

Swearing in the Workplace.

In 1852 it was noted that, in Melbourne, profane language was too often heard on the streets. *'Between drunken bullock-drivers, flash expirees, and half crazed gold diggers'*, opined one commentator, *'it is scarcely possible for a respectable woman to walk the streets of Melbourne, either morning, noon, or evening, without having their ears shocked with the most disgusting and blasphemous expressions'*. (Launceston Cornwall Chronicle, 28 January 1852, p. 60)
Can an employee be terminated for swearing in the workplace?

Swearing and the Workplace.

It seems that in approximately 170 years little has changed. Swearing in certain circumstances can and does cause offence.

Swearing itself is not considered serious misconduct under the Fair Work Act 2009 and therefore is not listed as an action that an employee may be summarily dismissed for however Deputy Presidents Sams and Wells provide insight on workplace swearing that does constitute serious misconduct.

1. **Deputy President Sams** on *Sirajul Bashir v Alex Perry t/a Alex Perry* [2019] FWC 2041 at 108:

"In any event, it hardly needs to be said that swearing in ordinary conversation might be tolerated in some workplaces... it is an entirely different proposition where swearing and grossly offensive language is directed at a particular person or group of persons in an aggressive, threatening or intimidatory fashion....Such conduct will invariably be grounds for summary dismissal, as it will likely result in the risk of the health and safety of the person to whom the language is directed."

2. **Deputy President Wells** in *John Smith v Aussie Waste Management Pty Ltd* [2015] FWC 1044 at 49:

"The use of bad language towards another person, especially a supervisor or manager, is of a different character to swearing at an inanimate object or its use as an adjective."

Crossing the line.

It is clear from these examples that both Fair Work Members concur that a line is crossed when swearing is aimed AT a person or a group of people and is offensive, abusive and intimidatory. In other words, the swearing is targeted.

What can you do?

Offensive or intimidatory language is a form of misconduct and must be dealt with as soon as you, the employer, become aware. Delays can cause increased risks in WHS, workers compensation claims and elevated absenteeism.

As the employer it is important that you undertake an investigation to determine what has occurred. An investigation ensures that both parties are afforded the opportunity to explain their version of events, which in turn provides you with the necessary information to determine if the allegations are substantiated or otherwise. Moreover, to decide on the disciplinary action commensurate with the outcome of the investigation.

Workplace Framework:

To assist you in dealing with offensive and intimidatory language in the workplace you should implement:

- Implement a policy on swearing and other offensive language.
- Lead by example.
- Deal with issues as they arise.
- Toolbox talks to inform your staff of what is and is not acceptable language in the workplace.
- Speak to employees that have been reported as using abusive language explaining it is not OK.

If you need advice or assistance to deal with swearing, or offensive behaviour please contact the MTA Employee Relations Team on 02 9016 9097