



DOMESTIC VIOLENCE AND THE WORKPLACE

The growing prevalence of, and concern over, domestic violence in the community has caused some employers to reconsider their code of conduct and what is acceptable out of hours conduct.

If an employee is to be validly terminated for their unacceptable out of hours conduct there must be a link between the conduct and the employment. The conduct must be such that it is likely to have an impact on the performance of work or have a significant and real impact on the employer's business and reputation. To justify a dismissal an employer would need to show that the employee was made aware that the out of hours conduct is not acceptable and have been trained on appropriate conduct. There should be provision in the contract of employment or reference to a policy dealing to unacceptable out of hours conduct and how this will affect the employee's continued employment. Reputational damage can also

be a consideration, but such impact must be significant and real.

In a recent NSW case a Senior Correctional Officer was reinstated after being terminated for being subject of a domestic violence order of the court, as the conduct did not affect his work performance and did not affect the integrity or reputation of the Corrective Services employer. If the employer had been a religious based institution or school then this employee could well have found that the termination of his employment was justified, as it could significantly impact the reputation of the institution or school.

Caution should also be exercised when dealing with victims of domestic violence in the workplace. Employers should give the same support and protection to the victim, as they would to a victim of sexual harassment. This is paramount if the victim and perpetrator are in

the same workplace. An employer who failed to protect the victim and assess the work, health and safety risks and simply terminated the victim was ordered to pay the maximum compensation (26 weeks) by the Fair Work Commission.

In concluding on this topic, we note that in the current review of Modern Awards before the Fair Work Commission there is an application to insert into all Modern Awards a provision allowing victims of domestic violence up to 10 days paid leave (in addition to any other leave) and the right to request flexible working arrangements as a result of domestic violence.