



The Human Resources Specialists

June 2009

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HR KNOWHOW WHAT'S

NEW

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Strategies for the Recession

What has become more and more evident during the first 6 months of this year is the creativity and tenacity of business owners. We know the recession and its effects won't be all over in 2009 but there is a toughness about getting through, and a realism about how we all need to operate in the next one to two years.

While businesses continue to restructure and make staff redundant there is a strong focus on preparing for the end of the recession – taking a clear sighted look at the business and finding ways to put the effort into the most valuable places.

We are seeing businesses focus on the areas set out below to increase their productivity and profitability:

The 80/20 rule

Putting the most effort into the most profitable work or the areas for development that produce the best results.

Removal of waste

Ceasing to do those things that we can live without, monitoring the productivity of employees - where is time going – can “unproductive time” be redirected to get additional business, improve skills, knowledge or coach others?

Controls

Not losing sight of the control points – in a restructure it is easy to loosen the controls in a business. This is particularly dangerous with financial controls. There have been a number of reports about increased employee fraud – a by product of the recession.

Systems

Businesses that are not at a point where staff redundancies are needed but nevertheless staff have time on their hands –using this time to improve and document operating systems which will enhance productivity.

Productivity Tools

We are working on a series of tools to help employers identify areas where they can improve productivity and will provide more detail on this in our next newsletter.

Restructuring - Update

We are still very busy with restructuring. Many of our clients are working to preserve jobs but reduce remuneration and hours of work to reduce costs. Some who ventured into the 3 and 4 day week have reverted to a 5 day week because the reality of the shorter week did not provide the service needed for clients. The other by-product was that people found work for the day/days they were not working and when the primary employer needed additional hours the employees were not available.

While fortunately our record with restructuring holds good (4 challenges – successfully defended- from 282 company restructures in the past 2 years) Mediation Services tells us that they are very busy with challenges to restructures.

It is a process which needs careful management and a thorough knowledge of the law and its procedural requirements. Employers should choose experienced advisors who are well versed in the technical areas of restructuring. Having over 20 years experience of managing restructures I still talk through some of the issues with our Barrister. This is why we don't issue guidelines or templates of letters. It is not a process where you can safely conduct a "paint by numbers" approach.

Predictions are that unemployment will increase from the current recorded 5% to around 9%. This will see considerably more restructuring however the 5% seems understated for those of us at the coal face.

If you know of any business owners who need help to look at restructuring please let us know or ask them to contact us on ph 09 377 9891 or email us at kh@knowhow.co.nz.

Meal and Rest breaks

This is one of the last pieces of legislation from the Labour Government - let's hope the National Government will refrain from introducing legislation that organizes us to this extent.

The Employment Relations (Breaks and Infant Feeding) Amendment Bill came into effect 1 April 2009. The purpose of this Act is to require employers to provide employees with meal and rest breaks, and breaks for employees who wish to breastfeed in the workplace. Previously there have been no legislative requirements for meal and rest breaks. Under the provisions in the amendment, employees are entitled to:

For part time employees

- One 10 minute rest break if they have worked between two and four hours
- One 10 minute rest break and one 30 minute meal break if they have worked between four and six hours

For full time employees

- Two 10 minute rest breaks and one 30 minute meal break if they have worked between six and eight hours.

The timing of the breaks is to be agreed between the parties, however failing agreement there are specific parameters set down.

The entitlements are a minimum. Where the parties have meal / rest breaks in place that provide in addition to the Act, the employer will be required to honour such agreement.

Breastfeeding Facilities / Breaks

Where reasonable and practicable employers will be required to provide appropriate facilities and breaks in the workplace for an employee who is breastfeeding if the employee requests such breaks. The term 'circumstances' includes the employer's operational environment and the employers' resources. Breastfeeding breaks are in addition to meal/rest breaks; however employees could take the breastfeeding break under the employee's meal / rest breaks.

There is no obligation for the employer to pay for the time taken with breastfeeding breaks.

H1N1 Influenza

We were all set to send a long and detailed newsletter on H1N1 to you but then it faded somewhat.

While the hype has come to very little at this stage there are a number of cases in Australia of H1N1 which has brought this back into the news. Let's hope it remains a non event for NZ however as employers it is necessary to know what would be needed if a pandemic occurred.

What follows is the general advice re pandemics. If an H1N1 pandemic becomes reality we will provide more specific information as it comes to hand.

If a pandemic occurred businesses would need to plan for up to 50% staff absences for periods of about two weeks at the height of a severe pandemic wave and lower levels of staff absence for a few weeks either side of the peak. Overall a pandemic wave may last about 8 weeks.

