

Take Care with Swearing

Published in the Daily Mercury on Wednesday, 16 March 2016



At the risk of sounding like a very conservative old lady, I find that these days many people are more open to and accepting of foul language. We often see it in its most uncensored form on social media and it is much more prevalent in movies and on the TV and sports fields.

It is therefore not surprising that swearing in the workplace is often an accepted norm particularly when daily frustrations range from unachievable timelines to kicking your toe on the photocopier.

Recent-cases have looked at situations where an employee has been subject to the offensive language directed from an employer, and when the shoe was on the other foot and the employer was copping it from an employee.

There is no clear cut rule yet on how to approach foul language in the workplace. The considerations that have been discussed in these cases include workplace culture, the type of language used and whether the swearing was considered to be an adjective or directed at a person to create actual or perceived aggression.

Repeated occasions of abusive language can without a doubt lead to formal complaints including (but not limited to) bullying which the employer would then have obligation to investigate. It also gets tricky when there is a possible termination of employment, with the prospect of unfair dismissal applications looming in the event of the termination being considered harsh, unjust or unreasonable.

For this reason, in any circumstances where employees are aggrieved by the use of foul language in the workplace, careful consideration must be given to the way in which the offensive language was used, whether it was directed to another person as an insult or form of aggression and the general nature of the workplace before decisions are made about potential remedies such as counselling or termination of employment.

Elsbeth Ledwy is a Senior Associate at Kelly Legal and can be contacted on elsbeth.ledwy@kellylegal.com.au or at www.kellylegal.com.au

Elsbeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elsbeth-ledwy/> or you can find Elsbeth's column "Mind Your Own Business" in the Daily Mercury newspaper each Wednesday.



With you.

Mackay Office

Level 2
65 Sydney Street
PO Box 1035
Mackay Q 4740


 0749 110 500

 07 49 110 599

Brisbane Office

Level 5
NSW Chambers
33 Queen Street
PO Box 13531
George Street
Brisbane Q 4003

 07 3179 2700

 07 3179 2799

mail@kellylegal.com.au
www.kellylegal.com.au

 @KellyLegalQld

 KellyLegalQld

 Kelly-legal

Disclaimer:

The contents of this publication are not intended as professional legal advice. You should obtain independent legal advice before relying or acting on any statements, recommendations or opinions contained in this publication. Kelly Legal Pty Ltd cannot accept any liability or loss occurring as a result of anyone acting in reliance on any material contained in this publication.

© 2016 Kelly Legal Pty Ltd