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MEDIA RELEASE

The rise of worker protection actions means employers should mediate first to save in legal fees

Australian employers are being hit with more general protections applications from workers claiming adverse action – such as dismissal for exercising a workplace right or discrimination, according to Fair Work Commission statistics.

In 2016-17, there was a 14% increase in general protections applications compared to the previous year.

Scott Eustace, Partner at Hickey Lawyers, said the steep rise meant that mediation should be the first action of all employers when faced with staff disputes.

He said that he had seen a noticeable increase in these cases last year, and found many employers he dealt with did not know what general protections applications were.

“The first thing employers say is that they have received from an employee an application filed in the Fair Work Commission, it’s not an unfair dismissal application – they have a general protection application and they don’t know what it is,” said Mr Eustace.

“General protections applications involving dismissal are similar to unfair dismissal applications. They could include a worker claiming they were dismissed because they complained about the conduct of a fellow employee or made a complaint about their pay or were otherwise discriminated against for a prohibited reason such as race, colour, sex, age, family responsibilities and so on,” he said.

Mr Eustace said the main differences between unfair dismissal and general protection applications were the limitations placed on an employee’s eligibility to make an unfair dismissal application.

“Generally speaking, to lodge an unfair dismissal claim, you need to be working for the employer for at least six months and earn less than approximately \$145,000 per year. There are no such limitations placed on general protections applications,” he said.

“Unfair dismissal claims also provide a maximum of six months’ wages as compensation, general protections applications have no such limit.”

Mr Eustace believed the lack of limitations could be a motivating factor for the rise in general protections applications.

“While there are less limitations in these claims for the employee, there can be large financial costs for employers,” he said.

Aside from paying legal fees and compensation, the Federal Court has the power to issue fines to employers if a breach has been found.

Mr Eustace, who is a Nationally Accredited Mediator, said mediation was a useful tool for resolving workplace issues, and could save employers thousands of dollars in legal costs.

“If there is an issue in the workplace (whether between employee and employer or between two employees), have those involved participate in mediation early – before an application is filed,” he said.

“By reframing the issues expressed by the parties, a mediator can make complaints less inflammatory, simpler and easier to understand so the heat is taken out of the situation. The parties are better able to speak to one another and resolve their differences in those circumstances”.

According to Fair Work Australia, employers who receive general protections applications will need to lodge a response to the application with the Commission. In dismissal disputes, the Commission must convene a private conference to deal with the dismissal.

The Commission will also convene a private conference for non-dismissal disputes, but if either party won't participate, the applicant can make an application to court to deal with the matter.

“If you're served with a general protections application, you will likely end up in mediation, so it may be better from the point of view of all parties for the employer to be on the front foot and use mediation to try to defuse the situation first,” said Mr Eustace.

Established on the Gold Coast, Hickey Lawyers is a commercial law firm with a portfolio of major clients from Australia and across the globe. Hickey Lawyers specialises in the fields of business, dispute resolution and mediation, property, development and tourism. Hickey Lawyers provides mediation services across all sectors, including the employment sector.

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