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Easy HR Newsletter
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Easy HR Training Update

Please visit our website for a complete list of courses – <http://www.easyhr.com.au>

OHS Consultation

Workcover NSW Accredited

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

We still have vacancies on our 4 day public courses held at Parramatta.
Our Parramatta venue has plenty of free onsite parking.

November 6, 7, 13, 14 - Limited Vacancies
December 9, 10, 16, 17

Course Cost: \$450.00+\$45.00 GST = \$495.00.

Risk Management For Line Managers & Supervisors

Workcover NSW Accredited

We still have vacancies on our 2 day public courses held at Parramatta.

November 20, 21

Course Cost: \$370.00+\$37.00 GST = \$407.00.

Manual Handling Awareness

Workcover NSW Accredited

Understand the requirements of the Manual Handling National Code of practice, and how to identify and eliminate manual handling hazards in the workplace.

Apply now for our ½ day public course at Parramatta.

Course Cost: \$150.00+\$15.00GST = \$165.00

December 15

OHS Construction Induction

Workcover NSW Accredited

Required by Workcover NSW for those working in the construction industry.

Apply now for our ½ day public course at Parramatta.

Course Cost: \$85.00

November 18

Regional NSW Training

We have recently launched our regional NSW training value package. If you are located outside of Sydney, please contact us, to find out more about this package.

Apply for a course

To obtain a public 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. Applications can also be made online through our website.

All our public courses can be conducted in-house, anywhere within NSW.

Please contact us for details – inhouse@easyhr.com.au

WA Crane Laws Change

New regulations are now in force for crane operators, under recent amendments to WA's *Occupational Safety and Health Regulation*.

The new regulations include:

- minimum crew operating requirements based on the crane's lifting capacity;
- requirements to report all incidents involving cranes;
- recording keeping requirements tightened in relation to training certificates and records; and
- fitting visual and audio alarms on cranes.

A series of serious accidents involving cranes on building sites prompted an enquiry into crane safety last year. "It quickly became obvious there was a lack of safe work practices with regard to cranes and a serious examination of the shortcomings become necessary in order for some action to be taken," said Consumer and Employment Protection Minister John Kobelke in a media release on 25 September 2003.

As a result, a tripartite working group comprising employer representatives, employees and WorkSafe WA was formed to recommend changes.

Did You Know ?

69% of cake eaters eat the cake first, then the icing.

The filaments of the first electric lamps were made of bamboo.

It takes 345 squirts from a cows udder to get a gallon of milk (4.5 Litres)

A Load Of Rubbish – Employer Liable

A driver had to twist his body to get behind the wheel of his garbage truck because the seat was stuck.

The driver drove a truck that emptied garbage bins with a hydraulic arm. The arm could only be operated from outside the truck. The driver had to leave and re-enter the cabin of the truck each time he emptied a bin.

A safety rail allowed the truck to be driven with the door open, but it impeded access to the driver's seat. The driver's seat was stuck in a forward position. The driver was 188cm tall and weighed about 95kg. His stomach pressed against the steering wheel. When entering and leaving the cabin, he had to arch his back and twist his body in order to fit behind the wheel. He had to manoeuvre himself to avoid a safety rail, but frequently struck his hip on it during the morning.

On the 4 October 1996, the driver was collecting and emptying rubbish bins. After an hour's work, the driver began to feel pain at the back of his left hip. He contacted his supervisor and asked for a mechanic to be sent out to adjust the driver's seat.

The mechanic was busy, and could not immediately attend to the truck driver. After another hour or two, the supervisor came and inspected the truck but could not move the seat. He saw how the driver had to twist his body to get in and out of the truck.

Another truck did not become available and the truck driver had to work until about 3pm.

On the way to work after the weekend on 7 October 1996, the driver swerved to avoid a dog and damaged a tyre on his vehicle. He changed the tyre, which subsequently made his back pain worse. After changing the tyre he felt pain all the way down his left leg.

