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HUMAN RESOURCE MANAGEMENT

Human Resource Management


The HR Legal Framework
Lecturer: Matthew Bambach
(Slide adapted from Wiley Lecturer Resources)

Shiraz College

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Objectives

- Understand the importance of the law as it relates to HRM
- Distinguish between an employee and an independent contractor
- Identify the sources of legal obligations in employment law
- Understand the importance of the contract of employment and its essential terms
- Recognise the amendments to the federal legislation by Recent Governments


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Objectives


- Understand the implications of current industrial law to the employment relationship
- Identify the legal requirements at various stages of employee recruitment and selection
- Discuss the procedures for terminating employees
- Understand an employee's rights of review upon dismissal

 **Some facts...**


- The largest single group of defamation litigants in Australia is politicians followed by company owners.
- Experience shows that most 'whistleblower' hotlines are taken up with complaints about harassment, discrimination and other office problems. Few relate to serious fraud.

 **HRM and the Law**

- HR managers need to be aware of legal issues that govern the employee/employer relationship.
- Labour law, law of employment and industrial law


 **The Legal Framework**

- EEO
- OH&S, Workers Compensation
- Privacy
- Spent Convictions
- Contracts and Employment Relations
- Child Related Employment
- Professional Registrations

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Employee or Contractor

- A person is a contractor if the service provider:
 - Is not an employee of the principal
 - Is providing special labour which may require special qualifications
 - Has control over the manner of performing their own work
 - Provides their own tools and equipment to perform the work
 - Is not presented to the public as an emanation of the principle

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Sources of legal obligations

- Contracts, statutes, statutory agreements, awards and the common law
- Employment contract
 - An informal (oral) or formal (written) legally binding agreement between an employer and an employee specifying the legal rights and obligations of each party
- Types of contracts:
 - Indefinite duration
 - Fixed term

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Policy and Reasonableness

- Workplace policy
 - A document of general application that is prepared by the employer and is designed to govern (either with or without contractual force) any and all aspects of the conduct, rights and obligations of the parties to a contract of employment
- Reasonableness as a test

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Considerations

- Confidentiality agreements
 - During and after the course of employment
- Workplace intellectual property
 - Invention created during the course of employment will usually belong to the employer
- Moral rights
 - The employee may still have rights with respect to the inventions created during the course of employment

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Agreements and Legislation

- Statutes
 - In the context of employment, statutes legislate the minimum conditions of employment that must apply in any employer–employee relationship
- Statutory agreements

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Common Law

- Case law developed in the court system as opposed to statute law.
- It includes laws and principles that have been established by courts over the years.
- It may be codified into a statute or overruled by a statute passed by the government.
- General duties prescribed:
 - Employer's duties
 - Employees' duties

Recruitment and Selection


- A myriad of laws govern arrangements for selecting and engaging employees.
- The following areas require particular consideration in the pre-employment phase:
 - The job advertisement
 - The job description
 - The application form
 - The interview

Unfair Discrimination

- Any practice that makes distinctions between different groups based on characteristics such as sex, race, age, religion and so on, which results in particular individuals or groups being advantaged and others disadvantaged in an unreasonable or unjust manner.


Direct discrimination versus indirect discrimination

	DIRECT DISCRIMINATION	INDIRECT DISCRIMINATION
Definition	Treating a person or group less favourably than another person or group in similar circumstances.	A practice that appears inoffensive but that results in a person or group being disadvantaged.
Example	An employer dismisses a woman purely on the basis of her gender.	A company makes promotion dependent upon five years continuous service. This disadvantages women who may be more likely to take time off to have children.
Remedy	Damages — pecuniary loss, hurt, loss of career prospects, stress, humiliation.	Damages — pecuniary loss, hurt, loss of career prospects, stress, humiliation.

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Issues to consider

- The job advertisement and legal requirements
- The job description and the law, basic elements:
 - The title of the position
 - The qualifications required
 - The level of experience required
 - The level of responsibility that the position holds
 - The person to whom the employee must report

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Issues to consider

- Application forms
- Freedom of (and from) association
- Age
- Sex
- Physical and mental capacity
- Criminal convictions
- References and previous employment
- Testing employees
- The interview

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Legal issues during employment

- Occupational health and safety requirements
- Discriminatory treatment of employees
- Statutory benefits:
 - Payment of wages
 - The provision of leave

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Types of dismissal

- Summary dismissal
- Notice of termination or payment in lieu of notice
- Redundancy
- Constructive dismissal

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Grounds for Summary Dismissal

- Serious misconduct
- Physical/verbal abuse
- Disobedience of an employer's lawful and reasonable directions
- Drunkenness at work
- Incompetence (where previously thought competent)
- Neglect of duties

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Grounds for Summary Dismissal

- Dishonesty/bribery
- Criminal behaviour in connection with employment
- Absenteeism

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Dismissal

- Valid reason — substantive fairness
- Unlawful termination for proscribed reasons
- The employer's right to 'hire and fire'

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Termination — Employee entitlements

- Be furnished with *reasons* for the impending dismissal
- A *fair hearing* so that the employee is afforded a right to response to those reasons
- An *unbiased* decision-making process that takes the employee's response into account before any final decision is made

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The rights of the employee

- Means of appeal
 - A statutory action including that for unfair or unlawful dismissal
 - A common law action for wrongful dismissal in breach of contract
- Unfair dismissal
 - Occurs were a dismissal is harsh, unjust or unreasonable, but need not involve a fundamental breach of the employment relationship



Summary

- The relationship between the employer and the employee is governed by law.
 - e.g. employment contracts, legislation, statutory agreements, awards and the common law.
- HR managers need to be aware of requirements to minimise an organisation's exposure to dispute and litigation.
- Having a balanced approach is the key.
