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Editor: Chris Taylor

FEATURE

Demystifying stress risk assessments

Most companies in Australia are now aware of the growing importance and potential detrimental effects of stress in their workplace, but many don't know where or how to begin to assess the risks. Tania Moloney, Managing Director of Stressworks Corporate Health, demystifies the stress risk assessment process and explains how companies can get started.

An indication that workplace stress is not being adequately risk-managed by companies is that stress claims are rising while all other categories of claims are falling. During the eight-year period from 1997/98 to 2004/05, the number of serious claims decreased for all injury categories except mental stress. In 1997/98, there were 4,440 claims resulting from mental stress; by 2004/05, claims had risen to 8,665, a 95% increase (Compendium of Workers Compensation Statistics Australia 2005/06, ASCC, June 2008).

In addition, stress claims costs are, on average, considerably higher than for other types of workplace injury. Employees with a psychological injury claim tend to take longer periods off work and have higher medical, legal and other claim payments when compared to people with other types of injuries (Comcare 2004/05). For example, the average cost of a psychological injury claim is \$109,000, compared to \$15,000 for a non-stress claim for a public sector employee (Comcare 2004/05); and in New South Wales, the average cost for a psychological injury claim has risen to \$27,798, compared to \$18,913 for a physical injury claim (WorkCover NSW Statistical Bulletin 2003/04).

The figures above reflect direct claims costs and cases formally lodged under the workers compensation system. It is likely that many more instances go unreported.

The real cost for an employer is that stress can reduce employee productivity, organisational efficiency and morale, and increase staff turnover, absenteeism and workplace accidents. They not only hurt a company's top and bottom line, but also detract from a company's ability to be an "employer of choice".

Workplace stressors

Job stress ultimately results when the requirements of the job do not match the needs, capabilities or resources of the employee.

Although, any occupation has the potential to cause stress, employees in roles that are high in demand/pressure but low in control and support are most often associated with increased risk of occupational stress.

Particular industries or job roles may also have distinctive potential stressors associated with them. For example, healthcare workers are often affected by vicarious traumatisation (secondary trauma) as a result of being repeatedly exposed to other people's trauma or distress.

Work-related stress may stem from the pressures of doing the job, from working conditions or from working relationships. Particular workplace factors that can lead to stress include:

- excessive workload
- poor working conditions
- lack of control over workload
- interpersonal conflict
- inadequate training or support for the job
- poor management practices
- long or inflexible working hours
- job insecurity
- shiftwork and fatigue
- pay and benefits
- work/life balance

- lack of communication or consultation
- bullying or harassment
- redeployment or relocation
- setting unrealistic goals or having them imposed upon you
- being expected to be "too many things to too many people"
- the uncertainties and demands of organisational change
- working under rules that seem unfair
- boredom from repetitive or unchallenging work
- feeling trapped in an unfulfilling job by financial pressures.

These sources of stress are common to many workplaces, but it is how individuals perceive the stressor and their ability to cope with it that determines how they will react to the situation.

Stress risk assessments and how they work

A stress risk assessment (SRA) is similar to a manual-handling risk assessment. The content may be a little different, but the process and focus is essentially the same. First, you must identify the potential risks involved in a particular job/role, then assess these risks, and ultimately plan and implement risk control measures to eliminate the risk completely, reduce it or optimise the way it is done.

In Australia, SRAs are a fairly new concept, and there are few examples of formal Australian SRAs available. But they are starting to become more common.

More commonly in Australia, many workplaces have "secondary" or "tertiary" stress management initiatives available to employees. On a secondary level, there are a multitude of initiatives such as seminars on managing stress, and programs to boost individual resources. On a tertiary level, individual counselling programs such as employee assistance programs (EAP) exist to help individual employees cope with stress and its effects.

As necessary and effective as these programs may be, they are often rehabilitative in focus, and assist in managing the problem *after* it has occurred. More beneficial to employers in their quest for prevention are primary level initiatives, such as SRAs, aimed at finding the root cause/stressors, and working to eliminate or minimise their impact.

Stressworks is developing a process called Workplace Stress Management Audit (WSMA) as an SRA tool, to provide employers with a simple process to assess workplace stress risks. The WSMA is largely based on methodologies of the UK's Health and Safety Executive (HSE), which has developed management standards for addressing stress in UK workplaces, and includes measurable goals for companies to work towards to ensure they are on target. They have created a number of practical, useful and useable tools, available at www.hse.gov.uk/stress.

The key to choosing and implementing effective SRAs lies in the understanding that every workplace has its own unique potential risks, and that every individual within that workplace is unique and responds to pressure in different ways. Gaining management support is also a key component to the success of such initiatives.

Getting senior management on board

There are compelling legal and business reasons, among others, for employers to carry out SRAs in their workplaces.

Seeing a financial return on investment (ROI) is a strong motivator for implementing effective SRAs, as identifying and assessing the risks is the first step in eliminating or minimising the effects of stress in the workplace. This will, in turn, translate into fewer stress-related workers compensation claims, and employers will see added benefits in terms of improved morale and increased productivity.

Another compelling reason for employers to take action is their legal duty of care. Employers across Australia have a duty of care to protect the health, safety and wellbeing of their employees while they are at work, and as part of this, they must assess the risks associated with hazards at work, including workplace stress. In Victoria, many employers may not be aware that as well as the obvious physical hazards, the *Occupational Health and Safety Act 2004* also specifies a duty of care to reduce and assess the risks associated with psychological hazards.

A common objection we hear from senior management is their fear of opening up a veritable can of worms. However, a comprehensive and properly implemented SRA process can give them the opportunity to be the early bird that gets the worms before they can get out of the can.

If management still have their head in the sand, there are a number ways to get the process started. We are often asked by OHS and HR managers to come and talk to their management teams about why work-related stress should be on their organisational

conscience and how controlling it can be directly linked to achieving their organisational objectives.

Developing a simple workplace stress policy and associated procedures, covering areas such as reporting issues and ease of access of avenues to do so, are ways employers can get started. But it is vital that these are clearly visible and clearly communicated to all employees on an ongoing basis.

What clients want from Stressworks

We assist our clients in prevention and management of stress, from consulting on why it is important to playing a really hands-on role, where we come in and "do it all". We prefer to train employers how to effectively do SRAs themselves, so that after we have implemented a program, the process can continue (with guidance and support from us if required).