The driver was given anti-inflammatory and muscle relaxant medication. His condition improved somewhat but pain symptoms remained and were unlikely to disappear.

The driver sued the garbage collection company for negligence. The District Court of South Australia found there was no dispute that the driver had a long-standing degenerative condition and had been vulnerable to the type of disc prolapse he had suffered. The court was satisfied on the evidence that it was the twisting movements the driver had to make in the cramped conditions in the truck that had caused his disc prolapse. The garbage collection company had been negligent because the system of work it had provided had been unsafe and had caused the injury.

The company was liable and the driver was awarded \$391,398 in damages (*Crago v Pacific Waste Management Pty Ltd & Ors* [2003] SADC 119, 15 August 2003).

There must be a better way

THE fiery demise of a red-back spider almost resulted in catastrophic house fire in Chatswood recently.

Snr Constable Jewell said a 23-year-old man, who wishes to remain anonymous (for obvious reasons), armed himself with an aerosol can and cigarette lighter to eradicate the arachnid intruder, which was on the bathroom window.

"The subsequent fireball that followed was aimed skilfully at the spider," Sen-Constable Jewell said.

Unfortunately, this up-to-now well executed plan began to unravel when the wooden window frame caught fire. The man rushed outside, grabbed a hose and extinguished the fire ... or so he thought.

"Unfortunately, unbeknown to the occupant the fire made its way into the roof while he was sitting watching television," Sen-Constable Jewell said,

"Fortunately, the resulting smoke attracted the attention of neighbours, who notified the fire brigade. Fire units arrived and the man apparently wondered what all the sirens were for.

The fire was extinguished prior to causing any substantial damage, Sen-Constable Jewell said.

"The only injuries sustained from the fire were to the spider," he said.

North Shore Times Wednesday 8 October 2003

Supplier Of Unsafe Machinery Fined

A manufacturer and supplier of unsafe machinery has been successfully prosecuted by WA WorkSafe.

Nomel Holdings Pty Ltd was fined \$10,000 for supplying an inadequately guarded auger. The machine was purchased new by a farmer. The machine was poorly guarded, and the farmer's hand became caught in the exposed rotating parts whilst cleaning it. As a result of the incident, he lost three fingers.

In addition to the lack of guarding, an operator's manual had not been supplied.

Earlier this year, a South Australian manufacturer was fined \$25,000 for supplying an unsafe grape-picking machine. An accident occurred which resulted in a worker suffering spinal injuries.

WorkSafe Acting Executive Director Nina Lyhne said in a media release on 16 October: "These two prosecutions are important as it is unusual for WorkSafe to have successfully prosecuted the supplier or importer of a machine involved in a workplace incident."

Ms Lyhne emphasised the importance of building safety into the machinery's design as a way to ensure safer workplaces. She reiterated that workplace safety was everyone's responsibility.

Tough Stand On Sitting

The Federal Court recently found that Australia Post had discriminated against a disabled employee when it refused to allow her to sit at any time during her shifts.

The employee suffered from physical disabilities that affected her lifting capacity and standing tolerance. As a result she had found it necessary to sit periodically at the counter of the customer service area. She claimed that Australia Post discriminated against her, on the basis of her physical disability, when it removed a stool she had previously used to sit on. Australia Post had applied this policy as part of its introduction of a new marketing concept of post shops, which resulted in the remodelling of its premises.

The stool, which had become her personal stool, was the only form of seating which Australia Post had ever provided her with over the preceding 11 years, despite medical reports recommending some form of ergonomic seating.

When Australia Post prohibited the use of stools in its retail outlets they imposed a condition, with which she was unable to comply. She was unable to stand for the full duration of her shift hours.

The Federal Court of Australia found Australia Post had discriminated against the applicant on the ground of her physical disabilities by imposing this condition of her employment.

