



## FAMILY VIOLENCE AND EMPLOYMENT – WHAT YOU NEED TO KNOW

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### IN THIS ISSUE

- Family Violence is an issue that has received considerable prominence in recent times and an awareness of the prevalence of the issue is emerging in workplaces.
- How does an employer respond when a staff member is a victim of family violence?
- How does an employer respond when a staff member is accused of family violence?

### FAMILY VIOLENCE IN THE COMMUNITY

On Wednesday 12 February 2014, Luke Batty was killed by his father at cricket practice in Tyabb, Victoria. It was a moment that brought the issue of family violence into sharp relief in the country's consciousness.

In response, Luke's mother Rosie Batty established the Luke Batty Foundation with the goal to raise funds to support women and children affected by the trauma of family violence. In January 2015, Rosie Batty was announced as Australian of the Year. The subject of family violence has entered the public consciousness for the first time in a significant way.

Employers too are now grappling with the issue of family violence which impacts the Australian population broadly. According to the Luke Batty Foundation, on average, this year alone, two women have been killed every week in Australia. Further, one woman is hospitalised every three hours. The cost of violence against women and their children to the Australian economy was \$13.6 billion in 2009 and it is calculated to rise to \$15.6 billion by 2012/2022 without the right preventative action ([www.ourwatch.org.au](http://www.ourwatch.org.au)).

### FAMILY VIOLENCE IN THE WORKPLACE

Family violence is a difficult and complex issue to manage in the workplace. The issue has hit the public consciousness in a significant way recently with a

decision of the Fair Work Commission involving the dismissal of an employee who was the victim of family violence.

In *Moghimi v Eliana Construction & Developing Group Pty Ltd*, Commissioner Roe found that the employee concerned had been dismissed because she was a victim of family violence. The complicating factor was that both the victim and her attacker worked in the same office.

The employee concerned had obtained an Intervention Order against her former partner as a result of domestic violence. That order, which was made on the basis of the Court's knowledge that the two parties worked in the same office required that the employee's partner not approach or remain within three metres of his victim.

When the terms of the Intervention Order were communicated to the employer, unsurprisingly, the business seemed to be at a loss as to how to manage such a difficult situation at the workplace (when both parties appeared to want to continue to work in the same office together).

The employee was presented with statements from her Managers:

- that were critical of the employee for not contacting the employer to discuss her absence from work. The evidence was that the reason for the absence was that the employee had been assaulted by her partner and then needed to attend court to obtain the Intervention Order. In any event, the evidence supported the employee's case that she had tried to contact representatives of her employer; and
- that indicated they were concerned as to how relations between her and her partner could be managed in the office to ensure a harmonious work environment.

The employee was asked by her employer to work from home but made clear that she could not because her former partner has removed resources that made it impossible for her to do so.

The employee's case was that in order to resolve the concerns of her employer, she was presented with no alternative but to resign because her employer made it clear that they would not be dismissing her husband or asking him to work from home.

The Commission had no hesitation finding that the employee's "dismissal" (in the form of a constructive dismissal) was unfair because the only basis for it was that she had been a victim of domestic violence

## FINDINGS

The Commission acknowledged that these cases are not easy, but made it clear that the employer was expected to think more laterally than it had in this instance. The Commission found:

*"there are limits to the extent to which an employer can be expected to accommodate the private lives of employees. Ultimately employees have to be capable of performing the inherent requirements of their jobs. When seeking to accommodate the reasonable needs of employee's the impact on the business will be a consideration. However, I am satisfied that Eliana did not explore all available options and discuss these matters over a reasonable period of time with those affected".*

Eliana was ordered to make the maximum possible payment of compensation to the employee being \$27,500 or 6 months of the employee's usual salary.

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## LESSONS FOR EMPLOYERS

In making decisions concerning the management and termination of employees, this case provides useful guidance to employers as to the steps that must be taken.

If the employee had been provided with the opportunity to work with her employer to develop options whereby both parties could remain employed, and yet still complying with the terms of the Intervention Order, it is unlikely that the employee would have felt compelled to resign and thereby in a position to commence an unfair dismissal application.

These matters are by nature difficult for employers to manage but employers should avoid making decisions or imposing requirements on parties with which they are unable to comply because of their personal circumstances without obtaining specialist advice and assistance beforehand.

If you require advice or assistance on any employment matter please contact our team directly.

FOR MORE INFORMATION, PLEASE CONTACT:



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