

Easy HR Pty Ltd Newsletter

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<http://www.easyhr.com.au>

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Easy HR Update

Easy Incident Manager

The elves have been hard at work fine tuning Easy Incident Manager. If you haven't yet, we encourage you to download a trial or an update from our website.

<http://www.incidentmanager.com.au>

If you plan to continue using Easy Incident Manager, then we encourage you to register it before July 2003. **Our special introductory offer of \$490.00 for the stand alone version and \$600.00 for the network version will expire at midnight on the 1/7/03. To be eligible for this offer, you must fax us your registration details before midnight on the 1/7/03. Please contact us before this time if you would like more time to evaluate the software, or if you need to extend your trial period.** After this date the software will be \$660.00 for the stand alone version and \$770.00 for the network version. If you would like a registration form, send a blank email to register@easyhr.com.au, and our automatic secretary will send one out for you. We are in the process of improving the network setup and application update installations. We hope to have these updated setup packages available within the next 72 hours.

Easy HR Training Update

Workcover Accredited OHS Consultation

This is compulsory training for OHS committee members and OHS representatives.

We still have vacancies on our 4 day public courses.

July 15,16,22,23

Aug 20,22,27,29

Sept 16, 17, 23 24

Our Parramatta venue has plenty of free onsite parking.

The cost of this course is a very competitive \$495.00.

We are considering running an OHS Consultation course in **Dubbo** towards the end of the year. If you are interested in this opportunity, please let us know as soon as possible.

Workcover Accredited Risk Management For Line Managers & Supervisors

We still have vacancies on our 2 day public courses.

July 29, 30 / Aug 12, 13 / Sep 9, 10 at Parramatta

The cost of this course is a competitive \$407.00.

Apply for a course

To get a course application form, [visit our website](#) or send a blank email to apply@easyhr.com.au.

Our automatic secretary will send you an application form.

All our courses can be conducted in-house. Please [contact us](#) for details.

Payroll Consulting - End Of Financial Year

With the end of the financial year fast approaching, employers should be giving consideration to their year end process. If you need help or support over this period, please don't hesitate to [contact us](#).

We are very familiar with major payroll applications, and can guide you through the payroll or year end process. We can also take over the year end process for you, giving you peace of mind that this annual task will be conducted smoothly and efficiently.

If you have any adhoc reporting needs please give us a call. We can write custom adhoc reports for you, and develop custom payroll applications.

Free Payroll Tools

We have a number of free payroll tools available for download on our [website](#). One of the most popular is our FREE [Date Calculator](#). It can quickly and effectively calculate the number of working days between 2 dates. It even takes public holidays into account. No pay office should be without it.

Contempt For Australian Industrial Relations Commission Costs Employer

The employer used various ploys to draw out the resolution of an employee's unfair dismissal. One such tactic was refusing to attend hearings.

As a deterrent from treating the Australian Industrial Relations Commission (AIRC) with contempt, the Commission increased the compensation payable to the employee for what was found to be an unfair dismissal.

The commission found the termination to be both harsh and unreasonable, and worked out the appropriate compensation, which would have been reduced to nil as a result of the employee's success in securing another job.

Commissioner Lawson also found that the respondent's failure to participate in the arbitration in any way "constituted in my view a contempt of Commission proceedings rarely experienced in proceedings of this nature."

As a result it was then determined that the applicant was entitled to a quantifiable remedy from the application of the "fair go all round" principle.

The Commission ordered the employer to pay the applicant \$3 200 in lieu of reinstatement within 14 days of the decision as a deterrent from treating the Commission with contempt.

Petra Marquis v Fire Protection Professionals NT Pty Ltd AIRC, (Lawson C) (PR931172) 8 May 2003.

Did You Know ?

Crocodiles Can't move their tongues.

An exocannibal is a cannibal that eats only enemies. An endocannibal eats only friends.

Before you ask, we don't know the correct term for a cannibal that eats enemies and friends. We suggest it may be something along the lines of Hungrycannibal.

Sexual Harassment

An apprentice hairdresser has been compensated for emotional distress and lost income.

The apprentice had previously asked the employer to stop the sexual remarks, but he did not. The employer had on one occasion shown the apprentice a lewd picture of a woman and a horse in a sex act.

The apprentice was distressed by the incidents and sought damages for loss of income for a period of two months following her termination, and damages for the hurt caused by her employer's conduct.

The employer did not attend the conciliation or the hearing.

The Tribunal accepted that the employee had suffered considerable trauma and awarded her \$4,000 damages for emotional distress and two months' compensation for the period she was unemployed following the termination of her employment.

Payroll Update For 2003/2004

Tax-free part of bona fide redundancy payments and approved early retirement scheme payments limits (LUMP SUM D) becomes \$5,882 plus \$2,941 for each completed year of service.

