

# FAIR go

## Gerard Nelson reviews issues of fairness in employment practices

In choosing topics for this column, I look at recent issues I've dealt with for clients with application to the collection and investigation industries. Disciplinary procedures and probation periods are matters constantly raised by clients - if properly handled they allow greater effectiveness and efficiency of businesses and yet many employers lack understanding of the principles involved.

### DISCIPLINARY PROCEDURES

Disciplinary procedures are designed to ensure employees work within written and unwritten policies and procedures in the workplace. If employees breach those guidelines, the employer must take action to establish if the transgressions were accidental or deliberate.

If accidental, steps must be taken to educate the particular employee, and if necessary, others. If deliberate, depending upon the severity, it may be necessary to take disciplinary action via either a verbal or written warning. Most employers will prefer a verbal warning considering a written warning too much trouble and believing a verbal warning requires nothing beyond telling an employee not to do it again.

Satisfactory, if the employee does not transgress again in the medium to long term. Unsatisfactory, if the employee continues to transgress! Employers will tell me an employee has been continually transgressing, despite many verbal warnings. On questioning most admit the behaviour is of many months standing - they usually want the employee dismissed immediately.

Yet, the employee can usually with some justification, say "I didn't realise this was so serious - all I received was a light tap on the wrist". The employers are unhappy because it is difficult to terminate an employee without good reason which they think they have! The employees are unhappy because they didn't realise things were so serious.

The solution, if the employee's breach is serious, is at an early stage to give a written warning. This will usually be sufficient for the employee to review & correct their behaviour. If they don't, then additional written warnings should be issued so there is evidence to justify termination.

**“there are very few situations where you can't judge the suitability of an employee within a three month period”**

Employees should always be asked to acknowledge in writing (usually by initialling & dating the written warning) that they have received the warning - acknowledgement doesn't imply any agreement with the content of the warning. An early written warning might cause some grief initially but will save a lot more trouble in the long run.

### PROBATION PERIODS

Probationary periods are designed to allow employer and employee to determine whether or not the position meets their respective expectations. It is for this reason the notice periods required during probationary periods for either party to terminate employment are usually shorter than required to terminate employment after the probationary period has concluded.

Whilst very useful to determine the suitability of an employee to a position there are some matters to consider:

It's not unusual for an employee to take a period of time to settle into and adapt their skills to a new position, making it difficult for the employer to assess the employee's suitability - this can lead to one of the major issues associated with probationary periods.

Probationary periods are usually for three months but often employers don't assess employees until close to the end of that



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period, leading to the employee being under the illusion he or she is performing well and so are taken aback when the employer terminates their position. Employers should evaluate employees throughout the probation period and advise them of their progress.

Probations, properly used, are a great way for employees and employers to establish if they are suited to each other. Perhaps there should be a probationary period for marriages?

Clients often ask if they can extend the probationary period, as they're unsure about the suitability of a particular employee. Generally, this is only possible if there was some agreement about the extent of the period at the beginning of the employment relationship. My experience is there are very few situations where you can't judge the suitability of an employee within a three month period.

Probations provide some immunity from unfair dismissal action but shouldn't be used as a no risk way of retrenching employees because of a downturn - this is quite unfair if the employee is doing a good job. Similarly, some employees take advantage to seek a better position at the expense of the employer, who has in good faith, given them employment. For every bad employer, who misuses probationary periods there are many more employees who use various conditions of employment against the best interests of all parties to the employment relationship. ■

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