Simply bringing in an external party to carry out generic SRAs may mean that the mark is missed completely. We can help guide and provide tools for the process, but without commitment and collaboration from both employers and employees, it is likely that generic assessments alone will highlight the symptoms of the issue, and leave the true cause of the problems unrevealed.

We also help workplaces run effective and targeted health and wellbeing initiatives such as stress and resilience training courses and seminars, leadership training, EAP programs, and workplace massages, which form part of the action plan stage to manage stress-related issues if and when they occur.

Five-step risk assessment process

The aim of a good SRA process should be to identify potential stress-related risk factors within each workplace, for each particular job role and the individual that carries out that role. From there, more accurate and targeted action plans for risk control can be developed.

There are five main steps we follow in the SRA process, which are essentially very similar to a manual handling risk assessment.

- (1) Identify the hazards. Here we are looking at factors such as job demands, level of control the employee has over his or her work, support from managers and colleagues, interpersonal relationships at work, job role within the organisation, and workplace change and how it is managed.
- (2) Who is at risk and why? By carrying out a simple survey of employees, we can assess the effect of common sources of workplace stress at an individual level.
- (3) Evaluate the risk and take action. Next we gather the data from the surveys and, in consultation with employees and employers, design action plans for risk control. It is important to effectively communicate the results to all parties concerned.
- (4) Record findings.
- (5) Review and monitor the assessments. Like any good risk assessment process, a regular review process (eg annually) needs to be planned for and implemented. Similarly, a new SRA should be carried out whenever certain events/circumstances arise (eg new employee, job role change, workplace restructure).

Costs, benefits and results

Obviously, clients are looking for a reduction in workers compensation claims in relation to stress, improved morale and job satisfaction among employees, less absenteeism and employee turnover and a reduction in other types of injuries. To see real results from programs of this nature, however, requires commitment for the medium to long term. Results may not seem immediately visible on the balance sheet; but targeted, well-implemented injury prevention and health and wellbeing programs are generally shown to have a noticeably positive ROI effect within about three years.

Costs of implementing a stress risk-assessment program vary depending on the scope of the program; however, if employers consider the true cost of a potential stress-related injury claim to their business, then their investment made in carrying out SRAs has the potential to become cost-neutral and cost-positive very quickly.

Once gathered, the statistics and comparisons we report to our clients are similar to those we provide for health risk assessments and other program reviews. These also include absenteeism and employee turnover statistics, injury statistics, and workers compensation claims statistics, as well as comparative results from employee surveys conducted as part of the SRA process.

Final tips

For SRAs to be effective, employers need to consider options that offer a comprehensive and solution-focused approach, customised for their own workplace and the individuals within it.

Stress risk assessments are only the first step in the stress risk management process. Once the underlying risks have been identified and assessed, employers will be armed with valuable information to help them decide on the best course of action to assist in developing and implementing proactive risk control measures, aimed at addressing the causes of work-related stress.

It is important for employers to commit to the SRA process with an equally strong commitment to acting on the results. Once the SRAs are completed, it is vital for employers to implement risk control measures.

Stressworks Corporate Health provides comprehensive, integrated workplace health promotion programs across a wide range of Australian businesses. In addition to SRA consultation, it offers the client seminar "Managing Personal Stressors in the Work Environment". For more information on Stressworks, visit www.stressworks.com.au or contact Tania at tania@stressworks.com.au.

NEWS

Combating workplace fatigue

WorkCover NSW has released a guide to help employers and workers tackle fatigue in the workplace.

The guide *Fatigue—prevention in the workplace* is aimed at employers and employees across all industries and it outlines procedures to identify and manage risks associated with fatigue.

WorkCover NSW Chief Executive Jon Blackwell said workplace fatigue affected health, reduced performance and increased the risk of workplace injury.

"The impact of fatigue can reduce one's ability to concentrate, recognise risks and communicate effectively.

"Workplace fatigue can occur because of a range of issues including the mental and physical demands of work, issues related to work scheduling and planning, environmental conditions and individual factors."

A risk management approach is recommended and the guide provides practical advice including a fatigue hazards identification checklist.

It also provides a number of tips to address fatigue risk including:

- eliminating excessive mental and physical demands of the job
- redesigning the job to include a variety of mental and physical tasks
- introducing job rotation to limit a build up of mental and physical fatigue
- using rest periods in addition to scheduled meal breaks
- using plant, machinery and equipment to eliminate or reduce the excessive physical demands of the job.

A copy of the guide is available from WorkCover at www.workcover.nsw.gov.au or by phoning 1300 799 003.

The flexible working world of 2018

The successful business of the future will provide its employees with flexible and tailored support for work–life integration, according to a UK report on the likely working world of 2018.

Global business will experience a big shift towards virtual community–based enterprises as the nature of business models and structures change over the next decade, the UK Chartered Management Institute's report *Management Futures: The World in 2018* predicted.

As organisations open up to the outside world and become more community–based, they will also become more employee–centric especially those built on the productivity of talented employees with more "non traditional" employment arrangements becoming the norm, the report said.

The working population will be more diverse, quicker to change jobs and far more demanding of its employers and what it expects from the working world. Work–life balance will be superseded by "work–life integration".

Part Time Online (www.parttimeonline.com.au) director Liana Gorman said the report showed the importance of flexibility as key for successful management of a working world that is probably just 10 years away.

"With virtual offices and diverse employment rather than a traditional linear career becoming the standard for many workers, organisations would have to become more adept at managing remote workforces and providing working arrangements attuned to employees' lifestyles if they were to remain competitive over the next 10 years," Ms Gorman said.

"As people's lives become more integrated in the work/life balance, emotional intelligence will determine how successful employers are," she said.

"It will become more about life in its entirety, not just about this work/home bloc divide."

The study, which consulted a range of business leaders, futurologists and academics, looks at how the working world is likely to

change in the next 10 years and what organisations ought to do to prepare for, and take advantage of, these scenarios.

Changes in work expectations will require leaders and managers to develop a new range of skills with an emphasis on emotional and spiritual intelligence, and they will often be required to manage virtual teams, working in geographically diverse and remote locations, the report says.

It also predicts that:

"Talent markets will become more complex and more diverse with regard to age, generational issues, culture etc, and will require more sophisticated recruitment processes. The proportion of employees coming from abroad will increase. Complexity in working life will lead to workers having greater anxiety and stress levels that managers will have to address regularly. Talented people will be demanding a great deal of personal control, leading from a power shift from employers to employees. The best talents will mix work with lifestyle."

