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LawTalk Blog



Domestic violence and an unfair dismissal case

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Date: Thursday June 30, 2016

There is growing recognition that domestic violence is an issue that affects every aspect of our lives, including our work.

Some Unions have been advocating for the inclusion of “domestic violence leave” in enterprise agreements. Such leave would enable victims of domestic violence to access their personal leave in order to deal with the consequences of violence such as the need to attend Court, find alternative accommodation etc.

A victim of domestic violence who requires time off work due to the physical or psychological impact of domestic violence would be entitled to claim personal/sick leave for such, but strictly speaking personal/sick leave cannot be claimed for things like the need to attend court, move house, or similar.

A recent blog by Andersons Associate Michael Irvine “[Domestic Violence – Does the workplace have a role?](#)” discusses this issue.

We now look at a unfair dismissal case which demonstrates the difficulties that can arise at work as a result of domestic violence.

"She had been subjected to domestic violence at the hands of her partner, which led to criminal charges."

In the recent Fair Work Commission (FWC) case of *Alexis King –v- DC Lee & LJ Lyons* [2016] FWC 1664, the worker, a salaried solicitor, was dismissed after being absent from the workplace to attend a Court hearing relating to domestic violence.

Ms King had previously been warned by her employer about being absent from the workplace without advising her supervisor.

She had been subjected to domestic violence at the hands of her partner, which led to criminal charges. Because of her embarrassment about the situation, Ms King had only told a few people at her workplace about the situation, and had not told the managing partner of the law firm.

When she was required to attend at Court in relation to the charges laid against her ex-partner, Ms King advised one of her supervisors, and was given permission to be absent from work for a few hours to attend Court. However, she did not advise the managing partner of the law firm, to whom she reported.

On the morning of the Court hearing, the time of the hearing was changed. Ms King did not advise her supervisors of the time change. Consequently, when the managing partner of the law firm noted that she was absent from work, the decision was made to dismiss her, without giving her the opportunity to provide any explanation.

"Ultimately Ms King was awarded compensation for unfair dismissal."

The FWC found that Ms King was at fault in not advising her employer that the time of the Court hearing had been changed. However, the FWC also concluded that the employer was at fault for failing to give the worker an opportunity to explain the circumstances before dismissing her.

Ultimately Ms King was awarded compensation for unfair dismissal.

In the decision, the Fair Work Commissioner commented that events might have been different if the employer had a policy in relation to paid domestic and family violence leave in place. He noted that the existence of such a policy would have sent a "very clear message to the employees that the employer attached no stigma to the victims of domestic and family violence and that it would support them to recover, attend Court and medical appointments, seek legal advice or make alternative living arrangements without any adverse action being taken in relation to their employment".

In the case at hand, such a policy might have meant that the worker in question would not have felt so embarrassed about her situation and might have felt more able to disclose the circumstances she was facing to all of her managers, which might have avoided the circumstances that led to the dismissal.

The Fair Work Commissioner noted that modern employers are increasingly turning their minds to policies in relation to paid domestic and family violence leave, and that this should be encouraged.

Recently Victoria held a Royal Commission into family violence and recommended a number of initiatives including:

- the provision of paid domestic violence leave to all public sector employees;
- a proposal that the Victorian government encourage the Commonwealth government to include an entitlement to paid family violence leave in the National Employment Standards; and
- the implementation of best practice workplace programs in all public sector workplaces.

The Royal Commission expressed its hope that private sector employers would also adopt similar initiatives.

If you require advice or assistance about your legal entitlements in relation to employment or domestic situations, please contact Andersons specialist workplace and family lawyers.

Note: the image used in this article is a "stock image" and not an image of the worker referred to in this article.

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