Q2 2014

BUSINESS MATTERS

Strategies for managing your business

INSIDE:

MGR ACCOUNTANTS
BUSINESS ADVISERS FOR LIFE

Difficult conversations at work

Avoiding difficult conversations in the workplace can increase the potential for legal claims, and reduce the employer's ability to successfully defend these claims.

It is understandable why employers often avoid having difficult conversations with their employees as it can be an awkward and time consuming process.

An employer may need to have a difficult conversation with an employee in a variety of situations, such as:

- giving ongoing performance feedback and performance reviews
- disciplining for poor performance or inappropriate behaviour
- giving notice of termination of employment

To ensure that difficult conversations are not avoided employers should take steps to make sure that their supervisors and managers are educated about the importance of honest and timely communication with their staff.

It is also important that supervisors and managers have the necessary skills to carry out difficult conversations in an appropriate manner.

Employers should also ensure that they keep detailed written records on conversations that take place with employees so that there is evidence of the communication.

The following are some potential legal risks that can arise from avoiding difficult conversations in the workplace:

Anti-bullying claims

New anti-bullying laws came into power on 1 January 2014 which have given workers experiencing bullying a new sphere of protection.

Raising underperformance or misconduct issues with employees at an early stage can help to reduce the chances of accusations of workplace bullying.

Unfair dismissal claims

A key element of procedural fairness is warning an employee about their unsatisfactory workplace performance and giving them a genuine opportunity to respond. Skipping this step may be found to be unfair by the Fair Work Commission.

Also, in the case of a genuine redundancy, an employer must be able to show that they have met any obligations they had under a modern award or enterprise agreement.

Adverse action claims

Having a conversation with an employee about their underperformance or misconduct can help the employee understand the reasons for decisions that may adversely affect them.

This will reduce the risk that employees are likely to suspect and argue that the decision was made for a prohibited reason, such as on a discriminatory ground.

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ACCC targeting franchises

The Australian Competition and Consumer Commission (ACCC) announced late last year that it would begin targeting franchises in the Health and Fitness and Takeaway Food industries.

A new round of audits will be performed on these businesses to ensure that the franchisors are complying with the Franchising Code of Conduct.

The ACCC will be using their audit powers to request that business owners provide information or documents that franchisors are required to either keep, generate or publish.

It is important that franchisors of all industries- not just Health and Fitness and Takeaway Food, review their compliance with the Franchising Code of Conduct.

The ACCC has the power to audit any documents required to be generated under the Franchising Code, such as disclosure statements, marketing statements and franchise agreements.

When an audit begins franchisors will be required to immediately produce these documents.

The audit is currently focused on the Health and Fitness and Takeaway Food industries as these industries received the highest number of franchise-related complaints in 2012-13.

The two major complaints that the ACCC received were related to disclosure and false representation.

However, the ACCC has stated that the audits are not just restricted to these two sectors and that no franchisor is safe from a surprise audit.

2014 lodgement changes

From 1 April 2014 taxpayers will be required to provide their financial institution account (FIA) details when lodging fringe benefit tax returns.

These requirements were first put in place for individual tax return lodgements and took effect on 1 July 2013.

Providing FIA details will allow the ATO to issue any resulting refund by electronic funds transfer to the FIA that is nominated.

Electronic funds transfer is the fastest and most secure way for taxpayers to receive their refund.

It is convenient for both the ATO and the taxpayer and it ensures the refund is paid directly into a nominated bank, credit union or building society account.

Alternatively, taxpayers can speak with their tax agent about using their trust account, if they operate one.

It is important that taxpayers ensure their FIA details are correct when lodging as this will help to prevent delays in receiving their refund, and also ensures that their money does not go into the wrong account.

Employer penalties for unpaid super contributions

Employers who are not meeting their super obligations may lose the tax deduction they would normally receive for super contributions.

They will also have to pay a superannuation guarantee charge to the ATO.

From 1 July 2013 employers must be paying 9.25 percent of each eligible employee's ordinary time earnings each quarter in super. From 1 July 2014 this will increase to 9.5 per cent.

The date for the next quarterly cut-off for superannuation contributions is the 28 July, which applies to the period of 1 April to 30 June.

If employers have not met their super obligations they will need to lodge a Superannuation guarantee charge statement with the ATO and also pay a superannuation guarantee charge.

Also, their business may lose the tax deduction that they would normally receive for superannuation contributions. This is because like most late payments the super guarantee charge is not tax deductible.

Employers will have to pay the super guarantee charge if:

- they do not pay enough super contributions to their employee. This is known as a super guarantee shortfall.
- they do not pay super contributions by the quarterly cut-off date for payment.
- they do not pay super to their employee's chosen super fund; this is called a choice liability.

The super guarantee charge is made up of the super guarantee shortfall amounts, nominal interest at 10 per cent per annum, and an administration fee of $20 per employee, per quarter.

Refund policies in business

Businesses have specific obligations under Australian Consumer Law (ACL) when it relates to refunds, returns, guarantees and warranties. It is important that a business's refund policy comply with ACL.

All businesses have a legal responsibility to consumers. In relation to the sale of goods, these include guarantees that the goods:

- are of acceptable quality
- are fit for any disclosed and/or advertised purpose
- will match any description under which they are sold
- will have spare parts available for a reasonable time

Refund obligations can be placed into two categories; minor and major faults.