Ms Gorman said Part Time Online's own statistics showed that the trend to lifestyle emphasis and power shift from employer to employee was already well underway in Australia. Of those job seekers conducting job searches on Part Time Online during June: 45.9% were looking for work from home arrangements; 31.4% were looking to work part time; another 17.9% were looking for either casual, temporary or contract arrangements.

Family flexibility guidelines for Victoria

The Victorian Government has introduced guidelines to help employees and employers balance work and family responsibilities. The guidelines complement amendments to the *Equal Opportunity Act 1995* (Victoria) that will come into effect on 1 September 2008.

Under the amendments, employers must "seriously consider" a request for more flexible working arrangements, the government said. However, this does not mean that they have to automatically approve such a request.

Employers must consider the cost of any new arrangements and the effect they will have on others in the workplace, including the financial impact on the business.

"The guidelines demonstrate that flexibility can be achieved by working part-time or working agreed hours over fewer days," Victoria's Deputy Premier, Rob Hulls said.

"Mutually beneficial results can occur through job sharing, working from home, starting and finishing earlier or later, or changing break times and rosters.

"It can be as simple as avoiding the schedule of meetings before 9 am to allow parents to drop children off at school."

PAY

New salary payments rules for sponsored employees

By Mark Dunphy, Partner, and Harriet Mantell, Migration Consultant, Hall & Wilcox

The Minimum Salary Level (MSL) which must be paid by sponsors of employees holding 457 visas will be increased from 1 August 2008. Failure to pay the appropriate MSL correctly will be considered a breach of sponsorship obligations and can result in severe penalties.

Employers who sponsor 457 visa holders need to meet a number of obligations, including paying at least the MSL or industrial instrument (eg award or collective agreement), *whichever is the higher*.

The new MSL that will apply from 1 August 2008 differs for those employees whose 457 visas are granted before 1 August 2008 and those whose 457 visas are granted from 1 August onwards.

New sponsored employees granted a 457 visa on or after 1 August 2008

The MSL that will apply to employees whose 457 visa is granted on or after 1 August 2008 is:

- \$77,850 — where the English language exemption is claimed
- \$59,480 — for Information and Communication Technology (ICT) employees
- \$43,440 — for non-ICT employees
- \$53,530 — for ICT employees approved to work under a regional concession
- \$39,100 — for non-ICT employees approved to work under a regional concession.

Employees whose 457 visa is approved before 1 August 2008

The MSL for all employees whose 457 visa was approved prior to 1 August 2008 will increase by 3.8%. Effective 1 August 2008, MSL increases will apply retrospectively, meaning that sponsors will be required to pay any new MSL rates to all existing sponsored visa holders who may have been approved on the basis of a lower MSL. Prior to 1 August 2008, MSL increases applied only to employees who were granted 457 visas after the promulgation of a new MSL.

Sponsors should check the visa approval notification for all 457 visa employees for the date of visa approval which determines the "MSL Instrument Period of Effect" in the table below:

MSL instrument Period of effect	MSL occupation category	MSL prior to 1 August 2008	MSL from 1 August 2008
11/02/2004 to 08/04/2005	Non-ICT	\$37,720	\$39,150
	ICT	\$46,620	\$48,390
	Regionally certified	Industrial Award	Industrial Award
09/04/2005 to 02/05/2006	Non-ICT	\$39,100	\$40,590
	ICT	\$50,775	\$52,700
	Regionally certified	Industrial Award	Industrial Award
03/05/2006 to 30/06/2006	Non-ICT	\$41,850	\$43,440
	ICT	\$57,300	\$59,480
	Regionally certified	Industrial Award	Industrial Award
01/07/2006 to 31/07/2008	Non-ICT	\$41,850	\$43,440
	ICT	\$57,300	\$59,480
	Regionally certified (non-ICT)	\$37,665	\$39,100
	Regionally certified (ICT)	\$51,570	\$53,530
	English language exemption (from 10/09/2007 only)	\$75,000	\$77,850

How must the MSL be paid?

From 1 August 2008, the MSL in all cases is based on a 38-hour week. An employee cannot be paid for less than 38 hours. Where an employee works in excess of 38 hours, they must be paid at least the equivalent hourly rate for every hour. The MSL must be paid weekly, fortnightly or monthly, and therefore the equivalent MSL for hours worked in excess of 38 hours must also be paid weekly, fortnightly or monthly. You cannot "average out" the MSL on an annual basis.

The MSL is the salary component (sometimes referred to as the "cash" component) excluding superannuation, any allowances (such as Living Away from Home Allowance), bonuses or salary-packaged items or deductions, other than:

- Pay As You Go (PAYG) tax withholding amounts, and
- amounts that are 100% tax deductible for the sponsored worker or otherwise exempt from Fringe Benefits Tax (FBT).

What sponsors can do to ensure compliance with obligations

Sponsors need to check that the salary paid to 457 visa holders is in accordance with the above MSL rates, and is paid on a weekly, fortnightly or monthly basis in accordance with the number of actual hours worked in that period. Sponsors may need to implement a system of recording actual hours worked for 457 employees to avoid possible breaches of the MSL obligation.

Conclusion

The minister for Immigration recently released a discussion paper on sponsorship undertakings for 457 and other visas. It is expected that legislation will be introduced later in 2008 to clarify and strengthen the obligation framework for all sponsors.

A copy of the discussion paper can be found at: www.minister.immi.gov.au/media/media-releases/2008/ce08058.htm

Hall & Wilcox's Migration Services team offers strategic advice and practical assistance by registered migration agents. It provides advice and assistance with temporary and permanent visa applications for work, training or other purposes; develop

risk strategies to ensure compliance with sponsorship obligations and immigration laws; and formulate appropriate HR policies and employment contracts for expatriate employees. For further information visit the website, www.hallandwilcox.com.au, or contact a member of the team.

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WORKPLACE RELATIONS

Get thee to a psychiatrist

By Angus Macinnis, Senior Associate, Dibbs Abbott Stillman

Can an employer require an employee to undertake a psychiatric assessment?

In short, yes, as a recent decision of the Federal Court of Australia has found. The decision provides some useful guidance to employers who are seeking to balance their obligations under occupational health and safety legislation with their obligations not to engage in unlawful disability discrimination.

