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LAWYERS & ATTORNEYS



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Healthy Work Place Relations

Good relations between managers and their employees increase a business's capacity to operate efficiently and productively. The safe and healthy work place is an essential ingredient of work place relations and successful business management. Poor safety and health affects human relationships, quality, production time and requires more time and energy to manage.

It is cheaper and easier to build good health and safety practices into all parts of the business operations. The State and Territory Occupational Health and Safety and Worker's Compensation Laws set out what is needed to achieve this.

Who makes OH&S and Worker's Compensation Laws?

Laws covering Occupational Health and Safety, Worker's Compensation and Rehabilitation of Injured Workers are made by the State and Territory Governments. OH&S and Worker's Compensation Authorities in each State and Territory are responsible for administering these laws.

There are different laws for Occupational Health and Safety and for Worker's Compensation. These laws apply to all employers big and small.

Occupational Health and Safety

In each State and Territory there is a general OH&S Act, plus other OH&S laws for particular situations. The general OH&S Acts require that employers and managers must act to ensure employees are not injured or made ill as a result of their work – "employees" covers contractors, casuals, part-time workers, apprentices and trainees. Responsibilities of employees and suppliers are also set out.

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Laws on the environment and industrial agricultural chemicals, sanitation and hygiene are made by state, federal and local governments, and also affect Occupational Health and Safety in work places, e.g. NSW Public Health Act 1991.

Worker's Compensation

Worker's Compensation laws set out employer's responsibilities including taking out Worker's Compensation Insurance and what to do if or when an employee is injured or made ill through their work.

Which parts of the OH&S Laws apply to Small Businesses?

OH&S laws usually have two parts – both parts apply equally to all employers.

1. An Act which sets out the law requiring employers to:
 - Keep a safe work place.
 - Make sure the way work is done is safe.
 - Make sure all equipment and machinery used is in a safe condition.
 - This legal requirement is called employers' "duty of care".
2. Regulations to go with the Act say what must be done about specific matters covered by the Act. There are no regulations attached to Worker's Compensation Acts, but Government guidelines and information are available from state and territory OH&S and Worker's Compensation authorities.

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What are OH&S Standards?

Occupational Health and Safety Standards are developed by the National Occupational Health and Safety Commission (NOHSC), also known as WorkSafe Australia. It answers to the federal government minister for Industrial Relations.

To help achieve a consistent approach across Australia, National OH&S Standards are developed with input from state and territory governments, employers and trade unions. Once developed, the standards are usually put into OH&S Act or regulations by state and territory governments. The OH&S Standards are not a legal requirement until this is done.

A non-government organisation, Standard Australia, also develops standards. Some of these apply to work place occupational health and safety. For example AS1715; selection, use and maintenance of respiratory protective devices. When Australian Standards (AS) are mentioned in Acts or Regulations they are law.

What are the OH&S Codes of Practice?

Codes of Practice explain how to put a particular standard or regulation into practice. Some are legal requirements, some are not. You will need to check with the State/Territory OH&S Authority.

Further Information

This information is intended only as a basic outline of Occupational Health and Safety requirements within the state of New South Wales. If further information is required please contact Martin Bullock Lawyers.

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Checklist

Starting Up the Business

- Contact State and Government OH&S Authority for free publications on health and safety and worker's compensation laws.
- Contact State and Government Departments of Environment and Health and Local Councils for information on environmental pollution and sanitation and hygiene in work places.

Renting, Constructing or Renovating Premises

- Contact your State/Territory Government OH&S Authority and Local Government Councils for publications or advice on Acts, regulations and standards you need to meet when purchasing supplies, equipment and machinery.
- Make sure your suppliers give you information about the health and safety effects of their products and how to use them safely (for example: chemicals and dangerous materials, equipment and machinery).
- Contact your OH&S Authority for information on State/Territory OH&S regulations. For example: noise, plant (equipment and machinery), hazards of substances.

Employing Staff

- Check your State/Territory OH&S laws for what is required of managers and supervisors – includes contractors also. For example: operating a safe work place; using a safe method of work; maintaining equipment and machinery in a safe condition; giving health and safety training, instruction and information; consulting with employees.