Superannuation Guarantee Contribution rates remain at 9%.

The maximum contribution base for each superannuation guarantee contribution period in 2003/04 is \$30 560 per quarter (\$122 240 pa). The indexation factor of 1.046 was applied to the 2002/03 figure to calculate the 2003/04 figure.

Income Tax Update

As announced in the Federal Budget on 13/05/2003, there will be a change in the tax paid by many employees.

The new PAYG thresholds are as follows:

Current Tax Thresholds	New Tax Thresholds From 1 July 2003	Tax Rate %
\$0- \$6000	\$0 - \$6 000	0
\$6 001 - \$20 000	\$6 001 - \$21 600	17
\$20 001- \$50 000	\$21 601 - \$52 000	30
\$50 001- \$60 000	\$52 001 - \$62 500	42
\$60 001+	\$62 501+	47

The standard 1.5% Medicare levy is on top of these rates.

You can download your updated tax tables from the ATO website.

Weekly Tax Table

http://www.ato.gov.au/content/Professionals/downloads/n1005_5_2003.pdf

Fortnightly Tax Table

http://www.ato.gov.au/content/Professionals/downloads/n1006_5_2003.pdf

Monthly Tax Table

<http://www.ato.gov.au/content/Professionals/downloads/n1007-6-03.pdf>

PAYG Formulas (For Software Developers) http://www.ato.gov.au/content/Professionals/downloads/n1004_6_2003.pdf

Tax tables can be ordered directly from the ATO - 1300 720 092

NSW Workers Comp Update

NSW has made quite a number of changes to the definition of wages for the calculation of premiums. They have now release a new Wages Definition Manual which is available on the NSW WorkCover Website: http://www.workcover.nsw.gov.au/publications/pdf/w_defini.pdf

Major changes which apply to policies renewed after 4.00pm on 30 June 2003 mean you now need to include the Grossed up value of Fringe Benefits, Long Service Leave and Superannuation Contributions (among other things) in your wages calculation.

Casual Brings Unfair Dismissal Action

The Australian Industrial Relations Commission (AIRC) has confirmed that long-term casuals can bring unfair dismissal actions.

A long term casual was employed as a casual relief teacher in a Victorian high school. The teacher worked on an "as needed" basis when regular teachers were absent.

The AIRC found that the teacher's working arrangements clearly characterised her status as a casual employee. Key factors of this decision included the facts that:

- | Her engagement was on a casual basis at the time of termination;
- | She was at no time entitled to sick leave, annual leave or any other form of leave;
- | The casual engagement and employment relationship remained the same on all the occasions when she taught at the school; and
- | Her employment was terminated without notice.

The AIRC found that although the employment contract was casual, the terms of the engagement occurred over a period of more than 12 months, and as a result her application was within the jurisdiction of the AIRC .

Elaine Atkins and Box Hill High School, School Council, AIRC (Lewin C) (PR930307) 28/3/03.

J From The Courtroom

Q: *What is your date of birth?*

A: *July fifteenth*

Q: *What year?*

A: *Every year*

Thought For The Day

"You should only look down on people if you are giving them a hand up"

Even Though Employee Was Careless - Employer Fined

An employee climbed on to a workshop roof to repair a clogged sprinkler system. While on the roof he stepped on a clear fibreglass sheet that let light into the workshop. The sheet broke, and the worker fell to the floor. The worker fractured his pelvis in two places, dislocated his right shoulder, broke his right thumb and cut his left elbow.

The workshop that had been converted from a poultry shed, and had a system of garden soaker hoses on its corrugated roof to keep the temperature cooler inside. The cooling system had been installed in 1997. It was an accepted practice to climb onto the roof to unblock the sprinkler.

The company that owned the workshop was prosecuted for breach of sec 15(1) of the *Occupational Health and Safety Act 1983* (NSW). The company was a wholly owned subsidiary of Red Lea Chickens Pty Ltd, which was also prosecuted at the same time, though for breach of sec 16(1) of the Act. Both companies pleaded guilty.

The Industrial Relations Commission of NSW in Court Session said it could not accept that neither company had been aware that workers had been climbing on the roof over the a period of 3 years to unclog the hose. The Industrial Relations Commission said that both companies had failed to prevent the obviously unsafe practice.

The Industrial Relations Commission said that even if both companies were unaware that workers climbed on the roof, both companies must have been aware that the sprinkler system had been installed, and therefore it was reasonably foreseeable that the system might become clogged and require maintenance. It should also have been foreseeable that as a result workers would climb on the roof to repair the sprinkler, and that they may injure themselves in the process.

