



The need for sound decisions – Unfair dismissal and mental illness

Date : November 1, 2013

A decision of the Fair Work Commission found that a public health organisation had unfairly dismissed an audio-typist based on his mental illness under workplace law.

The case highlights the need for employers to make informed decisions based on rational evidence and workplace law, when dealing with employees who may be affected by a mental illness.

Facts

- the employer received numerous complaints from other employees regarding emails described as “weird” and “disturbing” by the employee
- the employee agreed with the organisation’s relations manager to undergo a psychiatric evaluation
- the organisation received an independent medical report which diagnosed the employee with paranoid schizophrenia and advised that he did not have a current capacity for work
- the employee was terminated on the basis of the report and inappropriate conduct.

Fair Work Commission Decision

The Fair Work Commission:

- found that the employee’s dismissal was unfair under workplace law
- held that the psychiatric report was not sufficient to terminate the employee under workplace law, because the doctor had not stated that the employee was permanently incapacitated
- stated that the organisation had ignored the expert evidence on the possibility of the employee returning to work at some stage and failed to explore these options

In regards to the inappropriate emails, the Fair Work Commission:

- held this was an insufficient reason to terminate the employee under workplace law, because the conduct had occurred prior to the medical assessment and when the employee was unaware of his illness. It was also not serious enough to warrant dismissal
- ordered that the employee be reinstated provided that he produced medical evidence that he was fit to return to work



Tips for Employers

The case:

- shows that generally a basic capacity assessment will not be enough to validate a termination under workplace law
- serves a reminder that misconduct must be of such a nature as to amount to dismissal under workplace law
- demonstrates that employers need to make sure they obtain independent evidence and carefully assess situations involving employees that may be affected by mental illness
- reminds employers they need to make sound decisions and:
- obtain independent medical reports or assessments
- thoroughly assess any other conduct by the employee that may be of concern and the independent evidence obtained
- avoid assumptions and speculation
- seek further consultation, either internally or externally with a workplace lawyer Sydney, if necessary
- assess any potential risks to the health and safety of other employees

If you are unsure whether the dismissal of one of your employees is lawfully warranted under work, or if you need employment advice about how to dismiss an employee or on how to retrench an employee, consult to a workplace relations expert or HR lawyer.

More Information

If you have any questions in relation to this article or if you would like any assistance in other employment law matters including employment contracts or employer obligations under the *Fair Work Act*, please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** team on **9635-7966** to speak with one of our employment lawyers about your employment law issue.