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Planning Business Operations

- Look at each operation in your business.
- Find out what equipment, materials and chemicals will be used, and how they will be used.
- Find out what health and safety measures are needed for each operation, arrange and put them in place.

Setting Up Business Record

Check your State/Territory OH&S laws for what is required of managers and supervisors – includes contractors also. For example: operating a safe work place; using a safe method of work; maintaining equipment and machinery in a safe condition; giving health and safety training, instruction and information; consulting with employees.

Operation and Maintenance

- Arrange for routine rather than breakdown maintenance of equipment, machinery and processes.
- Discuss health and safety at regular staff meetings and get employee's ideas on solving problems.

Growing the Business

- Arrange for routine rather than breakdown maintenance of equipment, machinery and processes.
- Discuss health and safety at regular staff meetings and get employee's ideas on solving problems.

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Counselling and Disciplinary Procedures

Counselling skills are skills that you must learn and practise in order to improve them. You must also be aware of your limitations when counselling employees. You cannot solve all their life problems but you should be able to assist them with difficulties they may be having at work.

How do I conduct an effective counselling session? Counselling at work is to help people identify the causes of work-related problems, such as poor performance.

You should not feel that you must identify and solve the causes of personal problems such as depression, alcoholism or marital problems for an employee. If personal problems do become apparent, it is important that you refer the employee to the appropriate experts.



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The following checklist should assist you:

Do's

- Give the employee recognition
- Provide a warm atmosphere of communication
- Encourage the employee to gain insight into the problem
- Give the employee a clear picture of all their strengths and weaknesses
- Encourage the employee to bring out any conflicts, personal problems and ideas
- Suggest positive steps to rationalise the problem or improve performance
- Create a desire with the employee to change
- Build a level of support that is conducive to both friendliness and efficiency

Don'ts

- Do not assume the role of a stern parent scolding a child
- Do not moralise
- Do not threaten the employee with the sack or the likely repercussions if they don't get their act together
- Do not get into an argument
- Do not cut off an employee's comments
- Do not give the employee false hope
- Do not expect a dramatic change in the employee because of one counselling session

Source: *Australian Motivation Handbook p.123 Sydney: McGraw Hill 1990*

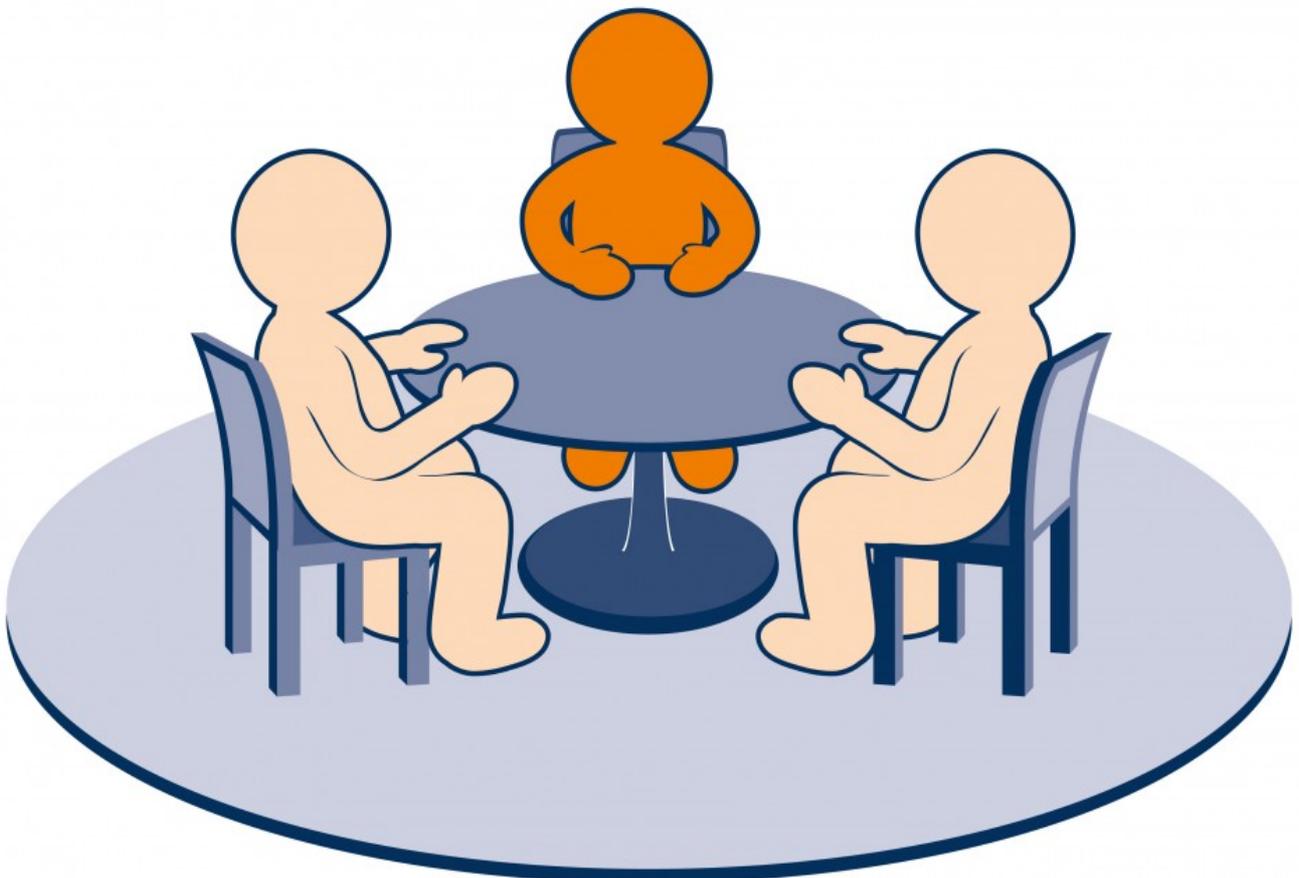
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What if counselling doesn't solve the problem?