The facts

The matter came before the court as an application by one Mr Thompson for orders that his employer, IGT (Australia) Pty Ltd (IGT), withdraw its direction to him that he attend a psychiatric assessment. He also sought orders that his employer be ordered not to make any further directions concerning psychiatric assessments, and that it be ordered not to discipline him for his failure to attend psychiatric assessments.

The evidence indicated that Mr Thompson had a history of back pain which predated his employment with IGT (which commenced in 2001). During the period of his employment, he had a very considerable number of absences from work, including absences for the purpose of surgery. However, from about May 2007, IGT began to have concerns about Mr Thompson's ongoing condition and about how the condition related to Mr Thompson's ongoing ability to perform his work. It appears that from about this time, IGT also became concerned about the level of Mr Thompson's absences from work, which it regarded as excessive.

IGT arranged for appointments with a general surgeon in November 2007 and with a psychiatrist in December 2007. Mr Thompson kept the appointment with the general surgeon but not the appointment with the psychiatrist. During December 2007 and through 2008, Mr Thompson was absent from work on a number of occasions on which he provided either no medical explanation, or no medical explanation other than "medical condition".

In May 2008, IGT again wrote to Mr Thompson directing him to attend a further psychiatric assessment which IGT had arranged. The letter was quite detailed and made plain that IGT was to pay for the cost of the assessment, as well as any out-of-pocket costs which Mr Thompson incurred, and that Mr Thompson would be paid as if he was at work during the period of the assessment. The letter also emphasised IGT's view that Mr Thompson was required to comply with lawful and reasonable directions, and that IGT considered that the direction to Mr Thompson was both lawful and reasonable. Finally, the letter referred to Mr Thompson's previous failure to comply with lawful and reasonable directions and indicated that disciplinary action might occur if Mr Thompson did not attend the appointment which IGT had arranged.

The response to the letter, it appears, was that Mr Thompson commenced court proceedings.

Mr Thompson's argument

Mr Thompson argued that the imposition of the requirement that he attend a psychiatric assessment was unlawful discrimination against him on the basis of his disability. He argued that the psychiatric assessment had nothing to do with his absences from work in late 2007 and 2008 which were, he said, related to his back injury. He also argued that the requirement that he attend a psychiatric assessment involved the imposition of a "detriment" within the meaning of anti-discrimination legislation.

What the court found

Justice Goldberg noted the discrepancy between the explanation for the absences given by Mr Thompson at the hearing, and Mr Thompson's failure to give any explanation to IGT at the time that the absences occurred (or to give no explanation more helpful than "medical condition").

In that circumstance, Justice Goldberg was of the view that it was not unreasonable for IGT to require a psychiatric assessment, and that the question of whether a psychiatric assessment was relevant to Mr Thompson's absences from work was a matter for doctors, and not a matter which Mr Thompson could determine, especially in light of Mr Thompson's failure to provide timely advice to IGT of the reasons for his absences. The failure to give a timely explanation meant that Justice Goldberg could not

conclude that all of Mr Thompson's absences in late 2007 and 2008 were related to Mr Thompson's back injury, and thus could not conclude that the psychiatric assessment was unrelated to the absences.

Turning to the question of whether Mr Thompson was subject to a detriment, Justice Goldberg considered the requirements of the *Occupational Health and Safety Act 2004* (Vic) (the relevant provisions of which are, in general terms, mirrored in occupational health and safety legislation throughout Australia). In the context of the employer's duty to ensure the health and safety of employees, Justice Goldberg held that requiring an employee to provide medical information relevant to that duty could not amount to a detriment (and to the contrary, that a request by an employer to provide such information will often be a necessary part of employment).

Finally, Justice Goldberg dealt with the argument that Mr Thompson has been subject to less favourable treatment "because of" his disability. Justice Goldberg held that IGT's requirement that Mr Thompson attend a psychiatric assessment had not been imposed because Mr Thompson had a disability, but rather, to enable IGT:

- (1) to find an explanation for Mr Thompson's absences, and
- (2) to comply with IGT's obligations under occupational health and safety legislation, and
- (3) to ascertain the extent to which Mr Thompson could fulfil the inherent requirements of his position.

It followed that Mr Thompson's claim for orders restraining IGT was dismissed with costs.

Lessons for employers

This decision certainly should not be read as an invitation to send all of your employees off to see a psychiatrist! However, it does emphasise some important points about dealing with injured employees.

- The process of managing an injured employee is one in which both employer and employee are required to cooperate. The employee's cooperation is needed to ensure that the employer has access to the necessary medical information, and in appropriate circumstances, this can extend to requiring the employee to attend appointments and to disclose information to the employer.
- Employers should always have up-to-date medical information before making decisions about an injured employee. A theme that flows through many of the unfair dismissal and discrimination cases in which employers have lost is that the employer made decisions based on assumptions about the employee's ability to perform work, rather than making decisions based on medical evidence.
- Although it is common for medical certificates to disclose no more detail than "medical condition" (sometimes, it is said, for privacy reasons), an employer may reasonably require the employee to provide further information to enable the employer to meet the employer's occupational health and safety obligations. If the employee does not provide reasonable information, it may be difficult for the employee to complain later that an employer's action was unreasonable.

Direct and indirect discrimination

Equal opportunity laws cover two kinds of behaviour, commonly referred to as direct and indirect discrimination.

The focus of direct discrimination is on affording a complainant less favourable or unfavourable treatment on the basis of a prohibited ground (such as sex, race, disability, etc). For example, direct discrimination occurs where an employer denies a female job applicant a position simply because she is a woman. In such circumstances, the female is treated less favourably than male applicants for the position, on the ground of her sex. Most jurisdictions also prohibit direct discrimination on the ground of a characteristic appertaining generally or generally imputed to the complainant's status; for example, pregnancy.

The focus of indirect discrimination is on the impact of requirements, conditions or practices. While a requirement, condition or practice might be applied generally, it may have the effect of disadvantaging people with a particular attribute. For example, a requirement that all employees work full time may disadvantage women and people with caring or family responsibilities. In the area of indirect discrimination, if a condition or requirement is reasonable, there is no indirect discrimination. However, in the case of direct discrimination, reasonableness is irrelevant.

Indirect discrimination was found to have been at play when a rail maintenance company removed a Macedonian-born worker from his supervisory position on the basis of concerns that his poor literacy constituted a safety risk. The NSW Administrative Decisions Tribunal upheld the worker's complaint against the employer of indirect racial discrimination under s 7(1)(c) of the *NSW Anti-Discrimination Act 1977*, but dismissed his complaints of direct racial discrimination and age discrimination.