She had also been discriminated against when she was directed onto maximum sick leave and told that there was no suitable position of employment available for her.

An assessment as to compensation is to follow.

Daghlian v Australian Postal Corporation

From The Court Room

This question was actually asked of a defendant during a court case.

Q: Were you present when your picture was taken?

Another defendant did not fully understand the question....

Q: Is your appearance here this morning pursuant to a deposition notice which I sent to your attorney?

A: No, this is how I dress when I go to work.

Effective Email

How we communicate in today's world of "instant communication" in the home and office. When writing letters, we should apply certain standards to our communication. The way you relay your words is a reflection of you.

Here are some tips when sending an email, especially in business.

1. Greet the recipient in the beginning of your message and thank them at the end.

If you were to walk into someone's office, the first thing out of your mouth would not be "Is the report ready?" More than likely, you would say something like "Hi Brad. Do you have that report ready?" Use the same courtesy when you're sending a message.

2. Make the subject line of your message meaningful.

The average person receives dozens of emails everyday. Make the subject of your email as meaningful as possible so the recipient will know if they need to open right away or if it can wait until after lunch.

3. Mark your message urgent only if it is urgent.

If every email in your box was marked as urgent how would you know what was really urgent?

If your email is genuinely urgent, write in the subject when you need a response by. This will help set expectations with your recipient. Example: "Easy HR Newsletter: Please Review by the 10th October."

4. If you have an attachment included in your email, mention it during the message.

This will ensure that your recipient knows there is an attachment and they should contact you if they don't get it. Also mention what format the attachment is. Some users still use office 95. Backward compatibility may be an issue in this situation. Some MS Word 95 users will not be able to read a Word 97 document unless they have downloaded and installed a special converter.

5. State the purpose of your email in the first couple of sentences.

When people open email, there is only one thought going through their minds "Do I have to read this now?" Answer that question for your recipient as early in the message as possible.

6. Use bullets or numbering in your messages to make them easier to read.

Reading from a computer screen can be hard on the eyes. Make this task easier for your recipient by making ample use of white space. Avoid long, dense paragraphs.

7. Be mindful of formatting features.

Many email systems strip messages down to plain text. If you've sent a message with a lot of fancy formatting in it, your recipient may end up with gibberish. Similarly if you use html formatting in your email, the recipient may end up with a difficult to read document.

8. Read your message out loud before you hit the send button.

Keep the tone of your message professional while at the same time adding bits and pieces of your personality. Given that deleted emails are never really deleted, never put something in an email message that you would not want to see on the Local News. Also, never say anything in an email message that you would not say to the recipient's face. You should not hide behind an email to deliver a difficult message. Pick up the phone.

9. If you are unhappy with an email, wait 15 minutes before sending a reply.

By waiting you give your self a chance to cool off. Often we hammer out an emotional response, hit send, and then think that perhaps we should have changed our response. By waiting a few minutes we give our self the chance to calm down, and the opportunity to craft our words more carefully.

10. When all else fails, pick up the phone or walk next door to the recipients office.

If you find yourself exchanging email with a person 3 or 4 times in order to clear up a single issue, the time has come to pick up the phone. Email is supposed to make communicating easier, not more frustrating. It is amazing how a short call can clear up the confusion that a 3-page email created.

Thought For The Day

A man's home is his castle, in a manor of speaking.

Left Handed Person Discriminated Against

On 17 April 2002, a new left handed employee was shown how to operate a saw. The supervisor told him to keep one hand on the operating handle and the other at least 200 mm clear of the blade. After about 20 minutes, the supervisor turned to his own work, about 1.2 m away from the employee, while still "keeping an eye on him".

Shortly thereafter the youth was injured when his hand came into contact with the spinning saw blade.

The employer was prosecuted for breach of sec 28(1) of the *Workplace Health and Safety Act 1995* (Qld) and pleaded guilty. The company was fined \$8,000 by an Industrial Magistrate.