Health & Safety in Employment Act – implications of a pandemic

Under the Health and Safety in Employment Act 1992, you as an employer have the responsibility for the health and safety of employees and others in the workplace, and to ensure that employee's actions or inactions do not cause harm to others. Therefore you will have to take all practicable steps to mitigate the risks and protect employees from pandemic influenza such as:

- Eliminating the hazard (removing the hazard or hazardous work practice)
- Isolating the hazard (reducing potential for contamination through changing work practices to achieve a greater degree of social distancing or installing screens etc)
- Where impracticable to eliminate or isolate, minimizing the hazard (use of protective clothing, and with employee consent, monitoring of their health)

Under the Act, employees have the right to refuse to perform work if they believe (on reasonable grounds) it is likely to lead to their suffering serious harm and if they have attempted to resolve the matter with their employer before refusing.

Suspension of business

In the event that you decide or you are required to suspend business it is important that the employment conditions during the business suspension are discussed with and made clear to employees. Such discussions may include the use of annual leave.

Early planning should include good general hygiene practices and workplace cleaning habits such as:

- Wash hands well
- Use tissues when needed and throw away immediately
- Thoroughly clean surfaces and utensils (influenza viruses may live up to 2 days on surfaces)

We will continue to keep you informed about employment issues relating to the H1N1 influenza virus if the possibility of a pandemic becomes a reality in New Zealand.

Case Law – Unjustified Dismissal

James Jesudhass v Just Hotel Ltd

Mr Jesudhass was employed on a two year Fixed Term Agreement as the General Manager of a hotel in Wellington. In just under 6 months into his Fixed Term employment, Mr Jesudhass was demoted to a marketing role, by way of a memo. As a result of his demotion, Mr Jesudhass allowed a union representative to speak to members of staff at the hotel. This then resulted in Mr Jesudhass being suspended, because he had not informed management of the session with the union representative. No consultation was undertaken to suspend him.

At this time, Just Hotel showed predetermination in their decision to dismiss by changing the locks on Mr Jesudhass' office, canceling his phone contract and requiring his car keys to be returned.

Mediation was held less than two weeks later which proved to be unsuccessful and on the same day as the mediation, Mr Jesudhass was dismissed. Just Hotel Ltd gave Mr Jesudhass no notice and no opportunity to comment on the proposed dismissal.

The Employment Court found Mr Jesudhass' suspension and dismissal to be unjustified and that regardless of having a one month's notice period in his Agreement, Mr Jesudhass would have worked out the rest of his Fixed Term had the unjustified dismissal not taken place. The Court determined that Just Hotel Ltd had to pay Mr Jesudhass just under \$120,000 for loss of salary, compensation, holiday pay and injury to feelings.

When dealing with Fixed Term Agreements, although there may be a provision to terminate, an employer needs to follow due process and have cause for termination.

Airwork New Zealand v Todd Curtis

Airwork New Zealand is a helicopter maintenance company that dismissed an employee after he refused to wear trousers provided by the Company. The employee alleged that he had a skin condition, which the uniform aggravated. The Company provided alternative shirts but maintained the requirement for the employee to wear the trousers.

The employee continued to wear shorts, and a formal disciplinary meeting was held. It was then agreed between both parties that the employee would wear the trousers after they had been washed.

The following day the employee did not wear the trousers and he was dismissed for a "loss of trust and confidence".

The Employment Relations Authority ordered the Company to reinstate the employee as it was

considered a minor issue which did not justify a dismissal.

It is important that an appropriate level of disciplinary action and due process is followed. Reinstatement is the primary remedy of the Court where this remedy is sought by the employee. We recommend that in any disciplinary matters you seek advice prior to taking action. If we can help you with performance or behavioural issues please contact us on 09 377 9891 or email kh@knowhow.co.nz

Job Support Scheme Expanded

From Monday 27 April the Job Scheme includes medium-sized business with 50 to 100 employees. Initially the Scheme was only available for businesses with 100 or more employees.

The Job Support Scheme involves a 9 day fortnight where the Government will pay employers \$12.50 an hour per worker, for up to five hours a fortnight for a period of up to 6 months provided the employer agrees not to make any participating employee redundant during the time the scheme is in place.

It is important that employers consider whether or not they wish to sign up to the job protection element of this scheme for up to a six month period in these uncertain times.

The Scheme does not apply businesses with fewer than 50 employees however work is currently underway on measures to help smaller firms and we will let you know of any further developments.

7 City Road

Our move to Level 15 7 City Road went smoothly and we are very grateful to all our clients who did not call us that day. Your support was greatly appreciated!

Referrals

We are very grateful to our clients who provide us with referrals and it is a key part of our business growth. If you know of a business owner or manager who needs expert HR I hope you will consider referring them to us.

And finally one of my favourite pieces of feedback recently received from a client where we were dealing with a particularly vexatious employee:

“Do we get to charge you for all the entertainment we are providing?”

If you have any queries relating to the matters outlined in our Newsletter please call us on 09 377 9891.

Kind regards
Sylvia Wood
Director