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Employers warned to keep their promises.

Two recent decisions of the Federal Court serve as a warning to employers to adhere to their workplace policies and honour the promises they make to current and prospective employees.

In both cases, the employer was held to be bound by the promises it made in general company policies even though the promises were not expressly included in the employment contract and the employers were held to liable to pay substantial damages of between four and five years' pay with interest and future loss of income.

“Given the restrictions on unfair dismissal claims imposed by WorkChoices it is likely that employees will increasingly look to civil proceedings for breach of contract”, said Craig McFadden, Managing Director of Savvy Human Resources, a Ballina based human resources consultancy. These cases demonstrate that employers need to ensure that they treat employees appropriately in performance management and grievance investigation processes and also carefully review how they draft their employment contracts and policies”, Mr. McFadden said.

Mr. McFadden added that these cases are important because they also demonstrate how mishandling of a formal complaint about co-workers intimidating and threatening behaviour can lead to sizable damages being awarded – in one case \$515,000 plus costs. “There is also an added cost to the business beyond financial penalties – bullying and harassment leads to unmotivated staff, increased absenteeism and higher staff turnover”, said Mr. McFadden. “An employment contract that provides for an annual

performance review and none is conducted may also leave an employer open to a breach of contract claim”, he said.

In the first case the employee had lodged a grievance against a fellow worker which was not investigated or resolved in a timely manner. The employee later claimed he suffered an illness that resulted from his former employer failing to adhere to its policies about provisions of a safe and healthy workplace, preventing harassment and handling grievances.

The Supreme Court of NSW also recently found that employers have an implied duty of good faith, and mutual trust and confidence even where there is no written employment contract. In a separate case an employee was reinstated and then sought damages including \$350,000 in costs following the employer’s delay in commencing a misconduct investigation and its failure to interview a key witness face to face.

Following these cases it is clear that provisions in workplace policies can be legally enforceable as contractual provisions and employers should take care in drafting employment contracts and policies so as not to be left open to breach of contract claims. Employers should carefully consider their dealings with employees so as to ensure they are acting in good faith otherwise their actions may lead to an order for damages to an affected employee.

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