

# Workplace Update

December 2009 edition

## **LESSONS FROM THE FRONT LINE – THE NEXT WAR FOR TALENT**

We are all still emerging from the aftermath of the so called GFC – indeed some countries are still a long way from being over the worst economic conditions the world has faced in more than 50 years. The period of global upheaval has resulted in fundamental changes being made to the workplace by many organisations locked in survival mode. As with any downturn, jobs disappeared as demand for various services dried up. Discretionary spending went out with the bath water (ipso facto).

Prior to the GFC, organisations were competing with each other to attract and retain talent during a time of historically low unemployment. The GFC gave new meaning to consultant speak such as “right sizing”, “involuntary career moves” or “equalising” staffing levels to cope with the difficult environment in which they operated. Many organisations inevitably lost real talent.

Current signs indicate the Australian economy is about to embark on a period of strong growth. We think this will kick start a new war for talent as companies regroup and realign their workforce to meet the growing demand for new business services.

The danger is that in the hunt to secure the best talent some organisations may forgo basic pre-employment screening or let their guard down once employees are on board. HR must therefore implement a robust employment screening program to protect the organisation against fraudulent activities by employees or former employees, or poaching by competitors.

There is general consensus that fraud and unethical behaviour have been behind some of the world’s largest corporate collapses. We think it crucial that HR conduct thorough background enquiries into potential employees.

The emerging business environment post-GFC will mean that competition for client/customer contracts will be intense. We think that companies must be extra vigilant to protect themselves against exploitation by competitors. It is not unusual in the war for talent for organisations to try to poach entire teams to rebuild areas of their business which have been depleted during a downturn. These staff can take with them valuable IP and confidential information belonging to their previous employer, including commission rates, client contact details, investment strategies and marketing plans.

It is therefore important that organisations develop strategies to ensure the right employees are hired and to reduce the risk of losing valuable IP in the event of employees leaving.

The first strategy is to develop an employment screening process to ensure that new staff do not have a history of questionable conduct and loyalty with respect to previous employers, as this is a pattern that may be repeated within your organisation. Employment screening is a key element in minimising the risks to the organisation, its employees and its clients with respect to the potential loss of valuable corporate information.

At the very least, organisations should conduct the following as part of their recruitment process:

- confirmation of the candidate's previous employment with at least two of their line managers
- confirmation of academic and professional qualifications
- criminal history check
- selective social network searches
- strategic interview techniques
- review of the candidate's *curriculum vitae* for gaps and inconsistencies, and
- obtaining a written warranty from the employee that he/she does not come tied to any form of restraint.

The second part of the defensive network relates to responding to situations where organisations are faced with the defection of key staff and/or teams. In order to ensure the protection of its intellectual assets, companies should consider:

- taking forensic images of all computers belonging to staff who are leaving and who may go to work with a competitor. These images can then be examined at a later stage, should there be a suspicion that your IP or confidential information is being used by a competitor
- undertaking exit interviews with staff to remind them of their obligations under their employment contracts with respect to confidentiality and the protection of the organisation's IP, including client lists and marketing collateral
- monitoring the network cyber 'market' for any indication that your IP is being used by ex-staff, including articles in trade journals, presentations at conferences and marketing information used by competitors
- conducting random 'sweeps' of network and email usage of existing employees to ascertain if a suspicious pattern of usage exists
- random checks of floor access with swipe cards, usually at odd hours, and
- developing a legal response in advance to ensure action can be taken in a timely fashion, including injunctive and other types of relief.

The workforce is now highly transient, often moving between organisations and countries – a fact which makes verifying credentials more difficult but even more crucial. Corporate loyalty is not a word that falls easily from the lips of Y Generation (or likely generation NEXT).

Speed is of the essence when a senior employee and/or team leave the organisation for a competitor. Our advice is to act fast and hard. After all, it's your information, IP, property and reputation at stake.

We work closely with a business risk consulting firm to enable us to help you develop and implement a robust employment screening program which meets your obligations from a discrimination and privacy point of view, but which also represents best practice with respect to background checking. We can also provide you with a checklist to follow in the event of losing key staff and/or teams to minimise the risk of potential misuse of corporate information.

Our next update will focus on the very interesting sections of the *Fair Work Act* dealing with discrimination, and their interaction with the Act's new adverse action and request for flexible hours provisions. Employers really do need to get their heads around these new laws because there are real (and potentially expensive) traps for the unwary.

## ENOUGH FROM US – NOW IT’S YOUR TURN

As the Workplace Relations Group begins planning for next year’s client activities, we would like to invite your feedback as to:

1. whether you find these updates worthwhile. The feedback we receive from clients is generally positive but we accept that may not be universal
2. any topics you would like covered in future updates
3. whether you like interactive forums or presentations during the year. At this stage we are planning another Workplace Relations Forum on the *Fair Work Act* (gaining everyone’s experience nearly 12 months on) for April 2010 in the same fashion as those we conducted earlier this year that many of you attended, and
4. any other forms of information sharing you find particularly useful, such as visits to your premises, meeting over coffee or lunch to discuss pressing issues, podcasts, etc.

Some of our clients have taken the opportunity this year of inviting us to make practical presentations to their front line staff, managers or HR teams on issues such as bullying and harassment, discrimination, enterprise bargaining guidelines, misuse of the social network (eg. Facebook), dealing with out of office conduct (social events, work conferences and the like), and managing injured workers out of the workplace. This is a great opportunity for us to know your business better and to get involved in training your staff to help identify and minimise risks before they become full blown legal issues. If this appeals to you we are always happy to work with you to put together a program tailor-made for your organisation.

We also include a link to the *Fair Work Information Statement* to be provided to all new employees by their employer as soon as possible after they commence employment. This is effective from 1 January 2010 – <http://www.fairwork.gov.au/Pay-leave-and-conditions/Conditions-of-employment/Documents/Fair-Work-Information-Statement.pdf>

We wish you a happy and safe Christmas, and look forward to working with you further in 2010.

### For further information, please contact:



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