Although it could be acknowledged that the worker had been foolish in climbing onto the roof without proper safety equipment, the court reminded both companies that employers had an obligation under the Act to ensure the safety of all employees, even careless ones. The worker suffered serious injury, but he could easily have been killed. A safe work program or safe work procedure could have minimised the risk to worker.

The court considered the offences serious, and convicted and fined each company \$39,000

(WorkCover Authority of New South Wales (Inspector Hopkins) v Red Lea Chickens Pty Ltd & Anor [2003] NSWIRComm 71, 21 March 2003).

Guarding Modified - Employer Fined

Two companies that operated together, were fined for OHS breaches after a worker's fingers were severed by a power press. An investigation revealed that the machine's guards had been modified so that the press could be operated when the guard was lifted up to 170 mm.

Merbow Pty Ltd and Bob Cole & Co Pty Ltd, trading jointly as Mermaid Metals, were each fined \$3500, without conviction, in the Dandenong Magistrate's Court.

Employees vs Contractors

The Full Bench of the Australian Industrial Relations Commission (AIRC) recently outlined the principles to be applied in determining whether a worker is an employee or an independent contractor.

The Full Bench said that the law governing the determination of whether a worker is an employee or an independent contractor turns on a number of considerations.

Contract Of Service vs Contract For Service

"The ultimate question will always be whether the worker is the servant of another in that other's business, or whether the worker carries on a trade or business of his or her own behalf: that is, whether, viewed as a practical matter, the putative worker could be said to be conducting a business of his or her own. This question is answered by considering the totality of the relationship."

Nature Of Work

The Full Bench said that the nature of the work performed and the manner in which it is performed must always be considered.

"This will always be relevant to the identification of relevant 'indicia' and the relative weight to be assigned to various 'indicia' and may often be relevant to the construction of ambiguous terms in the contract."

The Contract

The terms and terminology of the contract are important.

"However, in so doing, it should be borne in mind that parties cannot alter the true nature of their relationship by putting a different label on it. In particular, an express term that the worker is an independent contractor cannot take effect according to its terms if it contradicts the effect of the terms of the contract as a whole: that is, the parties cannot deem the relationship between themselves to be something it is not."

"Similarly, subsequent conduct of the parties may demonstrate that relationship has a character contrary to the terms of the contract. If, after considering all other matters, the relationship is ambiguous and is capable of being one or the other, then the parties can remove that ambiguity by the very agreement itself which they make with one another."

Past Case Law

Consideration should then be given to the various *indicia* identified in *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16 and the other authorities bearing in mind that no list of *indicia* is to be regarded as comprehensive and the weight to be given to particular *indicia* will vary according to the circumstances.

"Where a consideration of the 'indicia' points one way or overwhelmingly one way so as to yield a clear result, the determination should be in accordance with that result."

The Full Bench provided the following list of *indicia*:

- | Whether the employer exercises, or has the right to exercise, control over the manner in which work is performed, place or work, hours of work and the like;

- | Whether the worker performs work for others (or has a genuine and practical entitlement to do so);

- | Whether the worker has a separate place of work and or advertises his or her services to the world at large;

- | Whether the worker provides and maintains significant tools or equipment;

- | Whether the work can be delegated or subcontracted;

- | Whether the employer has the right to suspend or dismiss the person engaged;

- | Whether the employer presents the worker to the world at large as an emanation of the business;

- | Whether income tax is deducted from remuneration paid to the worker;

- | Whether the worker is remunerated by periodic wage or salary or by reference to completion of tasks;

- | Whether the worker is provided with paid holidays or sick leave;

- | Whether the work involves a profession, trade or distinct calling on the part of the person engaged;

- | Whether the worker creates goodwill or saleable assets in the course of his or her work;

- | Whether the worker spends a significant portion of his remuneration on business expenses.

The Full Bench indicated that the list is not exhaustive and that features of the relationship in a particular case that do not appear in this list may nevertheless be relevant to a determination of the ultimate question.

Common Sense To Prevail

"If the *indicia* point both ways and do not yield a clear result the determination should be guided primarily by whether it can be said that, viewed as a practical matter, the individual in question was or was not running his or her own business or enterprise with independence in the conduct of his or her operations as distinct from operating as a representative of another business with little or no independence in the conduct of his or her operations."

Conclusion

The Full Bench said that if the result is still uncertain then the determination should be guided by "matters which are expressive of the fundamental concerns underlying the doctrine of vicarious liability" including the "notions" referred to in *Hollis v Vabu* (2001) 207 CLR 21.

Abdalla v Viewdaze Pty Ltd t/as Malta Travel [2003] AIRC FB (Lawler VP and Hamilton DP, Bacon C), PR927971, 14/05/03.

