



Employer's Survival Kit

Employment Law Solutions

Every business is exposed to risks arising from employment issues. Sometimes the consequences of getting it wrong can be so significant that a business fails.

In the current employment law environment many businesses are now turning to innovative solutions to minimise the risks arising from problems with their workforce.

McKay's Employer's Survival Kit may be just the answer for you.

For a fixed annual fee, paid monthly or weekly to work in with your cashflow, you will receive:

- **Four (4) seminars / training sessions per annum.** This will include education on managing and avoiding unfair dismissal claims, general protections claims, problems with bullying and harassment and sexual harassment claims as well as using the Small Business Fair Dismissal Code;
- **On-call telephone advice** in relation to discrimination, sexual harassment, equal opportunity, work place health and safety, risks from social networking at work, drug and alcohol abuse and performance management;
- **Review your employment contracts** initially and make recommendations to change if necessary - separate cost to redraft;
- **Maintain employment contracts** by reviewing annually and amending in line with legislative changes;
- **Half yearly meetings with your management** to review your employment related systems;
- **On-call telephone guidance and advice regarding disciplinary action,**

performance management, incidents of serious misconduct and dismissals;

- **Flexible work arrangements.** Advice and documentation;

War Story

Joe's business had hit hard times and he could no longer afford to keep all of his employees. He needed to terminate at least 15. Joe knew that he had to pay each employee who had been terminated, redundancy in accordance with the Fair Work Act 2009 on top of their termination entitlements, pay out their notice period and pay all outstanding wages, accrued annual leave and long service leave. He did that but got his calculations wrong. He was contacted by the Fair Work Ombudsman who told him two of his employees had lodged a claim and that he was possibly liable for two \$33,000 fines for getting it wrong. As well he had to pay the right amount of entitlements. They also told him that as he had not notified Centrelink he could be up for another fine, again up to \$33,000. He was mortified! It's not worth taking risks with employment issues and not that expensive to get the right advice.

- **Provide standard restraint terms** prohibiting inappropriate use by staff of confidential information, intellectual property and stealing your staff and customers when they leave;
- **Review policies and procedures and make recommendations** regarding

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changes needed (if any) - separate cost to fix;

- > **Prepare your letters of warning, terminations and notifications** of changes to employment terms;
- > **Prepare your letters regarding breach of restraint, confidentiality, intellectual property** and software clauses in contracts and policies;
- > **Draft responses to unfair dismissal**

applications (appearances and hearings attract additional fees which will be costed separately);

- > **Provide updates about legislative changes** including workplace health and safety legislation;
- > **Conduct investigations into employee disputes** and draft a report setting out recommendations as to how to proceed; and
- > **Assess your business for sham contracting** arrangements for independent contractors and sub contractors.

War Story

One of David's employees repeatedly turned up at work under the influence of drugs. David wanted to sack him. He gave him notice but during the notice period the worker injured a fellow worker with a forklift. David was sued. What David didn't know is that he could have and should have sacked him without notice for "serious misconduct". Under Regulation 1.07 of the Fair Work Regulations 2009, serious misconduct includes an employee being intoxicated at work or under the influence of drugs. The employee is only entitled to outstanding wages, accrued annual leave and long service leave (if applicable) upon termination.

One of Sandra's employees, Julie, was on unpaid parental leave for 12 months. Sandra hired someone to replace her while she was away. The new person was much better. Just before Julie was due to return, Sandra told Julie that when she comes back it will not be to her old job but another one, lower in the organisation. Julie didn't complain but the next thing Sandra knew was that she was served with a General Protections Claim in Fair Work Australia. When an employee returns from parental leave the employer is required to give them their job back. If that position no longer exists then the employer must provide the employee with a position that they are qualified for, "suited nearest" to the employee's previous position and pay rate prior to their parental leave. Sandra was liable for a fine of \$6,600 as an individual and ordered to pay \$22,000 in compensation. She could have been ordered to pay more as damages in General Protections claims are uncapped.

This is how it works

Sometimes it's very clear that you have an employment law problem. However, employment law is a complex and tricky field so you may not always be sure whether you have a problem.

If you subscribe to the **Employer's Survival Kit**, all you have to do is pick up the telephone and call one of the employment lawyers at McKays Solicitors.

They can help identify what your problem is, explain your options and give you practical advice and recommendations.

Twice a year, we will carry out a review of your employment systems with your management team. We will go through with you and make recommendations in relation to your employment contracts, policies and procedures and all the documentation you need to help minimise the likelihood of any employment law problems.

We will also provide training for your management and employees. Among other things, this will help minimise the risk of you as a business owner becoming personally liable for the conduct of your employees.



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For example, if one of your employees sexually harasses another staff member and you do not deal with it properly, the business could be sued.

War Story

John is an air-conditioning contractor. One of his employees went to a site to carry out some repairs to an air-conditioning unit. He had to climb over a series of beams and in the process fell and crashed through the ceiling. He broke his ankle. John was prosecuted for a breach of Workplace Health and Safety legislation in that he did not provide a safe system of access. He was fined \$20,000.

Whilst John was not thrilled about the fine, it could have been much worse. As of 1 January 2012, penalties for work health and safety breaches have increased.

The new penalties are as follows:

CATEGORY 1

What does this mean?

For reckless conduct that exposes an individual to a risk of death or serious injury or illness and is engaged in without reasonable excuse

PENALTY

Corporations: \$3m
Officers: \$600k - 5 years jail
Worker: \$300k - 5 years jail

CATEGORY 2

What does this mean?

Failure to comply with a health and safety duty and exposing an individual to a risk of death or serious injury or illness

PENALTY

Corporations: \$1.5m
Officers: \$300k
Workers: \$150k

CATEGORY 3

What does this mean?

Failure to comply with a health and safety duty

PENALTY

Corporations: \$500k
Officers: \$100k
Workers: \$50k

Not only is there the financial cost of any damages you may have to pay but then there's the legal costs and the potential substantial damage to your personal reputation as an employer and the business generally.

What next?

To subscribe to the **Employer's Survival Kit**, call us now.

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