



## Employment & Safety Alert

### Fitness for Work and Adverse Action

July 2011

A recent decision of the Federal Magistrates Court (*Stephens v Australia Postal Corporation* [2011] FMCA 448) emphasises the risks that can arise when dismissing employees who have made workers compensation claims.

Australia Post claimed that it dismissed Mr Stephens from his employment because he had failed to make a collection from a customer and because he had sworn at a manager.

Mr Stephens alleged that his dismissal occurred because he had made a workers' compensation claim, and that the dismissal was therefore 'adverse action' that breached the general protections provisions of the *Fair Work Act 2009* (Cth).

Mr Stephens claimed that he was late for collections because he was discussing his workers compensation claim with the area manager and that he had sworn under his breath because of his frustration at a comment made by a manager.

Australia Post denied that it had engaged in adverse action regarding Mr Stephens' dismissal.

Federal Magistrate Smith indicated that Australia Post's reasons for dismissal were not supported by contemporaneous notes. He found that 'Australia Post has failed to establish that the real reasons for Mr Stephens' dismissal were "disassociated from the circumstances" of Mr Stephens' [workers compensation] rights...'

Smith FM also declared that 'It is enough, in my opinion, to raise a real hypothesis that the decision to terminate Mr Stephens' employment might have been influenced by a perception at the time by the relevant decision-makers that Australia Post's future liabilities under the SRC Act might be minimised by terminating his employment for reasons apparently unrelated to his work injury'.

It is extremely difficult for an employer to defend a general protections claim if there is no contemporaneous and compelling evidence that the dismissal was warranted in the circumstances.

Employers should seek legal advice before seeking to terminate the employment of a worker who has exercised, or indicated they may be exercising a workplace right (such as a making workers' compensation claim).

Our Employment & Safety Team can provide employers with timely and practical advice to minimise the risks associated with your decision-making processes.

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