

Practice Profile



Working hard for the money

It has been a relatively quiet year in employment law, with legal work that flowed from the major regulatory reforms of previous years all but dried up. So, where is the money coming from?

● Story by [Leanne Mezrani](#)

WHEN THE government's anti-bullying laws came into effect on 1 January 2014, employment practices nationwide prepared themselves for an anticipated flood of complaints.

That flood turned out to be a trickle.

Instead of the 67 formal complaints weekly that the Fair Work Commission originally expected, there has been an average of 14 per week.

In total, 532 bullying complaints were heard by the commission between 1 January and 30 September 2014.

"There was a lot of fanfare [and expectations of] a substantive flow of work, and that really hasn't materialised," says Mark Sant, national head of the employment group at Gadens.

However, Mr Sant predicts complaints will increase in 2015.

He claims current figures do not reflect the incidences of bullying, which he believes are high. Rather, he says a limited understanding of the scope of the legislation, and a reluctance on the part of many employees to go public with a bullying complaint, are keeping complaints down.

WHERE IS THE WORK?

While the anti-bullying legislation has not delivered the flow of work expected, employment lawyers have not been idle.

For Gadens, economic pressures and the subsequent business restructures have kept the law firm busy advising clients through change projects.

"Companies have to reinvent how they undertake their business and... a lot of legal employment work falls out of that because all of that work touches upon people," Mr Sant says, adding that these corporate restructures could also be contributing to the upturn in litigation, specifically claims against employers relating to terminations or discrimination.

Litigation in the safety space is also ramping up for the first time since national, harmonised OHS laws commenced on 1 January 2012, according to Mr Sant.

He says that once lawyers had finished bringing their clients up to speed with the new laws, safety-related litigation declined as jurisdictional issues were tested in the courts.

Three years on, Mr Sant says the flow of litigation work is back at pre-2012 levels.

Two other areas Mr Sant nominates as contributing to double-digit growth within Gadens' employment practice are construction and hospitality.

"International hotel companies are coming into Australia and there is increased competition between those hotel companies for development sites," he explains.

NICE AND NARROW

At the smaller end of town, one boutique employment practice is generating a tidy profit by focusing on workplace investigations and managing workplace conduct.

Sarah Nicita, who launched Aurora earlier this year, claims her firm's deliberately narrow focus has guaranteed a steady flow of work.

"I'm not looking to be all things to all people," she says.

Ms Nicita was a senior associate at Henry Davis York (HDY) prior to starting her own firm and she continues to work with many of the same private and public sector clients.

However, at Aurora she can offer a very specific legal service at a fraction of the price that might be charged by a larger firm.

Clients are also attracted to Aurora's fixed-fee model, says Ms Nicita.

"Fixed fees take away the fear they have about conversations where you're just getting to know them," she explains.

"Clients not having to watch the clock and drip feed me information for fear they're going to get charged."

She adds that, in employment law, having conversations with a client about their business and operating environment is just as important as receiving direct instructions.

"Those conversations improve overall how you understand the work you're doing in terms of what's happening in the client's business," she says.

THE WAR FOR EMPLOYMENT

Aurora's value proposition will become even more relevant as competition intensifies in the employment space.

In fact, Mr Sant says the "proliferation of competition" is the greatest threat to employment law practices.

"There's competition in every direction you look," he says.

Mr Sant argues that new boutiques, particularly those established by former-large law partners, have intensified competition for employment work – so have industry associations like the Australian Industry Group, which offers employment law advice to member organisations.

Several firms that recently completed global mergers are also "shredding" the size of their employment teams to focus on high-value transactional work for institutional clients or major industrial relations litigation, says Mr Sant.

This has created opportunities for firms of all sizes to pick up smaller pieces of employment work and well-regarded employment lawyers. A flurry of lateral moves in the wake of the mergers has "really reshuffled the cards and where the competition is actually coming from", he says. ●



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