



**VANA LIMITED**

Suite 4

202 Ferntree Gully Road

Clayton VIC 3168

**phone:** (03) 8540 7000

**fax:** (03) 8540 7077

**email:** general@vana.com.au

## **VANA Employment Relations Alert**

**November 2017**

### **Bullying and harassment in the Workplace – What should I be doing?**

The increasing severity of bullying and harassment within the workplace and the risk it poses to employers in the retail sector places greater importance on the need to raise awareness and implement prevention strategies within the workplace.

Workplace bullying and harassment can include:

- Intentionally humiliating an employee or putting them down;
- Unnecessarily isolating an individual;
- Intrusive behavior including questions about an employee personal life; or
- Suggestive behavior.

However it is also important to note that reasonable management action such as setting realistic standards for performance does not constitute workplace bullying and harassment.

As an employer it is important to recognise bullying and harassment in early stages and educate all employees of what constitutes bullying and harassment and what are the consequences of engaging in such behavior. Workplace bullying and harassment can lead to a workers compensation claim, an application to the Fair Work Ombudsman for a stop bullying order, or an unfair dismissal if bullying and harassment results in termination.

The following strategies can help to future proof your business.

- Implement company policies regarding harassment and bullying;
- Continue to raise awareness of these policies;
- Provide employees with training programs to inform them of harassment and bullying and its consequences;
- Implement effective investigation procedures to ensure all allegations are sufficiently addressed;
- Train and develop managers on how to support staff and identify possible bullying habits within the company;
- Implement various mechanism and communication channels by which employees can raise complaints or concerns; and
- Establish appropriate disciplinary procedures.

Employers should also seek to build strong and supportive relationships between managers and workers, as well as introducing training programs that aim to provide strategies for the management



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of poor performance, supervision and communication between employees and their superiors. Promoting positive reinforcement between staff members rather than fostering a competitive environment will enable your company to improve the overall wellbeing and mental health of your employees and mitigate the risk of a workplace bullying.

**If you are having difficulty managing bullying and harassment in your workplace or wish to learn more about protecting your business, contact the VANA employment relations line on (02) 9083 0091.**

**Get your Christmas Policies in place today!**

The festive season has officially arrived and with Christmas trading period literally just around the corner it's starting to get busy. From a HR perspective increased trading means bringing on new staff as well as increased demands in the workplace. When you add to the mix the upcoming Christmas party, public holidays and long term employees all vying for time off and it can be quite a nightmare from a HR perspective.

I know if you are reading this you are probably thinking Christmas trading is a busy enough period without putting more on your plate. However the combination of all these factors can create a quite volatile workplace. By taking the time now to review your workplace policies you can save help save one headache heading into the New Year.

**So what policies should I look at?**

a. Code of Conduct

A code of conduct outlines the way employees should conduct themselves in the workplace which is especially important in high stress situations where tempers can fray and things may be said or done that are not appropriate. Moreover new employees, such as Christmas casuals, bring a new dynamic into the workplace which can be another source of contention. Ensuring your code of conduct is up to date and reflects your current situation is a great way to remind your employees what is expected of them within the workplace.

b. Alcohol and drug policy

As summer starts to warm up there are more and more reasons to go out and celebrate. From completion of exams to the staff Christmas party you don't have to look too hard for an excuse for a drink. So what happens when someone takes it a bit far and they don't show up to work in the best shape? Not only is this a serious work health and safety risk which you have an obligation to mitigate it can be incredibly damaging to your brand.



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Updating this policy puts your workers on notice of their obligations to be fit for work and provides you with a procedure to follow should staff appear to be under the influence of alcohol or other drugs at work.

c. Sick leave policy

Being clear with your sick leave policies ensures that employees are aware of the procedure they need to follow when taking personal leave. Nothing is more frustrating than having a worker not show up to work when everyone else is already 'under the pump'. Under the *Fair Work Act* access to personal leave is a workplace right and as such you cannot take adverse action for an employee calling in sick. However if they do not provide correct notification such as a doctors certificate or a statutory declaration, or they do not follow the procedure for calling in sick this can be addressed with the employee. As such having this policy to rely on can be very useful in this situation.

d. Social Media

These days everyone is walking around with a connection to the rest of the world in their pockets. As such this access to social media has become an integral part of our day to day lives and often times the line can be blurred as to what is or is not appropriate to post online. Ensuring your employees are made aware of what can be posted about your business can go a long way to protecting your brand.

Don't wait until it's too late – taking a little bit of time to shore up your workplace policies now will ensure help you're in the best position to deal with any issues as they arise.

**Contact the VANA employment relations line on (02) 9083 0091 to learn more about renewing your workplace policies.**

**When do interns become employees and potential unfair claims?**

Unpaid internships are an ever growing industry, as more and more university students seek work experience to differentiate themselves in over populated job markets. According to the [largest survey](#) so far, 60% of people aged under 30 have done at least one. However when it comes to the status of interns often employers get it wrong.

The idea an unpaid internship or unpaid work experience is not contemplated in the *Fair Work Act 2009* (the Act). Under the Act an unpaid "vocational placement" is legal. However to meet the definition of a vocational placement the work experience must be a requirement of the students education or training course and the course must be one that is government approved.

An unpaid internship that does not meet the definition of a vocational placement is unlawful unless there is no employment relationship that exists.



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It is important as an employer you are clear on the distinction between an unpaid intern and an employee. Whether an employment relationship exists depends on a number of factors, however important factors that point to an employment relationship existing include if the:

- individual is performing productive work or assisting with the ordinary operation of the business;
- work performed is normally done by a paid employee;
- individual is expected to show up to work; and
- business is the one benefiting from the arrangement.

No one factor is determinative and each case is considered on its own facts. However the important thing to note is the individual should be the one benefiting from the arrangement and the work performed should not be productive or work that a paid employee would engage in.

If the Courts found an unpaid intern was an employee it can have significant ramifications with respect to an employer's obligation to pay wages, overtime, leave entitlements and superannuation.

That is not to say you cannot engage interns or provide students with valuable work experience, however for an unpaid work experience or internship that is not part of a vocational placement to be lawful there must not be an employment relationship and getting it wrong will leave your business exposed.

**If you are unsure about your employment obligations and are considering engaging students for unpaid work experience contact the VANA employment relations line on (02) 9083 0091.**