messages however stated he was only mucking around and that the message was meant as a joke, rather than to offend the Employee. The Employer notified the Acting Manager that his conduct was unacceptable and that he was summarily dismissed.

#### **The Claim**

The Acting Manager lodged a claim with the AIRC alleging that the termination was harsh, unjust or unreasonable. He claimed that jokes of a sexual nature were common in the workplace.

During the case the Employee who made the allegations stated that she had been subjected to previous unacceptable behaviour by the Acting Manager but had not brought it to the attention of the Employer for fear of losing her job.

The Employee also stated that the Acting Manager's behaviour was different to other staff and that while there was a bit of joking around in the workplace it was not of a sexual nature.

The Acting Manager stated that he was aware of the Employer's Sexual Harassment Policy and the implications of breaching it. He also conceded that the SMS could have caused the Employee distress.

### **Findings**

In considering the above the AIRC upheld the termination due to finding that the conduct of the Acting Manager was sexual in nature and from the evidence presented was unwelcome.

The AIRC also noted that the company did have a sexual harassment policy which was well known to all the Employees who gave evidence during the case. The policy clearly provided relevant examples of harassment and also indicated that '*disciplinary action, up to dismissal, will be taken against any Employee who has engaged in or harassment a co-Employee...*'.

### **Considerations for Employers**

This decision reinforces the importance for Employers in having appropriate policies and ensuring that the contents of the policies are clearly communicated to all Employees. A sexual harassment policy should provide relevant examples of unacceptable behaviour, and clearly indicate possible consequences of such behaviour.

If you don't have a Sexual Harassment Policy in place in your workplace, or wish to discuss this decision further, please call **Kylie Reed on 0414 353540** to discuss further.