Job satisfaction and your employment rights

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Question: where does job satisfaction come from?

Answer: the satis-factory!

Many young lawyers and articled clerks are prepared to accept that their junior years will necessarily be filled with hard work and long days (and nights) which, like a rite of passage, if survived, will pay off in the long run. In many cases, this may be true. Nevertheless, retention rates in firms are at an all-time low. After putting in years of study, talented junior lawyers are being lost from the profession, sometimes never to return.[1]

As lawyers – or as soon-to-be-lawyers – we often fail to consider our basic employment rights and the degree to which an employer's compliance with those rights can affect job satisfaction.

Moreover, when these basic rights are breached, young lawyers and articled clerks are often reluctant to enforce them – perhaps out of fear that in a competitive industry it is simply too risky. The perceived risk may be that of being dismissed, of not being offered continuing employment after articles, or simply not being given enough work to achieve budget. This, in turn, can lead to further dissatisfaction with one's job or career.

A better understanding of one's basic employment rights and protections against dismissal or victimisation for enforcing them may help articled clerks and junior lawyers find and/or preserve an acceptable level of job satisfaction. The following is a summary of some basic employment rights of which all articled clerks and young lawyers ought to be aware.

Security of employment and bargaining power

A fundamental component of job satisfaction is feeling that your job is secure. Having unfair dismissal protection means you cannot be dismissed without a valid reason, or in circumstances which are harsh, unjust or unreasonable. Unfortunately, the introduction of the *WorkChoices* amendments to the *Workplace Relations Act* on 27 March 2006 means that you can now be dismissed without a valid reason during the first six months of your employment. During this period you are exempt from unfair dismissal protection unless this statutory "qualifying period" has been waived in writing before you start the employment.

Additionally, if you work for a firm with 100 or fewer employees (including all related bodies corporate as defined by the *Corporations Act*) you do not have access to unfair dismissal remedies and so your employment may be terminated at any time without a valid reason.

It is also not unlawful for an employer to dismiss workers for complaining or inquiring directly to their employers about their rights. If you have been employed for less than six months or work for an employer with 100 or fewer employees, be wary about complaining or even inquiring directly to your employer.

There are strategies for protecting yourself in asserting your rights if you do not have access to unfair dismissal remedies.

One strategy is to wait, where possible, until the changes to the *Equal Opportunity Act 1*995 (Vic) come into force on or before 31 March 2008. These changes aim to protect employees from being discriminated against for making a request or raising concerns directly with their employer about their current employment entitlements. See *Equal Opportunity Amendment Act* 2007 (Vic).

Another strategy is to file a complaint with a third party in a manner which may engage unlawful termination or freedom of association protection against being subsequently dismissed or discriminated against for having made such a complaint.

It is still unlawful for one's employment to be terminated for a prohibited reason or reasons that include a prohibited reason under s659 of the *Workplace Relations Act* (including but not limited to one's race, colour, sex or sexual preference etc.) and it is unlawful to discriminate against an employee because of a protected attribute under s6 of the *Equal Opportunity Act* 1995 (Vic) or to act in breach of the federal *Sex Discrimination Act* 1984, *Disability Discrimination Act* 1992, *Racial Discrimination Act* 1975 or *Age Discrimination Act* 2004.

Job security will only become more of an issue when the currently tight job market inevitably slackens. Hence, junior lawyers may wish to take into account access to unfair dismissal protection when considering job offers from future employers.

Additionally, where one's employment is terminated for reasons that do not justify summary dismissal, the employer is obliged to give the employee reasonable notice of the termination. This notice period can either be worked or the employee can receive pay in lieu of notice. The minimum notice requirements are set out in the *Workplace Relations Act* as shown in the following table.

MINIMUM NOTICE OF TERMINATION REQUIREMENTS

Employee's period of continuous service with the employer	Period of notice
Not more than one year	At least one week
More than one year but not more than three years	At least two weeks
More than three years but not more than five years	At least three weeks
More than five years	At least four weeks

If the employee is over 45 years of age and has more than two years of continuous service, they are entitled to an additional week of notice as a minimum.

A higher notice period may apply under a workplace agreement or contract and even where a notice period is specified, a still higher entitlement may apply under the definition of "reasonable notice" at common law.

Minimum pay and conditions of employment

In Victoria, the minimum wage for articled clerks and lawyers who have been admitted to practice for less than 10 years is set by the Property and Business Services Sector Minimum Wage Order. At the time of writing, the minimum wage for lawyers is $611.04 (gross) per 38-hour week ($16.08 per hour) and for articled clerks the minimum is $511.86 (gross) per 38-hour week ($13.47 per hour).

Somewhat surprisingly, the minimum wage for articled clerks is the same as the standard federal minimum wage as set by the Australian Fair Pay Commission (AFPC), which is the lowest wage rate that an adult permanent worker can be paid where their employment is not covered by an industrial instrument such as an award or workplace agreement.

On 1 October 2007 the rate for both articled clerks and lawyers increased by 27 cents an hour.