Do not expect improvement immediately or after one counselling session. Your employee will need an adjustment period and probably some time to steadily improve. You must also be committed to the counselling process and reward and recognise your employee's efforts to improve. As you should with all your employees!

If the counselling doesn't solve the problem, you may have to formally discipline your employee. To do this, you must have a disciplinary procedure in place and every employee should be familiar with this system and understand the steps involved.

If you are facing a situation where an employee may be dismissed, it is essential that you can document and substantiate your actions.



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Disciplinary Procedure

A sample disciplinary system follows:

1. Employees who are performing unsatisfactorily will be counselled so they understand the standards expected of them. They will be offered assistance and guidance in achieving the expected standards.
2. Confidential records of any counselling undertaken will be made. The employee will be shown and given a copy of the written records and will have an opportunity to comment on its contents.

This can be done either in writing or orally. The record will only be placed on the employee's personal file when the employee has been given the opportunity of responding to the record and add any notations regarding the contents of the record.

3. Employees whose performance or behaviour is unsatisfactory will be given adequate time to demonstrate a willingness to improve. If at the end of this period the employee shows no willingness to improve in the opinion of the employer, a final warning in writing will be issued to the employee.

This notice will inform the employee in writing that disciplinary action up to and including dismissal may be taken if the employee does not cease the unsatisfactory performance or behaviour immediately.

4. The employer also has the right to summarily dismiss an employee for serious and wilful misconduct.
5. At every stage of the disciplinary process, the employee has the right to have another employee or union representative present as a witness.

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How many warnings should an employee be given before disciplinary action occurs?

There is no hard and fast rule. You should give your employee a number of chances to improve their behaviour or conduct. But you should not issue a large number of warnings as this could give the impression that his or her conduct is not really serious and will not merit dismissal.

In general, three warnings would be considered adequate. It is suggested you make sure that your employee realises the number of warnings to be given will not be open-ended.

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Greg Martin - Solicitor



Greg is the principal of the firm and a senior solicitor of 33 years' experience. He has practiced in litigation for the whole of his career, including commercial law, family law, wills and estate litigation, extensive commercial litigation, criminal law and personal injury litigation. He was an Accredited Specialist with the Law Society of NSW. Greg also lectures at Western Sydney University in criminal law, advanced torts, contracts and alternative dispute resolution, and has done so for 8 years.

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