WORKPLACE REVIEW

Volume 11, Number 4

June 2023

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Fed up with Work, Just Quietly – *David Nikolas Brodsky*

Quiet Quitting (a term that defines a low level of commitment to one's job by barely satisfying the requirements stated in the job description) might seem a fleeting social media fad, or even an ephemeral workplace trend. However, there is much that lies beneath the surface, and if not understood and addressed appropriately, dismal outcomes can ensue for organisations and for those who sustain decent work. This article explores what Quiet Quitting entails, what causes it, and what lies at its ethical boundaries. Restoring staff engagement, motivation, and dedication demands bold responses that involve redesigning the employee experience and rebuilding a sense of community in the workplace. 186

The Use of Lateral Thought in Cross-examination – *Richard Burbidge KC*

Sister Sophia Heathcote, a young English nurse, applied for a vacant position: that of the only nurse at Wilcannia Hospital in the far north-west of New South Wales. Of Wilcannia, Wikipedia records: "Predominantly populated by Aboriginal Australians, Wilcannia has received national and international attention for government deprivation of its community's needs, and the low life expectancy of its residents. For indigenous men, that figure is 37 years of age." 193

Respect@Work: Continuing Developments to Prevent Workplace Sexual Harassment – *Bianca Mendelson*

New Federal legislation introduces for the first time a positive duty on employers to take "reasonable and proportionate measures" to eliminate sexual harassment. The positive duty requires employers to proactively prevent unlawful conduct and seeks to shift the onus of managing sexual harassment from employees to employers. The Explanatory Memorandum for the amendments asserts that the positive duty will not create a substantially new or increased compliance burden. However, there do appear to be important differences with respect to what consideration a court will have for the costs of preventive steps and the size, circumstances and resources of the duty holder. Typically, these factors are given lesser weight under the work health and safety framework, whereas they feature heavily in the criteria for the positive duty. We must wait for the courts' consideration of this issue to see whether the amendments will create the unintended consequence of having two standards for managing sexual harassment. 196

The Role of the Multi-factorial Test after Jamsek – *Peta Willoughby*

The 2022 decisions of the High Court in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* and *ZG Operations Australia Pty Ltd v Jamsek* each have significant ramifications for how the employment/contractor dichotomy is assessed under Australian law. Where there is a written contract between the parties,

the terms agreed will be of primary importance in determining whether the contract is one "of service" or "for services". This is so even where there is a significant imbalance of power in bargaining between the parties, and where the deal struck does not indicate that the putative contractor is generating goodwill in their business. While at first glance this appears to represent a rejection of the previously accepted multi-factorial test, in fact the test continues to have work to do in numerous circumstances, including where there is no written contract between the parties (or it is incomplete), there is an allegation of invalidity (eg, a sham contract) or it is alleged to have been varied. 201

Angry Words: Weston v Coal & Allied Mining Services Pty Ltd – *James Kim*

On 13 January 2023, Saunders DP sitting in the Fair Work Commission handed down a decision reinstating an employee of a mining company who had been dismissed a few months earlier for aggressive conduct. This case is a useful reminder of the protections that employees are afforded under the *Fair Work Act 2009* (Cth) against dismissals that are harsh but not necessarily unjust or unreasonable. It is also a curious example of how an employee's ability to articulately explain their circumstances in writing may in fact be a valid reason for refusing a face-to-face meeting to do the same. 205

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