



## Quiz

### Adverse Action

1. What is prohibited by s 340 of the *Fair Work Act 2009* (Cth)?
  - a. An employer must not take an adverse action against an employee
  - b. An employee must not take an adverse action against an employer
  - c. A person must not take adverse action against another person
  - d. A person must not take adverse action against another person: (a) because the other person has a workplace right, has or has not exercised a workplace right, proposes or proposes not to exercise the workplace right; or (b) to prevent the exercise of a workplace right by the other person
2. What is a "workplace right" under the *Fair Work Act 2009*?
  - a. Where a person is entitled to the benefit of a workplace law or instrument
  - b. Where a person is able to initiate a proceedings under a workplace law or instrument
  - c. Where an employee is able to make a complaint in relation to his or her employment
  - d. All of the above

3. Which of the following would NOT constitute an adverse action pursuant to s 342 of the *Fair Work Act 2009* (Cth)?
- a. Where an employer dismisses an employee
  - b. Where an employer significantly reduces a casual employee's hours
  - c. Where an employer provides an employee with a significant pay increase
  - d. All of the above
4. Can an employer suspend an employee who sends an email to fellow employees encouraging them to not agree to create fraudulent documentation to help the employer pass an accreditation audit?
- a. An employee can never be suspended for alleging fraud
  - b. If the employee is a Union sub-branch President they cannot be suspended
  - c. If the employee is suspended because of the allegations of fraud rather than their industrial action or membership of a union then there is a no prohibition of s 340 per *Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32
  - d. If the employer suspended the employee because of their membership of a union this is not a "workplace right" per s 341
5. Can an employer dismiss an employee under a mistaken belief that the employee was dishonestly taking sick leave whilst not sick?
- a. The employee would likely be successful in an adverse action claim – see *Construction, Forestry, Mining and Energy Union v Anglo Coal (Dawson Services) Pty Ltd* [2015] FCAFC 157
  - b. The employee would likely be successful in an unfair dismissal claim per Rangiah J at [136] of *Anglo Coal*
  - c. If the employer subjectively believed that the employee was dishonestly taking sick leave then the employee has no recourse for a resultant adverse action
  - d. Both a. and b.

Answers:

1. d 2. d 3. c 4. c 5. b