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News > Business > Business Comment

How do businesses deal with their rainmaker who pushes the boundaries?



Organisations will often, instinctively, do everything in their power to hang on to their superstars

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Imagine this nightmare scenario - your top dog, who is bringing in more revenue than most of your other employees together, just keeps on misbehaving. It was easy to turn a blind eye to the slow starts, the long lunches and the loose language. It was harder to overlook the dodgy expense claims, the sporadic sickies and the extended holiday. But now your star performer has verbally abused a subordinate. The subordinate has not put in a complaint (probably because they are too scared) but



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everyone knows about it. You are reluctant to take any action, knowing that the company depends on the income stream. But can you brush it under the carpet? What if it has gone public? It is a dilemma that many employers will dread.

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The answer I should give with my employment lawyer hat on is that the matter should be properly investigated. If there is a case to answer, a disciplinary hearing should be convened and, if proven, the employee, irrespective of their status, standing and popularity, should be disciplined. Depending on the circumstances dismissal could be an appropriate sanction.

We all know, however, that in the world of business, commercial considerations play a huge part. While there should not be one rule for one person and another rule for someone else, the reality is that organisations will often, instinctively, do everything in their power to hang on to their superstars. It could, for example, in the above scenario be appropriate to issue a final warning. What though if the verbal abuse was particularly unpleasant or there was a physical attack too or the individual was already on a final warning or all three things? The bar is then raised, and it gets even more difficult for an employer not to reach out for the P45.

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What in fact it often comes down to is a commercial balancing act – though most employers will not admit it easily. The employer needs to weigh up the financial and reputational cost of sticking by its prize asset versus the financial and reputational cost of losing it. It is likely that there will be a cost whichever way the employer goes and no easy way out. If you do make this assessment, weigh everything up including your responsibilities to others in the organisation, the risk of damage to your reputation and brand, which could be significant, and any claims that employees (including the star) could make against the business. Also, consider whether any other key members of the team may leave if the big shot goes.

For employers, here are a few general tips: Any investigations should be speedy and thorough. In cases which could involve serious misconduct, suspending the employee pending the investigation may be appropriate. The suspension should be with pay unless the contract of employment provides for suspension without pay, which would be rare. It is important that the suspension is as short as possible to limit adverse publicity, particularly if the employee has a high profile.

If some sort of deal is reached with the employee, by which the employee leaves the business, make sure that in any agreement

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there are suitable confidentiality clauses and non-derogatory statement clauses. Sometimes restrictive covenant clauses are appropriate to protect the business. The employee may have restrictions in their contract, precluding them, for instance, for a certain period of time from joining a competitor, soliciting or dealing with clients or poaching staff. However they may not have them, in which case it would be wise to consider including appropriate restrictions in the agreement. You do not want the disgruntled employee to ride off into the sunset and then tap into your client base or breach confidentiality.

Matt Gingell is a partner at Gannons Solicitors, which specialises in commercial and employment law.



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