

Keeping the Peace - FairWork Commission demonstrates willingness to intervene to prevent workplace bullying

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The FairWork Commission's decision of CF AND NW v Company A and ED [2015] FWC 5272 was delivered in August 2015. It is the first decision from the FairWork Commission where it published reasons for making a stop bullying order.

The matter concerned two employees of a small real estate agent business who applied for stop bullying orders following unreasonable conduct by a property manager. The conduct allegedly included, among other things, belittling conduct, swearing, physical intimidation and threats of violence. The Commission found that the applicants had been bullied at work and that there was a real risk of further bullying.

The orders made were:

1. that the applicant employees not approach the property manager and that they not attend each other's workplace; and vice versa;
2. that the employer implement appropriate anti-bullying policies, procedures and training to address a problematic workplace culture.

In making these orders Commissioner Hampton said:

“The prospect that the applicants and the ED would, in the absence of the orders, have some future work related interactions was real. Further, without measures being implemented to set and enforce appropriate standards of behaviour in the workplace there was a risk of further relevant unreasonable conduct.”^[1]

The Commissioner then continued on:

“In my view, the orders, particularly those dealing [with] future workplace conduct and providing appropriate procedures to make and deal with complaints, are genuine preventative orders in the context of this workplace and are consistent with the purpose of such orders as contemplated by the Act.”^[2]

Implications

The decision is significant because:

1. it demonstrates the Commission’s willingness to make “genuine preventative orders” to assist in the particular workplace to prevent workplace bullying;
2. it shows the measures that the Commission is willing to implement when bullying is considered to be an ongoing risk; and
3. it also shows the scope of the Commission’s powers to make any order it considers appropriate to prevent workplace bullying.

This decision demonstrates how important is it that employers implement appropriate workplace bullying policies and that if a bullying matter comes before the Commission employers and their insurers should focus on resolving the matter as quickly as possible to preserve the employment relationship.

It should be borne in mind that the Commission cannot award damages for bullying but, conceivably, if the bullying became bad enough, and the victim had to leave the employment, it might amount to a constructive unlawful dismissal and damages can be awarded for that.

One of the problems with EPL insurers is that the insured does not notify early enough. Moving forward, education and smaller deductibles may help to encourage early intervention to avoid the escalation of matters concerning workplace bullying and to hopefully avoid any instances like this one where the FairWork Commission feels compelled to intervene to prevent workplace bullying.

[1] [2015] FWC 5272 at [25].

[2] Ibid at [34].

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