New work flexibility cuts both ways

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Concern about the negative effects of contemporary work practices continues to mount across the world. And Australian librarians are echoing it.

The European Agency for Health and Safety at Work [EAHSW] has released two major reports on new forms of work and changes to employment contracts. Both identify serious threats to employee well-being. The Agency argues that decentralisation, teleworking, and short-term job contracts are increasing occupational health and safety [OHS] risks in almost all industry sectors. It targets five particular developments as central to its concerns. The growth in small to medium enterprises and sub-contracting has put huge extra demands on labour inspectorates, with confusion about who bears the OHS duty of care. The rise of 'the virtual firm', based on decentralisation, teleworking and virtual networks, is diluting OHS policies and controls. Tighter schedules and more intense workloads have increased stress-related illness and accidents. Massive growth in use of information and communications technology has increased the risk of musculoskeletal and related problems, and re-emphasised the critical need for effective ergonomic design in workplaces. More older workers mean careful attention to their particular problems is essential if health risks are to be minimised.

Similar trends are evident in Australia and in its library and information sector. A major outcome was the recent Reasonable Hours test case decision by a Full Bench of the Industrial Relations Commission [AIRC]. It came directly from the feeling that longer hours are damaging employee ability to juggle work and family duties. It is the broadest review of working hours since 1947's famous eight-hour day ruling, and creates new standards on what is reasonable overtime. It gives employees new rights to decline longer hours in certain defined circumstances.

In implementing its decision, the AIRC ratified a standard award clause for insertion in all federal awards. It permits employers to require their staff to work reasonable overtime at overtime rates. But it also allows employees to refuse overtime as unreasonable, having regard to any risk to health and safety, the employee's personal circumstances and family responsibilities and whether adequate notice of overtime has been given. The list of situations where overtime can be refused is not exhaustive and the clause purports to strike a balance between the needs of both employers and employees. The Commission seems likely to conduct a further review in a year or two to assess the effectiveness of the new provisions.

A further area of focus in Australia is that of 'flexible work practices', with employer and employee views often widely divergent. This subject was recently discussed in the *Australian Library Journal* [http://www.alia.org.au/alj/50.4/full.text/flexible.work.html]. A most important legal case has now extended the growing body of case law on flexible work practices. In *Schou v The State of Victoria*, the claimant who is a Hansard sub-editor, alleged discrimination by her employer on the grounds of her caring responsibilities after her plan to do part of her work at home via a modem was refused. The Victorian Civil and Administrative Tribunal agreed with her and determined that the employer had imposed a condition on her [namely that she must work full-time on-site] that she could not comply with because of her caring responsibilities. That condition was held to be unreasonable.

After appeals and a re-hearing, that judgement has now been upheld. In its final decision the Tribunal considered in very close detail the arguments for and against the complainant's ability to complete her work satisfactorily from home. The employer put a strong case against the proposal on the grounds that it would place undue burdens on other sub-editors, may compromise security of information, would be vulnerable to equipment failures, may reduce access to external resources and prevent essential liaison with other staff. The Tribunal ultimately dismissed all these arguments as 'remote or mildly inconvenient difficulties [that] could be accommodated ... with goodwill amongst sub-editors and others'.

This case makes it very clear that employers cannot legally use an argument for flexibility purely for their own convenience, for example by removing penalty rates, extending the working week and by broadening the job descriptions of employees. All these steps are available to them, but flexibility cuts two ways. Employees are entitled to gain the benefits of flexibility too. It is not acceptable for employers to reject employee access to the benefits of flexibility by simply arguing that it is inconvenient. Courts and tribunals will analyse proposals on the basis of feasibility, rather than just as matters covered by managerial prerogative. Many ALIA members will warmly welcome this long-overdue development. ■

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