The worker was allocated to an alternative position assisting another supervisor and given a smaller vehicle. After a few days in his new position, he became stressed and anxious and could not continue working. He has not returned to work since that time.

In July 2006, the employer revised and updated its health, safety and environmental (HSE) management plan. The employer

gave evidence that the decision to remove the worker from his job was on the basis of his inability to comply with the HSE system. The worker did not receive any training in relation to the implementation of the revised HSE system.

The worker submitted to the Tribunal that he had always been regarded as a good worker, had a good safety record and had never been counselled about a safety issue connected with his English language ability. He rejected the claim that his limited ability to read and write in English meant that he could not fulfil his job requirements.

The tribunal rejected the employer's claim that if the worker remained in his supervisory position he could have put himself and others at risk, and also rejected the employer's reliance on the defence of statutory authority under s 54 of the Act.

The tribunal found that although the employer was concerned that the worker's poor English skills posed an unacceptable safety risk, it was not necessary to remove him from his position in order to comply with safety requirements. The employer could have, instead, taken the opportunity to utilise "the cost effective and practical alternative" of training him in the new HSE system, and instructing him on how to complete the necessary HSE forms, as well as assisting him with duties such as report writing.

The tribunal stated that the employee could read straightforward work orders and had been compensating for his low literacy levels by using his own judgment or, alternatively, asking other people to read material and write reports and statements for him.

The tribunal found the employer had no training organised at the time of the demotion and it was "their perception that training was a long-term proposition, [when] there was a short-term position available and [the employee] said he was going to retire within the following 12 to 15 months".

The tribunal held that the employer's actions in demoting the worker amounted to indirect discrimination on the grounds of race. "A substantially higher proportion of Anglo-Australian employees of the employer who are otherwise eligible for appointment as a supervisor, would be able to comply with the literacy requirement than comparable employees whose national origin is Macedonian."

Tanevski v Fluor Australia Pty Ltd [2008] NSWADT 217 (7 August 2008)

CASE ROUND-UP

Was employment abandoned?

Abandonment of employment is usually defined as "the voluntary relinquishment of employment". Often, awards and agreements provide that an absence of work for a continuous period of more than three days without the employer's consent or without notifying the employer, constitutes abandonment of employment, entitling the employer to summarily dismiss the employee.

A recent decision of the full bench of the Australian Industrial Relations Commission overturned on appeal an earlier finding that an employer was entitled to assume that a woman had abandoned her employment, warranting her dismissal. She had returned letters from the employer unopened and repeatedly failed to contact her employer while on sick leave and workers' compensation leave. Instead, the full bench found that her dismissal was at the initiative of the employer.

Background

The company, Moly Mines, suspended the woman in September 2007 in response to serious allegations she had made about a coworker. Both employees were suspended, pending the results of an investigation which found that the appellant's allegations were unsubstantiated. Subsequently, the employer unsuccessfully sought to persuade both employees to leave their employment on a negotiated basis and utilised mediation to achieve this aim. However, neither agreed.

In October 2007, the employer proposed that the appellant return to work on the basis that she would not be required to work with, or near, the other employee. Despite making telephone calls and sending written communication to the appellant, there was no response from her regarding the proposal. Instead, the employer received a letter from her solicitor indicating that she had a medical certificate for a week, from 18 November 2007, and that all inquiries about her employment should be directed to him.

On 13 November 2007, the appellant provided a Workers' Compensation First Medical Certificate covering 8–22 November 2007. Later, she provided a second, covering 21 November to 12 December 2007.

The employer repeatedly sought to contact her, via their and her solicitors, warning she would be considered to have abandoned her employment if she continued to refuse to deal directly with the employer and failed to return to work. There was evidence that letters from the respondent to the appellant dated 1 and 2 November 2007 were returned unopened.

The employer wrote to the appellant eight days after the expiry of her first workers compensation certificate stating that it considered that she had abandoned her employment (unaware that the day before her doctor had issued a new certificate, and that the appellant had also lodged a workers' compensation claim).

In March 2008, the commission determined that the termination of the appellant's employment was not at the initiative of the respondent and that, accordingly, the commission did not have the jurisdiction to consider her claim that her termination was harsh, unjust or unreasonable. It dismissed the appellant's application.

Appeal decision

The full bench upheld the appellant's appeal, applying the test established by the full bench of the commission in *O'Meara v Stanley Works Pty Ltd* AIRC (PR973462) 11 August 2006. That decision made the point that the question to be answered is "did the employer take some action which was intended to bring the employment to an end or had the probable result of bringing the employment relationship to an end?"

The full bench emphasised that employment is terminated by the employer, even though the contract continues until the employee accepts the repudiation, thereby bringing the contract to an end.

The full bench examined the appellant's contract of employment, finding that clause 18.4 provided the usual provision, that failure to report for work and failure to notify the respondent for three consecutive working days constituted abandonment of employment.

"The provision is to be read in the context of the surrounding statutory and award provisions. We do not consider that cl. 18.4 of the contract can be taken to apply to every absence. It is necessary to distinguish between absences with some notice of the circumstances and absences which are unexplained. As of 23 November 2007 the provision of a formal workers compensation claim was a clear indication that the appellant was not abandoning her employment. In the general sense the appellant was absent on workers compensation and [the employer] knew that. It is difficult in those circumstances to say that the appellant was under a duty to report for work. As a matter of objective fact she was entitled to be absent pursuant to the certificate."

The full bench rejected the approach of the Commissioner at first instance, who had dealt with the matter by evaluating the reasonableness of the parties' conduct. "Whether or not the employer's conduct was reasonable was irrelevant," said the full bench.

"The question is whether [the employer] initiated the termination ... The whole of the appellant's absence was covered by a workers compensation medical certificate. She had relied on the medical staff to forward the certificate to [the employer]. Furthermore, [the employer] knew the appellant had a workers compensation claim. It may be true, as the Commissioner found, that [the employer] concluded from the appellant's failure to attend work and her silence that she had abandoned her employment. But [the employer's] conclusion was clearly incorrect ..." the full bench said.

The full bench concluded that the employment was terminated at the initiative of the employer and that the Commissioner's decision dismissing the appellant's application for relief must be quashed. Her application for relief for harsh, unjust or unreasonable dismissal was referred for conciliation.

