EMPLOYEE EXIT

Like the close of any relationship, the end of the employment relationship can be fraught with emotion, ill feeling and it has the potential to bring out the worst in people. However, it does not have to be that way.

There is an increasing trend for businesses to measure their success "as an employer", not just in terms of employee satisfaction, but also in terms of their relationships with past employees. Remember that past employees can become your suppliers, clients, contractors, advocates and may even return as employees at a later date.

Therefore the key to managing the end of an employment relationship is maintaining a cool head and being guided by the businesses strategic goals, not your emotions. There are many causes for the end of an employment relationship, some of which will be covered by the following case studies.

Company Z – Resignation

Company Z provides a very interesting example of "what not to do" when an employee leaves.

The resigning employee (a friend of mine) was never given an employment agreement, as the Managing Director openly boasted his refusal to work with the restriction of agreements. Not only is this illegal and could have attracted a $20,000 fine from the Employment Relations Authority, but the absence of an agreement meant there was nothing guiding behaviours and expectations during the relationship. In essence, everyone was in the dark.

When my friend decided to move on, she was unsure how much notice to give, due to the lack of an agreement and as her pay cycle was weekly, she felt that giving two week's notice would be sufficient. While you can't fault her logic or "generosity" in giving twice the notice period of what she thought was reasonable, the reality is that it can take a month or more to replace "knowledge workers" and a four week notice period (as could have been stipulated within an employment agreement) would have provided much greater protection for the business in this instance.

When my friend gave her notice, this was where things got ugly. The Managing Director took the resignation extremely personally and responded with a highly

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charged demonstration of yelling, raving, remonstrating and constantly threatening legal action. This behaviour continued for more than a week, until my friend threatened him with a grievance for harassment. Of course, he also had no grounds for legal action due to the fact she had not breached her non-existent employment agreement.

What the Managing Director also did not seem to recognise was the impact his behaviour was having on his own reputation. His business operates in a niche market, where everyone knows everyone and behaving in this way in front of other staff, suppliers and even clients was damaging his "employer brand".

As an aside, failing to have a comprehensive employment agreement in place meant he had no recourse for preventing my friend (who worked in sales) from immediately working for his direct competitor and then immediately targeting Company Z clients. Had the Managing Director had comprehensive employment agreements in place, with Restraint of Trade and Non Solicitation clauses, he could at least have been in a position to slow down this process, giving him time to re-establish his relationship with the clients before she made contact as the representative of his competitor. Moral of the story… get employment agreements in place to protect you at all stages within an employment relationship, including the end of the relationship.

Company Y – Medical Incapacity

Company Y is a small business with a low staff turnover and a real people oriented approach to managing their staff. As you can imagine, they were horrified to find themselves in the position of having to consider medical incapacitation of one of their longest serving employees and a valued member of the team - Peter Piper. After a string of poor health, Peter Piper had only attended work for one day in the preceding six months and there was no indication that things were going to improve at all in the near future.

The impact that this ongoing absence was having on the remainder of the team was really taking its toll and while Company Y had done their best to re-assign work, there was no getting around the fact that they needed someone back in the role full time. Furthermore, the nature of the role meant that use of a temp was not an option, while awaiting the possible recovery of Peter. After engaging Peter Piper in a medical incapacity process, while this was not a pleasant process, it was a decision that the business needed to make to support the future of the business. Peter's incapacity meant that he was unable to work; and this process enabled the business to seek a new recruit to fulfil the requirements of the role.

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Company X – Redundancy

Company X was really struggling as a result of the ongoing poor economic climate and realised they had to consider either a reduction in hours for the whole team or the redundancy of one of the positions in order to ease the financial pressure placed on the business.

Management presented these options to the team for consultation and feedback. At the end of this consultation process a decision was made to go ahead with the redundancy of one position. The feedback from the team did reveal some ideas to generate small cost savings but not enough to make a significant impact on the financial performance of the business. All team members felt that a reduction in hours would be unworkable for them personally and after consideration from an operational perspective, it was agreed that this was not the best course of action for the business either. This left them with the only workable option - making one role redundant.

Because there were two employees carrying out the role identified for redundancy this meant that a transparent, fact based selection criterion had to be used to identify which employee would remain and which would leave the business. In this case, the criterion was based on skills, qualifications and tenure.

After conducting in-depth interviews with the two employees, measuring them against these criterion, it became clear which employee would be retained and which would be advised their role was to be made redundant. In order to reduce the impact of the redundancy, the employee was paid in lieu of their notice period, to give them the opportunity to find further employment. Company X also paid for outplacement services, including career coaching and CV preparation to help with this transition.

Company W – Termination

Sometimes it is necessary to terminate a staff member's employment due to poor performance or misconduct. New Zealand employment law means you can't do a "Donald Trump" without risking litigation. In New Zealand, instances of misconduct or poor performance require a

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fair process to be followed, and if you read the paper you will see it peppered with stories of businesses that, while they may have had good reason, did not follow good process. Sometimes these businesses face significant fines as a result of the personal grievances being taken against them.

Employers need to remember that with "no win / no fee" employment advocates available, terminated employees have nothing to lose as a result of going through this process. In reality business owners should either seek employment relations training or engage the services of an external organisation to help guide them through this process and avoid exposing themselves to a personal grievance case in the first place.

However, one instance where employers can manage termination without too much fear of getting it wrong is when employees are under the 90 day trial period. Company W admits they hired Sally Sausage in a bit of hurry, as they were trying to fill a gap in their workforce caused by another employee resigning. Sally was very confident and personable at the interview, and assured the Manager of Company W that she had the skills required to carry out the role.

Unfortunately, the referees provided by Sally were for Managers where she was

working in a different role to the one she was being hired for, therefore Company W could not verify Sally's skills as being suitable. Instead of requesting further referees from Sally, they took everything at face value and offered her the role. About six weeks into her new employment it became very clear that Sally did not have the required skills to effectively do the job she had been hired for. In essence this was a case of significantly poor performance.

If Sally had not been within her 90 day trial period, this revelation would have required Company W to engage Sally in a protracted performance management process involving several meetings, the development of a performance improvement plan, the chance to improve and several warnings, before her employment could have been terminated. However, because Sally was on the 90 day trial period, Company W was able to terminate her employment immediately, without fear of personal grievance.

The moral of this story however, is not to extol the benefits of the 90 day trial period for employer, but that businesses should never rush through their recruitment process. Spending another week or two recruiting the "right" staff member would have saved them a couple of months in the long term.

Just a word of caution though, for when you are thinking of using the 90 day trial period - if you are using old employment agreements, be aware that a "probationary period" is not the same as the 90 day trial period. Furthermore, for the 90 day trial period to be used, an employee must have signed their agreement prior to starting their first day of employment.

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