The prosecution appealed, arguing that the fine was inadequate since the employee had suffered a grievous bodily harm injury. The laceration to the base of his hand had required 21 sutures. The tendons in his index and middle fingers had been completely severed and a tendon in his ring finger had been partially severed.

The Industrial Court of Queensland found that the induction training had been inadequate. The supervisor had not noticed that the employee was left-handed, and that he had passed his left hand under the saw blade in order to position the timber.

The system of work had been designed for a right-handed person, but could have been adapted for a left-handed person.

The Court remarked on the difficulty of achieving consistency in sentencing. Prosecutions under the Act were not as common as prosecutions for offences for theft or assault, for example. There were not always suitable sentences for comparison. An additional difficulty was that the actual fines in comparable cases had already been discounted to allow for mitigating factors. One could not treat the actual fine as the fine appropriate to the objective gravity of another offence and then mitigate again. The Court assumed that the Industrial Magistrate may have fallen into such an error.

The Court allowed the appeal and set aside the original fine. Instead it imposed a fine of \$25,000 on the employer (*Garaty v Friendly Sofa Designs Pty Ltd* [2003] QIC 140, 14 July 2003).

Left Handed Thought...

If the left half of the brain controls the right half of the body, then only left handed people are in their right minds. J

Casual Wins Annual Leave

Many employers are choosing to employ staff on a casual basis, rather than as permanent employees.

In general, no matter how regularly or systematically a casual employee works for a company, tribunals are reluctant to award annual leave payments or a right to take annual leave, to these employees. The loadings that a casual employee is paid primarily represent the fact that they don't have access to annual leave or sick leave. Some of those loadings have risen as high as 25% of the base wage in some Federal awards.

Recently in South Australia a truck driver who had worked as an employee for a period of over 10 years approached the South Australian industrial Relations Court for an order that he should be entitled to annual leave, and won (*Gaerth v McAvoy* [2003] SAIRC 38).

The evidence suggested that the employee had received a very basic verbal offer of employment. There was no written contract of employment.

The evidence further suggested that when first employed, the truck driver was not working on a full-time basis and continued to work concurrently as a Shearer for a couple of years.

However from 1993 onwards, apart from a break related to a non-work related injury, he worked exclusively for the employer, and was the only person to drive the truck which was supplied by the employer.

The employer asserted in the court that the employee only worked about 36 weeks a year. However, the employee was able to produce evidence including invoices to demonstrate that he worked for about four or five days a week for 48 weeks a year.

In those circumstances, the court held that the employee was not a casual employee. There was no informality, uncertainty or irregularity about the engagement.

The employee was awarded the annual leave moneys owing to him for the whole period of his employment as no six year statute of limitation was applied in this instance (following an earlier decision in *Barton v R.V. Hodge & Partners t/as Gundooee Proprietors* 2003 SAIRC 6).

The case is similar to that of *Mallon v Nursing Agency of Australia Pty Limited* [2003] SAIRC 22, where a nurse was successful in demonstrating that she was a permanent employee rather than a casual employee for the purposes of leave legislation.

These decisions in South Australia should pose a warning for employers who employ casuals who work consistently long hours. Employers need to be vigilant in the way in which the employment relationship with a casual employee is established.

It is very important that the employment contract for a casual employee be made in writing, in order to avoid the possibility of costly annual leave payments being made in the future. Careful attention should also be paid to awards or agreements which may place limitations on the number of hours in a day or a week that a casual employee can legally work.

Company & Directory Fined

A company that harvested and supplied logs to a sawmill was contracted to perform work using a log forwarder. The log forwarder is a heavy articulated tractor-like four-wheel drive vehicle.

On 2 May 2000, the log forwarder was carrying a load of logs, which weighed about 16 tonnes, across the sawmill log yard. The load obscured the driver's view. An employee who was walking across the yard was struck by the log forwarder and suffered fatal injuries.