Searle v Moly Mines Limited [2008] AIRCFB 1088

Failing to manage risks

Safety systems and practices that are poorly implemented and enforced in the workplace can pose a significant legal risk for senior management, writes Rachael Sutton, Senior Associate, Cropper Parkhill Solicitors.

In *WorkCover Authority of NSW (Inspector Townsend) v Carrier Air-Conditioning Pty Ltd* (2008) NSWIRComm 74, the Industrial Court of NSW fined Carrier Air-Conditioning \$120,000 for failure to ensure the safety of its employees in relation to the storage and handling of dangerous goods (butane, map gas and acetylene, oxygen) in the vehicles of its service technicians.

The court found Carrier's lack of attention to risk assessment in relation to the motor vehicles of its service technicians, slow approach to taking action in relation to improvement notices and general lack of cooperation with WorkCover's investigation, reflected a lack of remorse on the part of Carrier for the breach of the *Occupational Health and Safety Act 2000*.

Incident highlights risk

Mr Ginn had been service technician for almost 40 years and an employee with Carrier for almost 15 years.

Carrier provided its service technicians with vehicles to conduct their duties as service providers of commercial and residential air conditioning products. Mr Ginn drove a utility with a canopy on the back. Carrier did not provide racking in the rear of the vehicle and left it to employees such as Mr Ginn to design the racking themselves.

Mr Ginn's usual practice was to perform his work during the hours of 7.30 am to 4.30 pm and store his equipment, flammable materials, tools, pressure packs and contact cleaner in his vehicle. Once he finished work, Mr Ginn would park his utility at his home overnight. All the windows and doors of the vehicle would be closed and locked overnight.

On 17 August 2005, Mr Ginn set out for a service job and as he drove he felt a large jolt accompanied by a loud bang. He was

knocked unconscious, came to and then stumbled from the vehicle as a small fire started. The fire soon grew to a large out of control inferno engulfing the vehicle and almost completely incinerating it. There was an explosion which caused damage to surrounding houses and cars in the street. Mr Ginn lost consciousness as a result of the explosion and suffered head injuries from debris.

Poor ventilation and storage practices

An investigation concluded that the most likely cause of the explosion was acetylene with the ignition source attributed to either the fluorescent ceiling light circuit or a poor connection between a single tail light and its socket. The gases in question were stored in the rear utility tray which was covered by a fixed canopy. The canopy area of the vehicle had a rear hatch and two side-windows, and although the vehicle was not airtight, there was insufficient ventilation for storing dangerous gases.

The lessons from carrier's approach

Although Carrier had provided Material Safety Data Sheets (MSDSs) informing service technicians of the need to keep such cylinders in a well-ventilated area and never to keep them in enclosed unventilated areas, it also:

- instructed its service technicians to carry compressed gases in their vehicles
- had no policy in place regarding the storage of gases in vehicles or ventilation of the vehicles
- had no procedures or policies in place to ensure that the requirements of the MSDSs were being followed
- had no policy on quantities of compressed gases carried in service vehicles or in relation to checking compressed gas cylinders for leaks
- had no evidence of documented risk assessments.

This was a matter that had escaped Carrier's attention, as well as the attention of expert consultants retained by it from time to time. External audits and risk assessments conducted before this incident did not identify vehicle ventilation as a risk factor.

Warning to those using flammable materials

The court specifically noted, in assessing penalty, that the penalty should reflect the need to deter similar breaches; and for that reason, it was appropriate that all employers who transport flammable materials understand the risks involved and the measures that need to be taken to eradicate any risk of injury.

Delay in addressing safety issues costly

The court also viewed Carrier's delay in complying with WorkCover's improvement notices, which required the installation of floor ventilation as an unsatisfactory attitude. The penalty imposed in this matter was fairly hefty for a defendant with no prior convictions and may not have been so had Carrier cooperated more quickly with WorkCover.

Implications for employers and managers

Providing employees with MSDSs and the failure of external risk assessments gave Carrier, in some respects, a false impression that it was properly managing OHS risk. The failure of external audits to pick up vehicle ventilation as a risk factor seems to have led to it being overlooked as an issue. Despite this failure, it would appear that no one within Carrier was checking compliance with the recommendations contained in the MSDSs for proper ventilation when it came to the vehicles of the service technicians.

If safety systems are poorly implemented and there is a lack of commitment to safety in the workplace, this will reduce the measures employers have in place to control OHS risks. They also create significant legal risk for employers, senior managers and/or directors. This is because in the event of a workplace accident, a failure by an employer to implement and adhere to procedures that could have prevented an accident may be used in a prosecution as evidence of a director's, senior manager's or OHS manager's failure to exercise all due diligence.

Short-changing apprentices proves costly

The Magistrates Court of Victoria imposed pecuniary penalties of \$30,000 upon an employer after he failed to pay two apprentices their award entitlements in a number of different respects.

Mr Adam Coombes-Pearce was a sole trader who employed two apprentices. One of the apprentices was 16 and the other 18. Following the institution of proceedings by a workplace inspector in the Magistrates Court, Mr Coombes-Pearce was found to have breached the National Building and Construction Industry Award (the Award) and the *Workplace Relations Act 1996* (Cth) (the Act) in relation to the two apprentices. The present decision dealt with the question of penalty to be imposed upon Mr Coombes-Pearce for those breaches.

The contraventions of the Award in relation to the two apprentices were as follows: failure to pay the minimum rates of pay specified by the Award; failure to pay industry allowance; failure to pay tool allowance; failure to pay travel allowance; failure to pay overtime; failure to pay personal leave for a period of illness; failure to pay annual leave and annual leave loading upon termination of employment; and failure to make superannuation contributions on behalf of either apprentice.

Because of these underpayments, one of the apprentices received only \$2,650.48 when he should have received \$7,976.96. The other apprentice received only \$2,747.62 when he should have got \$7,614.67. Attempts were made by the workplace inspector to contact Mr Coombes-Pearce prior to the institution of the proceedings and during their course. He nevertheless refused to be interviewed or to negotiate with the workplace inspector. The apprentices had consequently remained underpaid.

The magistrate noted that Mr Coombes-Pearce's lack of cooperation showed a complete lack of contrition on his part. That was entirely consistent with the deliberate way that he had flouted his industrial obligations in relation to two young employees, one of whom was legally still a child. These circumstances called for a serious penalty to be imposed. The only factor that mitigated penalty was that Mr Coombes-Pearce (who did not appear at the proceedings) had not previously been found to have breached his industrial obligations.