Thankfully, most firms pay their articled clerks and junior lawyers well above the minimum wage order. However, articled clerks and junior lawyers should note that if they are regularly working more than 38 hours a week, their annual salary needs to be high enough to compensate for all extra hours worked at the direction of the employer. If it is not, the employer may be in breach of the minimum wage order and the employee lawyer or articled clerk may be owed unpaid wages for those hours worked as overtime.

In addition to the minimum wage under the Property and Business Services Minimum Wage Order, all permanent full-time employee lawyers and articled clerks are entitled to the following minimum conditions of employment under the Standard:

- a maximum of 38 ordinary hours of work a week on average plus reasonable additional hours;
- four weeks of paid annual leave;
- 10 days of paid personal/carer's leave including sick leave and carer's leave with provision for an additional two days of unpaid carer's leave per occasion and an additional two days of paid compassionate leave per occasion; and
- 52 weeks of unpaid parental leave (including maternity, paternity and adoption leave) but only after one year of continuous service.

Right not to be bullied, unreasonably stressed or overworked

A 2001 survey found that 33 per cent of workers in the legal profession said they suffered regular bullying from a manager or employer.[2]

PHOTO **ADAM BUSHBY**

Every worker has the right to be safe and free from risk of injury when at work. This includes the right not to be subjected to bullying in the workplace.

Workplace bullying is repeated, unreasonable behaviour directed towards an employee, or group of employees, that creates a risk to health and safety. It may include practical jokes, swearing, insults, excessive supervision, constant criticism, public putdowns, spreading rumours, being given excessive work or no work, not being given training or information needed to do your work, being threatened with dismissal and any other behaviour that offends, humiliates, intimidates or undermines a person.

Employees suffering a psychological injury such as stress and anxiety or depression as a result of workplace bullying may be entitled to make a WorkCover claim.

As stated above, the maximum number of hours that an employer can require an employee to work is 38 a week (on average) plus "reasonable additional hours". The number of additional hours which may be considered reasonable depends on a range of factors including any consequent health and safety risk to the employee, the employee's personal circumstances and the operational requirements of the business.

If an employee is directed to work more than 38 hours a week and the additional hours are not reasonable in the circumstances, the employer may be acting in breach of the Standard. For a corporate employer, such breaches can attract a penalty of up to $33,000 per breach.

Right to flexible work practices to accommodate family responsibilities

There is no automatic right to return to work part-time or to work from home after parental leave. An employer may have family-friendly policies regarding working from home and/or the right to return to work part-time after parental leave.

Even if an employer does not have family-friendly policies, anti-discrimination laws still require employers to genuinely consider and assess any reasonable requests for part-time work or home-based work due to family or carer responsibilities.

If the employer does not agree to allow an employee to return to work part-time or to work from home after parental leave, the question of whether the employee has been unlawfully discriminated against will depend on the facts of the particular situation, including whether the firm's requirement, condition or practice that an employee work full-time and/or in the office is reasonable in the circumstances.

Right not to be sexually harassed

Sexual harassment is conduct of a sexual nature that is unwelcome. It involves behaviour that could reasonably be expected to make a person feel offended, humiliated or intimidated and may be physical, verbal or written in nature. It can involve anything from unwelcome sexual advances or sexually offensive pictures, comments or jokes to serious criminal offences such as indecent assault.

Employers can be vicariously liable if they did not take all reasonable steps to prevent the sexual harassment.

Depression and disability discrimination

Recently there have been some disturbing survey results about the high levels of depression suffered by lawyers compared with other professionals.[3]

It is unlawful to discriminate against or dismiss an employee on the basis of an impairment or disability including mental illness. In certain circumstances, employers have an obligation to make reasonable accommodations or adjustments for an employee who is suffering from a disability or impairment so long as the employee can still perform the inherent or genuine and reasonable requirements of the job.

Union membership

Lawyers and articled clerks in Victoria are entitled to be members of the Australian Services Union (ASU) Private Sector Branch.

Unions campaign for decent pay, conditions and fairness in the workplace and operate on the basis that working collectively is the best way to achieve this. Union members are entitled to advice and support on a range of work-related matters, including correct wages and entitlements, grievances and disputes, assistance with workplace agreement negotiations, unfair dismissal, disciplinary action, restructuring, redundancy, WorkCover, occupational health and safety, discrimination and workplace harassment.

Union members are also entitled to representation, expert legal advice, advocacy and assistance from a workplace delegate or union organiser in resolving workplace issues.

Traditionally, union membership for professionals has been low. Nevertheless, for articled clerks and junior lawyers, union membership should not be discounted as a valuable resource, especially in the early stages of one's legal career.

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The information provided in this article is of a general nature only. Readers should not act on the basis of the information contained in this article without first obtaining professional legal advice relevant to the reader's particular employment situation. This article is not a substitute for professional legal advice.

For further information on your employment rights and where you can obtain further assistance, contact JobWatch's free and confidential inquiry line on ph 9662 1933. ■

1. S Jacobson, "Leaving the law", see *LIJ* June 2007, p92.
2. See "Outline of a presentation given by Bryan Bottomley, Bryan Bottomley and Associates at the LIV on 28 May 2002 on the draft Code for the Prevention of Bullying and Violence in the Workplace" at www.liv.asn.au/members/sections/workrel.
3. See "Survey reveals depth of depression problem", *LIJ* June 2007, p22.