Secondary Boycotts

On 16 May 2003, the Australian Competition and Consumer Commission ("ACCC") commenced legal proceedings in the Federal Court against three unions alleging that they breached the secondary boycott provisions of the *Trade Practices Act 1974*.

It is alleged that, between 2nd and 23rd October 2002, the three unions maintained a picket at the entrance to the construction site of the Patricia Baleen gas plant near Orbost in Victoria.

It is alleged that the picket prevented construction workers and vehicles delivering materials from entering the site.

The three unions concerned are:

- The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union ("AMWU");
- The Australian Workers' Union ("AWU");
- The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ("CEPU").

Section 45D of the Act prohibits two persons acting in concert from hindering or preventing a third person trading with a fourth person (the "target") where the purpose and effect (or likely effect) of the conduct is to cause substantial loss or damage to the target.

The section does not apply where either of the two persons who are acting in concert is an employee of the target.

Unsafe Systems Of Work - \$104 305 Damages Awarded

The Court of Appeal of NSW has found that a bank was responsible for the psychological injury sustained by a teller during a bank robbery. The teller was awarded \$104,305 in damages.

The Incident

On 3 June 1998, Brambles delivered three bags of cash to a St George bank. The guards brought in the bags one at a time, and placed them on the counter. The teller then placed the bags on her side of the counter. It was 9:00am when the third bag was brought in, and customers were also entering the bank. A robber in a balaclava jumped over the counter. The teller pressed the hold up button and the bank security screens activated, however the robber was already over the counter.

The robber pointed a gun at the teller and yelled at her to put the money in a large bag. He

then ordered her to get down on the floor. He escaped via a back door. When he had gone, the teller called the police.

The Trauma

The teller experienced a severe psychological reaction to the hold-up. She was depressed and went through marked mood fluctuations, became easily irritable, and lost her temper. She was eventually dismissed because of her behaviour. She was diagnosed with a major depressive illness, and her recovery was slow.

The Court Case

The teller sued the bank for negligence. She argued that the installed security screens were inadequate. She also argued that the standard procedures for receiving cash deliveries was inadequate. She gave evidence that previously Armaguard employees would escort the tellers with the cash into the vault, and would remain until the money was locked up and the vault was closed. They would then bring in the next bag and repeat the operation until all cash was in the vault. When the bank changed hands and Brambles took over the cash deliveries, the teller had asked them to help bring the money to the vault, but the guards indicated that it was not part of their job.

The Verdict

As a result the District Court of NSW found that the way of delivering cash to the bank had been outside the employer's control, and entered a verdict for the employer.

The Appeal

The teller appealed this decision, arguing that the delivery method had not been outside the employer's control. The bank's executive manager for security and investigation admitted that the bank could have required that delivery take place within the security of the vault.

The Verdict

The Court of Appeal of the Supreme Court of NSW found that the money delivery system had been unsafe and as a result, had put the teller at considerable risk. The court found the employer liable, and awarded the teller \$104,305 in damages.

Faucett v St George Bank Ltd [2003] NSWCA 43, 11 April 2003

Director Fined For Not complying With Prohibition Order

A Melbourne supermarket and a director were convicted and fined nearly \$41,000 in the Melbourne Magistrate's Court, after a WorkSafe inspector found that a forklift and compactor had been used in violation of prohibition notices. Prohibition notices prevent a company person from performing the specified task until certain specific safety criteria have been met.

Dollar Foods Supermarket, and director David Sawicki pleaded guilty to failing to provide a safe workplace and not maintaining safe plant, under the *Occupational Health and Safety Act 1985* (Vic).

A WorkSafe inspector visited Dollar Foods in May 2002, and identified a range of forklift maintenance issues. These included:

- | The forklift had a hole in a tine that could cause it to fail;
- | Both tines were badly worn and contact with them could cause serious injury;
- | All four tyres were badly worn affecting the forklift's stability;
- | A load guard to prevent falling stock hitting the operator was not fitted;

- | The drivers' seat was worn and in poor condition;
- | A load data plate was illegible.

In addition, the inspector noted that an unsafe compactor was being used. It was possible to access the danger areas of the compactor while it was being used, and there was a chance of electric shock from the control box.

The inspector prohibited use of both machines, but they were both used before a follow-up visit nine days later.

Magistrate Angela Bolger convicted and fined the supermarket \$30,000. Mr Sawicki was convicted and fined \$8,500. They were ordered to pay WorkSafe's costs of \$2,218.

J The Toaster

Why do toasters always have a setting that burns the toast to a horrible crisp that no decent human being would eat?

Let Us Know What You Think

This is **YOUR** newsletter. If there is any particular topic that you would like us to cover, please [let us know](#). We will try and satisfy all reasonable requests.

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