The magistrate then noted that, when steps were taken to ensure that there was no double-counting, eight separate breaches had occurred. The total maximum penalty that could be imposed for that many breaches was \$52,800. Her Worship stated that, in the circumstances of the cases, the needs for specific and general deterrence would be achieved by a penalty of \$30,000. The magistrate consequently concluded by ordering that Mr Coombes-Pearce pay \$30,000 to the Commonwealth.

Lewis v Coombes-Pearce 26 June 2008

"Sickie" surfer fairly dismissed

The Australian Industrial Relations Commission held that an employee who took part in a surfing competition while on sick leave was validly dismissed for doing so. However, the commission further held that summary dismissal was not justified.

Mr Shane Bevan commenced employment as a baggage handler with Oceania Aviation Services Pty Ltd in October 2005. While performing his duties in September 2007, Mr Bevan injured his back. The day after the injury, Mr Bevan consulted an osteopath. After examining him, the osteopath gave Mr Bevan a medical certificate which certified that he would be unable to work for six days.

Oceania accepted that certificate. Four days after the injury, Mr Bevan again consulted the osteopath. She advised him that she was happy with his progress. On that basis, Mr Bevan decided to participate in a professional surfing competition the following day, a Saturday. Mr Bevan had never been rostered to work on that day but he was rostered to work on the Sunday. However, Oceania allowed Mr Bevan to swap his Sunday shift with another employee on the basis that he needed to have six days off.

The following Monday, Oceania learned that Mr Bevan had participated in the surfing competition on the Saturday. After a brief investigation of the matter, Oceania summarily dismissed Mr Bevan from his employment. He then commenced proceedings in the commission on the basis that his dismissal had been harsh, unjust or unreasonable. By way of relief, he sought reinstatement and compensation for the way he had been dealt with. Oceania nevertheless insisted that it had had a valid reason to dismiss him.

On behalf of Mr Bevan, it was argued that surfing exercised completely different muscles than lifting of heavy bags. His participation in the surfing competition was accordingly completely consistent with the medical certification. Mr Bevan contended that he also had had a number of personal reasons for wanting to participate in the surfing competition. These factors, and the osteopath's assessment that he was improving, combined to justify his participation. Mr Bevan also pointed out that he was never rostered to work on the Saturday and that he had taken painkillers in order to compete.

Oceania argued that sick leave had been granted to Mr Bevan on the basis that he would be resting at home over the six days that he had off. In fact, Oceania had offered Mr Bevan lighter duties but he had refused them on the basis that he needed complete rest for that period. Oceania also contended that, when Mr Bevan returned to work, he was not candid about what he had done on the Saturday. More specifically, Mr Bevan had not initially admitted that he had participated in the surfing competition. Only when he was specifically asked to make that admission did he do so.

Commissioner Spencer held that Mr Bevan's conduct by engaging in the surfing competition while on sick leave misled Oceania in relation to his actual physical capabilities. In addition, Mr Bevan had failed to advise Oceania that his physical capabilities had improved by virtue of him being able to surf and that he was able to attend work. According to the commissioner, these circumstances meant that Oceania had a valid reason to dismiss Mr Bevan.

But the commissioner further held that Oceania had not been entitled to dismiss Mr Bevan summarily, particularly because of deficiencies in the investigation process. More specifically, Oceania had not given Mr Bevan an opportunity to properly respond to the allegations made against him. On that basis, Commissioner Spencer held that Mr Bevan was entitled to be paid for a notice period but that the dismissal was otherwise valid. The application was dismissed on that basis.

Bevan v Oceania Aviation Services Pty Ltd [2008] AIRC 413 (17 July 2008)

EQUAL OPPORTUNITIES

Flexibility implementation well below average

By **Juliet Bourke, Partner, AEQUUS Partners**

Results of the third Australasian Diversity and Equality Survey were launched in July at the Macquarie Graduate School of Management's Women, Management and Employment Relations Conference. The survey tracks the implementation of diversity and flexibility through the eyes of diversity practitioners in Australia and New Zealand. Significantly, 81% of survey participants rated implementation of flexibility as average or below average. Much more than just identifying the problem, the *2008 Status report on diversity and flexibility* provides proven and practical change strategies to redress the flexibility policy/practice gap.

Perspectives

Often research about diversity (and flexibility) analyses implementation issues by canvassing the views of employees and/or the responses of employers, and very little attention is given to the perspectives of diversity practitioners — ie those human resource practitioners who have practical experience in linking strategy, policy and practice. In 2003, 2005 and now 2008, the Equal Employment Opportunity Network of Australia (EEONA) has filled that gap by conducting the Australasian Diversity and Equality Survey (ADES), which monitors implementation from the viewpoint of diversity practitioners. Key questions concern:

- why are organisations interested in diversity?
- how do organisations implement a diversity agenda?
- what are the challenges to diversity implementation?, and
- how are issues/responses changing over time?

In addition to these general questions, each ADES includes a special section on a topical diversity related issue. In 2008 the ADES reported on workplace flexibility as well as diversity. This note highlights key findings and recommendations in relation to flexibility. In essence, the report concludes that building managerial capability to implement flexibility and enabling managers to access flexibility are the two key strategies to bridging the flexibility policy/practice gap.

Method

In March 2008, the EEONA (a not-for-profit umbrella body of EEO networks across Australia and New Zealand) asked presidents of the networked organisations in Queensland, New South Wales, Victoria and New Zealand to invite members to participate in the online ADES. The survey included diversity questions related to:

- the drivers of diversity and expected outcomes
- the nature of diversity initiatives
- data collection and metrics, and
- challenges and effective change strategies.

Flexibility questions also focused on these issues plus on the conditions for the effective implementation of flexibility.

The survey was completed by 48 members in March 2008, representing a diverse range of small, medium and large organisations from private, government and community sectors. In total, the survey respondents represented nearly one quarter of a million (238,580) employees. In June 2008, 12 EEONA members (from the New South Wales, New Zealand and Victorian networks) participated in a follow-up focus group. Data were analysed by Dr Graeme Russell and Juliet Bourke (Chair EEONA) and launched in July 2008.

Findings

As noted above, the *2008 Status report on diversity and flexibility* makes findings in relation to the current state of play on diversity and flexibility. This note only provides findings in relation to the flexibility section of the report regarding:

- the nature of flexibility initiatives
- expected flexibility outcomes
- drivers of the flexibility agenda
- effective flexibility implementation

- opinions about flexibility, and
- key differentiators of effective flexibility.

