



# ‘Simon Says’

Issue 13 – April / May 2014



Edward George

## Exceptional leaders simply must understand the traps in employment law.



An interview with Rob Greig – Director, Greigs Consulting & Lawyers

The best ‘tip’ for managing employment law matters is to build really good relationships with your employees. As a manager, when employees trust and respect you, almost all employment law issues can be negotiated and managed without causing a breakdown in the actual relationship. The main challenge for any employer is that unless you are an expert in this area, keeping up to date with constantly changing and evolving laws can be very difficult. Here are a few critical traps in employment law and how to avoid them:

### Trap 1: Using (and relying on) old employment contracts

Many companies create current employment contracts based on the old ones. While it makes sense to have standard documents and templates ready to access, contracts in particular, need to be reviewed regularly to ensure they are legally compliant and reflect what is required for the business now. In reviewing contracts for a wide range of companies, we commonly find superannuation and personal leave terms that do not comply with the current laws or awards, terms that provide benefits they didn’t intend to; and contracts that do not provide adequate protection to the employer.

### Trap 2: Failing to keep up with changes in employment law and key legislation changes

A change in Australian Government almost always results in changes to employment law. This naturally creates both challenges and annoyance for many small to medium sized businesses that are simply not resourced to understand or respond effectively to these changes. Despite this, staying informed is really important and there are free and credible information sources that allow you to keep abreast of current labour law news. It is also worth considering engaging an IR professional periodically to conduct a thorough review and audit.

### Trap 3: Ignoring the issues and hoping they will go away

In the hustle and bustle of competing work priorities, it is easy, by default, to assign a lower priority to people related issues and just hope that they sort themselves out. Regretfully, they rarely do! This commonly relates to:

- Poor performance (wishful thinking that your team member will either ‘pick up their act’ or leave);
- Conflict between employees;
- System errors and payroll process related errors that result in poor and inconsistent reporting and data output (particularly leave and related accruals).

Being proactive is really the only way to prevent people issues from becoming unmanageable and as managers, our staff expect this of us.

Develop a plan that addresses poor performance and ‘people’ strategy and make it a priority to tackle a systems issue before it becomes so big it feels impossible to fix. Then move on.

### Trap 4: Failing to record and formalise performance related matters

It is pretty common knowledge that terminating an employee without valid reasons and due process can result in an unwanted unfair dismissal case. Sound performance management policies support employees to know what is expected of them in their roles and as a member of the organisation. They also support managers who are far less likely to find themselves at exasperation point where they say “just terminate the guy!”

To ensure that a termination is lawful and fair, retain progressive evidence of the journey you have taken with the employee along the way.

- Keep detailed meeting notes of discussions with employees and diary notes of events that occur;
- Formalise written warnings that specify where and why performance is lacking; and
- Provide in writing your expectations of the employee, the process and potential consequences. The employee is then crystal clear about what they need to do if they want to stay in your employment.

### Trap 5: Only ever thinking the best

Donning rose coloured glasses is only natural when you appoint a new executive who creates a vision of great things to come. It may be the cynical lawyer in me but past experience has demonstrated that a level of precaution is healthy. Think about protection of intellectual property and confidential information, conflict of interest issues, restraints of trade, process and consequences of termination. There is value in believing everything will work out (which is where all effort should be directed once an employee starts), but even greater value in having the systems in place just in case they don’t.

Edward George provides comprehensive Human Resource Solutions specialising in recruitment and retention strategies, team building and training, exit interviews and outplacement services. If you would like further information about any of our services, email us at [perth@edwardgeorge.com.au](mailto:perth@edwardgeorge.com.au) or phone us on **9457 4566**.

Simon Stibbs is the Managing Director of Edward George Pty Ltd.