According to ACL, a major failure is when a product or service fails to meet a consumer guarantee, whereas a minor fault occurs when a problem can be fixed easily and in a reasonable time.

The remedy a business is obligated to provide will depend on whether the fault was major or minor.

When there is a major failure within a product or service, the consumer can choose to give the product back, or cancel the service and receive a refund.

When a business receives a refund, the first step they should take is to find out, preferably in writing, what the reason is for a refund request. This is valuable information that can be used to improve the business products and services.

To prevent issues with refunds businesses should ensure that the refund and return policy is easily accessible by customers.

If some goods are unable to be refunded, such as swimwear or perishable products, this must be clearly outlined in the refund policy.

It is important that customers be able to access and understand the policy before making a purchase.

Here are some basic tips when constructing a refund policy:

- it is illegal to put up a 'no refund' sign in store or online
- if the product has a major failure the business must give a refund, replacement or compensation
- if a product has a minor failure the business must offer to repair, replace or refund
- it is the businesses choice whether to provide a refund if the customer changes their mind

The Data and Payment Standard

From 1 July 2014, employers with 20 or more employees will begin using the new Data and Payment Standard, also known as SuperStream, to make superannuation contributions to their employees.

From 1 July 2015 small employers, with 19 or fewer employees, will also begin to make contributions using the new standard.

The Data and Payment Standard is designed to improve the processing of everyday superannuation transactions. Businesses need to begin preparing as soon as possible and investigate the options available to them to meet the standard.

There are over 800,000 Australian employers who are required to make super guarantee contributions on behalf of their employees.

Some employers can find this a complex process because they often have to contribute to multiple superannuation funds, each with their own specifications for accepting the data and payments.

The Data and Payment Standard will streamline the process for many employers when making contributions. It provides a simpler, consistent method of preparing contributions. In most cases, it will provide a single channel for interacting with multiple super funds.

Employers will make super contributions electronically. The contribution data is sent electronically in message format to the fund and the contribution payment is sent electronically through the banking system. It will also reduce payment processing costs as the manual methods have been removed.

Super funds and their members will also benefit from processing contributions faster and improved data quality. The ultimate goal is to lead to better retirement outcomes for all Australians including:

- reduced administration costs
- higher lifetime savings
- fewer lost accounts

The data message and payment will be linked by a payment reference number which will enable reconciliation at the receiving fund.

Most of the key components required for this change, including e-commerce infrastructure

and software solutions, are currently being developed, trialled and implemented.

Employers have options available to them for meeting this new standard. They can either use software that conforms to the standards, or a service provider who can meet the standard on their behalf.

Their options may also include:

- upgrading the businesses payroll software
- using an outsourced payroll or other service provider
- using a commercial clearing house

Common mistakes at year-end

Businesses should be aware of their responsibilities at the year-end.

Businesses that are unorganised, or make mistakes in their tax return, can lose out on significant tax savings, as well as find themselves liable for penalties.

Below are some common mistakes that small businesses often make at year-end:

Paying superannuation

A job that is often forgotten by employers is superannuation contributions. Super is payable 28 days after the end of the quarter.

However, it is important to remember, that to claim a deduction for the super contribution the employer must have made the contribution before June 30. Not paying super by the due date will also lead to a penalty imposed by the ATO.

Lodging group certificates/payment summaries

A common mistake made by business owners is issuing group certificates late and incorrectly reporting the figures. Employers are required to issue their payment summaries to their employees by July 14 and to the ATO by August 14.

ATO benchmarking

Small business benchmarks are financial ratios that have been developed by the ATO to help compare the performance of similar businesses in an industry. Benchmarks allow the ATO to identify businesses that may be avoiding their tax obligations.

Businesses should take a look at their financials and review their management

accounts before June 30. They should be focusing on any unusual large amounts that have been reported as this could be an indicator of an accounting error, or a more serious problem.

Fine print in advertisements

The High Court has reinforced the importance for businesses in taking care when advertising their products and services.

In June 2012 the Australian Competition and Consumer Commission (ACCC) was successful in obtaining orders in the Federal Court penalising TPG for engaging in misleading and deceptive conduct in their advertisements by putting important information in the fine print.

Businesses should consider implementing a four-step process for determining whether an advertisement is misleading:

1. Identify the 'dominant message' or 'headline claim' of the advertisement

2. Determine whether the dominant message, without any qualification, conveys a misleading impression

3. If it would be misleading, identify whether the advertisement also contains any qualification or condition which corrects the misleading impression given by the dominant message

4. Consider whether the qualification or condition is given sufficient prominence in the advertisement so that an ordinary and reasonable consumer would notice the qualification and be disabused of the misleading impression from the dominant message.

The final step requires people to use their own common sense and judgement in determining whether the advertisement is misleading.

When the High Court considers misleading conduct it takes into consideration a variety of factors, including:

- the extent to which the 'dominant message' is misleading
- the nature of the product being advertised
- the nature of the target audience of the advertisement
- the medium in which the advertisement is placed

Important tax dates

MAY 21

2014 FBT return - final date for lodgment and payment if required.

April 2014 monthly activity statements - final date for lodgment and payment.

JUNE 21

May 2014 monthly activity statements - final date for lodgment and payment.

JUNE 30

End of financial year.