Where available, the results on the flexibility questions are compared with those for the diversity questions.

In summary, the ADES found that managers hold the key to bridging the gap between flexibility policy and practice. In particular to enable the effective implementation of flexibility, organisations need to help build managerial capability and enable managers (as well as employees) to access flexibility. The report provides specific findings on the nature of that assistance.

The nature of flexibility initiatives

The most common types of flexibility offered were part-time work (100%), flexible start and finish times (89%), time-in-lieu (88%), job-share arrangements (81%), teleworking (75%), career breaks (72%) and flexi-time (72%). There was less offering of purchased leave (59%) and part-year work (29%). Overall, these data suggest that, on paper at least, organisations are offering a broad range of flexible work practices.

Expected flexibility outcomes

Why are organisations offering flexibility? The highest ranking outcomes for flexibility were recruitment (92%), retention (92%), employee engagement (87%), maximising the performance of staff (87%) and to be an employer of choice (79%). The report observed that survey respondents identified the link between employment outcomes and flexibility.

After comparing the results on the diversity scores against expected outcomes with the flexibility scores, the report suggested that flexibility is more likely than diversity to be seen as also driving bottom-line benefits associated with a competitive advantage (71% for flexibility compared with 50% for diversity) and customer service (61% for flexibility compared with 55% for diversity).

The report found that while there is still room for improvement in linking flexibility to the broad range of bottom-line benefits (eg creativity and innovation (47%), and marketing and sales results (43%)), recognition of the employment and business-related benefits of flexibility augurs well for the leveraging of organisational commitment to bridge the gap between flexibility policy and practice.

Drivers of the flexibility agenda

Survey respondents were asked to identify the main drivers for the organisation's commitment to flexibility. The highest rankings for flexibility were:

- (1) alignment with values (88% for flexibility and 95% for diversity)
- (2) employee feedback (88% for flexibility and 65% for diversity)
- (3) personal leadership commitment (83% for flexibility and 94% for diversity), and
- (4) the business case (79% for flexibility and 84% for diversity).

The most interesting of the difference between the scores for diversity and flexibility was the extent to which flexibility, in contrast to diversity, is being driven by "employee pressure" (88% compared with 65% respectively), which, the focus group participants suggested, shows that flexibility is perceived by organisations to have greater relevance across all employee groups. This accords with a life cycle approach to flexibility which recognises that flexibility is of value at different life stages, eg to study, to assist with child care, to take career breaks and to enable phased retirement.

Finally, the report observed that "legal compliance" is not as closely linked to flexibility (60%) as diversity (76%), and suggested that this may indicate that organisations are unaware of, or have not yet geared up for, the impact of the (Australian) National Employment Standards or the (New Zealand) Flexible Working Arrangements Amendments.

Effective flexibility implementation

Survey participants were asked to rate on a five-point scale (1 = not effectively at all to 5 = highly effectively) how effectively flexibility had been implemented in their organisation. Notably that the majority of respondents (81%) rated implementation as average or below average and these findings (especially that only 4% rated flexibility as having been implemented highly effectively), indicated that there is considerable room for improvement in approaches to flexibility.

Opinions about flexibility

Survey respondents were asked a range of questions about flexibility in their own organisations. These questions were designed to identify the ways in which flexibility is working well, and the implementation gaps. The ADES found that survey respondents were less likely to agree that:

- flexibility has been implemented consistently across the organisation (28%)

- managers have sufficient confidence to manage difficult implementation issues (35%)
- the development of capabilities to work flexibly has been integrated into employee training (35%), and
- managers are effective role models for flexible work practices (39%).

A high number of participants (71%) also perceived that the nature of work was a key barrier to the implementation of flexibility. This final result begs further investigation to determine the ambit of this barrier, and whether it is linked to the design of roles at senior levels which have traditionally required a more than full-time commitment.

More positively, 71% of respondents indicated that flexibility is promoted and encouraged, 65% that managers are committed to implementation, 61% that managers are strongly supportive of flexibility and only 29% of respondents said that an employee's commitment to the organisation would be questioned if they used flexibility options.

Key differentiators of effective flexibility

In order to gain a deeper level of insight into the factors which differentiate an organisation in terms of the implementation of flexibility, the sample was divided in terms of people who rated the effective implementation of flexibility as being either low, medium or high, and analyses were then conducted to determine the key differentiators of these three groups.

This analysis provides the greatest points of insight into the necessary focus of organisational strategy to bridge the flexibility policy/practice gap. For example, the finding that "67% of those in the highly effective group agreed that managers in their organisation were committed to the effective implementation of flexibility, in contrast with the 5% who agreed with this statement in low functioning organisations" indicates that managerial commitment is a key component of effective implementation.

In terms of priority ranking, the key differentiators are:

- managerial commitment to flexibility (67% agreement in high-functioning organisations compared with 5% in low)
- managers are effective role models for flexibility (67% agreement in high functioning organisations compared with 5% in low)
- there is strong support for managers using flexible work options (58% agreement in high-functioning organisations compared with 5% in low)
- managers have sufficient knowledge about how to manage flexible work options (58% agreement in high-functioning organisations compared with 5% in low)
- managers strongly support flexible work practices (50% agreement in high-functioning organisations compared with 0% in low)
- managers have sufficient confidence to manage difficult implementation issues (33% agreement in high-functioning organisations compared with 5% in low).

Conclusion

The *2008 Status report on diversity and flexibility* consolidates the experiences of diversity practitioners tasked with implementing a diversity strategy, and thus provides a valuable resource for HR practitioners, as well as policy makers, in terms of identifying practical steps which will improve diversity and flexibility outcomes. In particular, the report highlights the importance of developing specific accountabilities and rewards for managers implementing positive diversity/flexibility behaviours.

In terms of workplace flexibility, apart from confirming the gap between flexibility policy and practice, the report drew two key conclusions. Firstly, "the gap between flexibility policy and practice is less about "in-principle" support for flexibility and more about perceived gaps in managerial capabilities, managerial confidence and role modelling in relation to flexibility, and consistency of implementation". Secondly, "the key differentiators between organisations implementing flexibility effectively and those which are not, concern managers — both in terms of managers themselves accessing and role modelling flexibility, and in terms of managers' practical support for employees using flexibility".

For more information, see *2008 Status report on diversity and flexibility* at www.eeona.org.

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