The sawmill was prosecuted for breach of sec 15(1) of the Occupational Health and Safety Act 1983 (NSW). Its director, Braith Murray Vidler, was prosecuted for the same breach, according to sec 59(1) of the Act. No pleas were entered and neither defendant attended the prosecution. (The driver of the log forwarder had already been separately prosecuted, convicted and fined \$3,000).

The Industrial Relations Commission of NSW in Court Session found an appalling lack of regard for health and safety at the sawmill. There had been no audible alarm or other device to warn when the log forwarder was mobile and no spotters or guides.

People could enter the log yard without supervision and there had been no signs warning that the loading and log areas were exclusion zones.

The induction procedures for employees had been inadequate and, while there had been a safety handbook, the director had remarked during the accident investigation that no one would have read it.

The sawmill was convicted and fined \$270,000 and the director was convicted and fined \$27,000 (*Inspector Dell v Wyoming Mill Pty Ltd & Anor* [2003] NSWIRComm 267, 14 August 2003).

Did You Ever Notice....

The journey of a thousand miles begins with a broken fan belt and a leaky tire.

Redundancy Warning

When deciding to make an employee redundant, employers should ensure the termination is handled fairly, or they risk a successful unfair dismissal claim being brought against them.

The applicant in this case had been employed as a legal secretary and had worked for the same solicitor, in a number of law firms, from 1995 to January 2003. Prior to her going on annual leave in December 2002, the solicitor informed the applicant that the firm was to be reorganised.

The applicant said that she was assured that she would remain working for the same solicitor. She denied saying that she did not want to work for anyone else, as was claimed by the employer. On 30 January 2003, the applicant was informed that she was to be made redundant.

The Commission found that the interview process was appallingly handled. The applicant was informed of her redundancy at 5 pm, after other employees had left the office. This time was chosen by the employer so as to avoid disrupting other staff and effectively denied the applicant an opportunity to farewell her colleagues.

The employer admitted that the applicant was not consulted or given any notice of her redundancy. That being so, there would have been no discussion with the applicant of alternative employment, or other options such as working part time or retraining. It was accepted that no calls for voluntary redundancies were made.

A key issue was the fact that there appeared to be little, or no account taken of the applicant's long period of loyal service with the solicitor for whom she had been working. In addition, the applicant was not informed as to why she was selected for redundancy in preference to others.

When the applicant was told of the firm's restructure prior to her taking leave in December 2002, she was deliberately not informed that she was already regarded as a candidate for redundancy.

The secrecy of the whole process was justified by witnesses for the employer who suggested that it was to protect the firm from other employees leaving. It was also suggested that it was not the practice in the legal industry to consult with staff or give notice of redundancies.

Deputy President Sams found that this argument was contrary to good and decent industrial relations practice, and that the whole process was a classic example of how not to treat employees in redundancy situations.

The Commission noted that there was some ex post facto criticism by the employer of the applicant's performance. However, the evidence was clear that, at no time prior to her dismissal, was the applicant's performance ever cited as a reason for her redundancy.

The Commission found that the question of the applicant's work performance was never a consideration in her termination of employment and took no account of the employer's allegations of poor work performance or lack of co-operation.

The Commission noted that the obligations of an employer in redundancy situations are to:

1. give reasonable notice to employees and/or their Unions;
2. adequately consult with employees and/or their Unions on the impact of the proposed changes;
3. explore genuine alternative options for redundancy, such as redeployment or relocation;
4. ensure such options are fairly offered to the affected employees;

5. provide reasonable standards of redundancy benefits;
6. provide appropriate ancillary services, such as time off to seek alternative work, retraining opportunities, outplacement services or financial planning;
7. ensure employees nominated for redundancy are fairly selected on an objective and unbiased basis.

