



HR Mythbusting

What is a myth?

- A widely held belief that may, or may not, be true
- HR is full of myths – when a myth is used as the basis for decision making it creates risk
- We'll look at commonly held myths and determine if they are fact or fiction





Myth 1

An employee needs to be given 3 warnings before you can terminate them.

Myth 1

- There is no legislative requirement to provide an employee with three warnings before termination
- You do have to follow any HR policies or Enterprise Agreement – if they require 3 warnings before termination then you need to comply
- When terminating due to performance, you do need to provide an employee with:
 - The opportunity to understand the reason for the termination and to respond to the issues
 - The opportunity to bring a support person to any meeting
 - A prior warning about that unsatisfactory performance before the dismissal – no number of warnings is specified
- If the termination relates to misconduct, there is no requirement to provide prior warnings, however you still need to ensure a fair process is followed.



Myth 2

If I pay my employee at a rate of pay above the award then I don't need to pay overtime and other award conditions



Myth 2

- Paying an employee above the minimum award rate of pay does not automatically offset award penalties, allowances or loadings
- It must be made clear that the employer and the employee intended for any over-award payment to offset those entitlements
- One way to ensure this, is for the contract of employment to contain an offset clause that states that the over-award payment is in satisfaction of all wages, penalties, loadings and allowances
- Offset clauses should be reviewed annually to ensure the employee is better off under the over award payment then they would be if paid strictly in line with the award

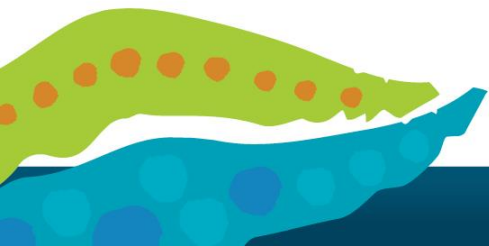
Myth 3

If I engage someone as a Contractor, I do not have to provide them with entitlements owed to an employee



Myth 3

- Generally, contractors are engaged to provide a service. They are not employees and therefore not eligible to be paid superannuation or other entitlements owed to employees
- Contractors are often engaged inappropriately and may, in fact, be employees
- Meena vs Biripi Aboriginal Corporation. Dr Meena was engaged as a contractor for 8 years. His services were terminated and Dr Meena lodged an unfair dismissal application
- FWC concluded he was an employee based on him working regular hours at times determined by Biripi, no right to delegate, had an exclusive working relationship, wore a uniform, Biripi supplied all equipment and resources
- A finding that a contractor is an employee may also expose the organisation to unpaid superannuation, leave liabilities etc.



Myth 4

An employee on probation cannot challenge their dismissal



Myth 4

- The Workplace Relations Act - reasonable probation period were exempt from unfair dismissal laws
- The Fair Work Act – to access unfair dismissal must have served a “qualifying period” of 6 months, or 12 months if less than 15 employees
- Probation period greater than the qualifying period is no bar to unfair dismissal
- Consider aligning the qualifying period and probation period
- An employee dismissed during the qualifying period may still dispute the dismissal on the basis of anti-discrimination laws
- Therefore, if you decide to dismiss a probationary employee, you should still ensure you are in a position to prove the reason for dismissal and show that it is a lawful reason



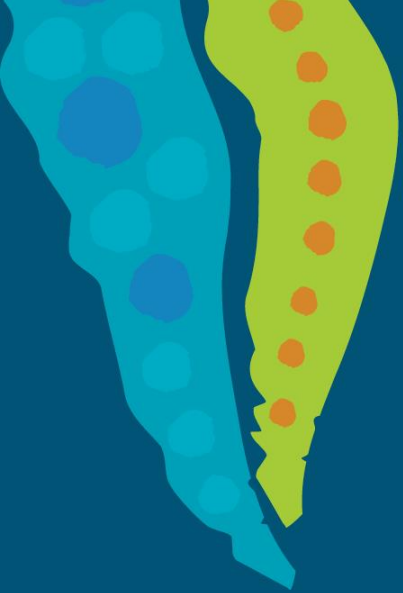
Myth 5

I can engage someone on an unpaid basis to help them get work experience



Myth 5

- Unpaid work may only be performed if it is associated with a recognised educational institution or is a genuine volunteering arrangement
- *Unpaid work may include:* work experience, such as high school students or university students, vocational placements associated with an educational course requirement
- Volunteering, generally in charitable and community service organisations. Volunteers should sign a clear agreement indicating they will not be paid. It is also helpful to distinguish volunteer work from work done by employees



QAIHC

Queensland Aboriginal and
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