



LAWYERS & ASSOCIATES

QUARTERLY NEWSLETTER MARCH 2012

New Work Health & Safety Laws

The *Work Health and Safety Act 2011 (Cth)* (the "WHS Act") commenced on 1 January 2012. The WHS Act replaces the *Occupational Health and Safety Act 1991*.

Under the WHS Act, a person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not at risk from work performed as part of the business or undertaking.

The WHS Act requires a person conducting a business or undertaking to advise Comcare immediately upon the occurrence of a notifiable incident arising out of the conduct of its business or undertaking.

An inspector may issue an improvement notice requesting that the person conducting the business or undertaking take appropriate measures to rectify a working environment. The improvement notice may include measures that should be taken to remedy the contravention or prevent the likely contravention. The penalty for a failure to comply with an improvement notice within the time period specified in the notice is \$50,000 for individuals and \$250,000 for a body corporate.

Warning to All Employers Dismissing Employees on Sick Leave

Section 352 of the *Fair Work Act 2009* protects employees who are on sick leave due to illness or injuries prescribed by the Fair Work Regulations from being dismissed.

In the case of *Kavassilas v Migration Training Australia Pty Ltd* [2012] FMCA 22, Kavassilas ("the applicant") was dismissed by her employer, Migration Training

Australia ("MTA"), after taking two days sick leave. The applicant informed MTA that she would provide a medical certificate upon her return to work. However, before she returned to work, MTA sent her a letter terminating her employment.

The letter outlined various performance based issues as the reason for her dismissal. However, the Federal Magistrates' Court of Australia found that MTA's directors were highly contradictory and that the performance based issues were not the reason for her dismissal. It also found that MTA's directors knew that the applicant was on sick leave and upon her return would provide medical certificates.

The court concluded that the reasons for her dismissal were a result of her absence from work and that her dismissal was a clear breach of s 352 of the *Fair Work Act*.

An employee is required to submit a medical certificate to his or her employer within 24 hours of the commencement date of their sick leave, but could provide a medical certificate at a later date if it is reasonable in the circumstances.

Employers should avoid dismissing an employee whilst he or she is on sick leave otherwise, they will be at risk of being ordered to pay wages and compensation to that employee.

If an employer wishes to dismiss an employee whilst he or she is on sick leave, they will need to prove that the dismissal was not related to the employee being on sick leave. This may be quite difficult for an employer to prove. An employer should document poor performance issues, disciplinary meetings and issue warnings to the employee before any period of sick leave is taken by the employee. Employers should seek legal advice prior to dismissing an employee and due to the short time frame in which employees have to lodge an unfair dismissal claim

employees should seek legal advice immediately upon being dismissed.

A Critical Reminder to Businesses involved in Transport

The Australian Customs and Border Protection Notice number 2011/58 ("Notice") indicates the importance which the Australian Customs and Border Protection Service ("Customs") places on timely and correct reporting of cargo. It is also a warning that Customs will closely monitor cargo that has not been reported within legislated timeframes and take enforcement action including issuing Infringement Notices, penalties and prosecutions.

The Notice is a reminder to those reporting cargo at any stage of the supply chain that the movement of goods through the supply chain must be correctly reported.

Often people in the industry complain that there are several reasons for their failure to correctly report cargo or move goods without the approval of Customs. Some common complaints include that they have received inaccurate information from others in the supply chain overseas or clients have not provided the required information or paid import duties or other charges and request that the goods be released without Customs' approval.

We advise any business owners involved in reporting cargo to issue a reminder to employees, contractors, agents, shippers and clients advising them of your reporting obligations. Furthermore, you should remind any overseas agents, shippers and

clients that if they do not assist you as required, they will be held responsible for any delays and any loss or damage you may suffer as a result. Furthermore, your terms and conditions must reflect any obligations you wish to impose upon them.

SEMINARS*

Venue for all Seminars

MLB Lawyers & Associates,
Level 1, 441 South Road,
Bentleigh Victoria

Preparing to sell your business

ABSTRACT: This seminar provides invaluable legal and marketing advice on preparing your business for sale.

DATE: 21 March 2012

TIME: 6:30 – 7.30PM

Purchasing a business

ABSTRACT: This seminar provides essential information on choosing the right business for you and on successfully maintaining and building your new business.

DATE: 11 April 2012

TIME: 6:30 – 7.30PM

**All dates and times of our seminars are subject to change depending on numbers of participants attending.*

MLB Lawyers & Associates, Level 1, 441 South Road, Bentleigh Victoria 3204

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