Notwithstanding the employer's obligations, there are certain reciprocal obligations on employees when confronted with genuine efforts by the employer to minimise the impact of potential redundancy. These obligations include:

1. a willingness to participate in consultation with the employer;
2. genuinely participating in exploring alternatives to redundancy;
3. not unreasonably refusing to accept retraining, alternative employment, redeployment or relocation.

The Commission found the process of the applicant's termination of employment was harsh and unjust. The employer had failed to meet its obligations in relation to items 1, 2, 3, 4 and 6, above, and was not completely satisfied as to the employer's bona fides in respect to item 7.

In addition, the Commission had regard to two other matters which exacerbated the "harshness" of the applicant's termination of employment.

Firstly, while there was some dispute as to whether the applicant and the solicitor for whom she worked were close friends, there was no doubt that they enjoyed a close working relationship and friendship over seven and a half years. To be dismissed in such a perfunctory manner, without warning, must have come, not only as a complete shock to the applicant, but it must have deeply hurt and distressed her.

On termination the applicant received five weeks' pay in lieu of notice (\$4 915.00), 20 weeks' severance pay (\$19 660.00) and an ex gratia payment of \$425.00 taking the total to \$25 000. The notice and severance pay was in accordance with the Clerical and Administrative Employees Legal Industry (State) Award 312 IG 703 (the Award) and the *Employment Protection Act 1982* (NSW). The employer asked the Commission to have regard to these payments when considering the amount of compensation that might be awarded to the applicant.

The Commission noted that the amounts paid as redundancy reflected no more than the minimum standards for redundancy under the terms of the Award.

Secondly, the relief sought by the applicant arises from a finding of the Commission that a particular dismissal was unfair. The entitlement to redundancy pay arises from a totally different and discrete industrial objective, including compensation for the loss of non-transferable credits and the fact that a redundancy will usually have little, or nothing to do with an employee's performance or conduct. A payment for one purpose should not as a matter of course, be offset against a payment for an other purpose.

Thirdly, the payment of redundancy pay, even where it may be more generous than the minimum standards of the Commission, cannot offset a failure to observe the other obligations on the employer which arise in redundancy situations.

As reinstatement was considered impracticable, the Commission awarded the applicant compensation for unfair dismissal of 20 weeks' pay (\$19 660).

Neal v Shaw McDonald Pty Ltd and another [2003] NSWIRComm 298, *Sams* DP, 22/09/2003.

Rules For Success

Become inner directed.

Long-term success is only possible when the goal is worthwhile to YOU.

Life is NOT a game.

There is no dress rehearsal. Play as if you want to win. There will be no second chances.

Success is what YOU define it to be.

If you believe you are successful, you are. Success is measured in numerous ways. If you are intrinsically successful then it would be very difficult not to let this success shine through in who you are and what you do.

Stay in the moment. Seize it. Carpe Diem.

Living with the "could haves, should haves, ought haves" is not empowering. We all have 20/20 vision in hindsight. Don't let others' beliefs that don't work for you determine how you will live your life.

There are many lessons to be learned.

There is a lesson to be learned in every triumph as well as every failure. Look for the lessons.

Watch that self-talk.

Avoid comparisons with others, negative energy and people who are energy drainers. Stop focusing on your shortcomings, focus on your achievements.

Believe you can and you will.

Only you can achieve your goals. If you doubt yourself, then others will too.

You need to have a vision or a goal.

Having a vision is the first step toward having the life you want. Purpose gives meaning to your life and changes your attitude and perspective about life.

Success is a journey as well as a destination.

Everything you learn along the way is important to the final outcome. Plan the journey, so that the trip is structured to assist you learn and gain experience as you travel.

YOU must take actions.

If you want a more satisfying, fulfilling and balanced life, you must begin taking actions to create it. Status quo is not good enough when you have a gap between where you are and where you want to be. Set goals to support your vision and your dreams. Focus on results and if you're not getting the results you want, find the reason.

"Act as if..." even if you have not reached your goal yet.

Your subconscious mind does not know the difference between reality and pretend.