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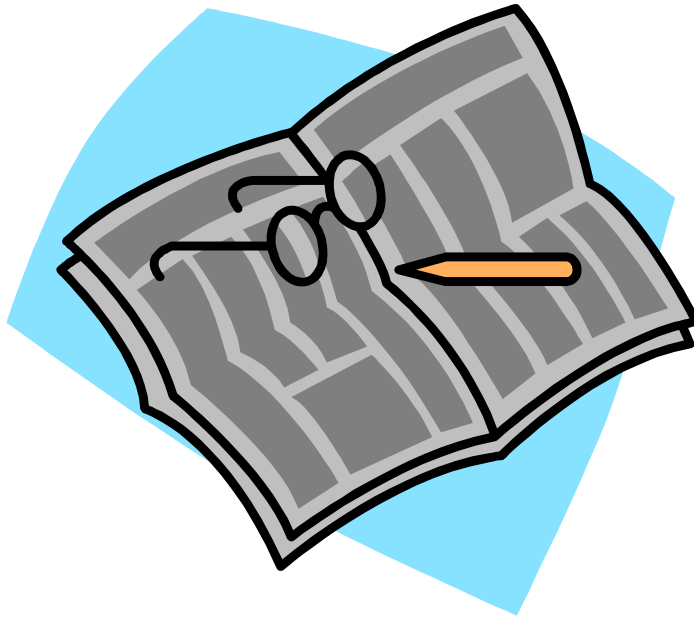
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Easy HR Newsletter December 2003

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Easy HR Training Update

Please visit our website for a complete list of courses

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.
Our Parramatta venue has plenty of free onsite parking.

2, 3, 9, 10 Feb / 8, 9, 15, 16 March / 5, 6, 14, 15 April / 3, 4, 10, 11 May / 7, 8, 16, 17 June

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.

23, 24 Feb / 27, 28 April / 29, 30 June

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.

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

19 March 2004

OHS Construction Induction

Workcover NSW Accredited

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

Course Cost: \$85.00 (GST Exempt)

30 Jan / 26 Feb / 31 March / 30 April / 28 May

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 or call us on 1300 667 331.

Easy Incident Manager –Special Offer

Register our Easy Incident Manager software before 5pm on 30 January 2004, and receive a \$161.00 discount off the normal purchase price of \$660.00. Your special price of \$499.00 entitles you to a single user license, plus unlimited free updates for all future releases of the same version.

Easy Incident Manager allows you to quickly and efficiently track incidents and injuries within your workplace. Records are easily located via a familiar and intuitive interface.

For each incident you can record injuries, as well as action items that have arisen as a result of the incident. You can also quickly and efficiently email incident reports to relevant managers and supervisors.

The injury module helps you keep track of workers compensation, absences, as well as rehabilitation.

The software is fully customisable. Users can define incident types, user types, states, regions, locations, etc.

Visit our website to download a free trial – <http://www.incidentmanager.com.au>, or call us to find out more – 1300 667 331

(Please quote promotional code NL1203 when ordering)

Did You Know ?

Computer viruses have cost us millions of dollars and have been around for 20 years. The virus was first created by Fred Cohen, an American PHD student. The virus was used to infect a graphics program, and was the subject of Cohen's November 10, 1983 paper.

Industrial Manslaughter

The A.C.T. has become the first jurisdiction in Australia to pass legislation creating the offence of Industrial Manslaughter. The Crimes (Industrial Manslaughter) Bill 2002 was passed by the Government with the support of crossbenchers.

"The Government's position is clear - if a workplace death occurs and that death can be attributed to the employer, then the death should be treated with the seriousness it deserves. The A.C.T. Government is pleased that the majority of the Assembly members have given their support to such an important piece of legislation," A.C.T. Industrial Relations Minister Ms Katy Gallagher said.

"The legislation is a key component of the Government's occupational health and safety reform agenda aimed at ensuring that workplaces are as safe as possible for A.C.T. workers."

"Under the current Crimes Act, individuals can already be charged with manslaughter when they contribute to the death of another person. This legislation simply ensures that companies can be held responsible where their criminally reckless or negligent conduct causes the death of a worker."

“This legislation does not impose vicarious liability on employers nor does it impose any additional responsibilities on them. Employers who adhere to their responsibilities under the A.C.T. Occupational Health and Safety Act 1989 have nothing to fear from this legislation.”

The legislation will commence on 1 March 2004, which will allow three months for industry to be made aware of the new laws and for A.C.T. Workcover to continue to provide support and education to workplaces in the A.C.T.

Christmas Party - Duty Of Care

Employers and their workers have been warned to be 'jolly' careful at staff Christmas parties to avoid potential legal hangovers.

Employers could be liable for a workers' compensation claim if an employee was seriously injured or killed while driving home from a work party - even if they had been drinking alcohol. In addition inappropriate behaviour at a work function may warrant dismissal.

Employers have a duty of care under the Occupational Health and Safety Act for their workers, and that includes at Christmas parties or other functions, whether or not they are held on or off site.

The end of year party is a time to celebrate and recognise the achievements of staff and the organisation, within a safe environment where people are not embarrassed or put at risk.

To minimise the risk of a legal headache, employers should limit the amount of alcohol available at staff parties. We also suggest you consider these some tips to minimise the risk of sexual harassment claims which can stem from these gatherings.

- Send a communication to all staff reminding them of sexual harassment policy and that breaches of the policy may result in discipline, including termination.
- If no policy or procedures are in place, talk to staff about acceptable and unacceptable behaviour and the various consequences. Implement a policy as soon as possible.
 - Ensure managers and staff have a working knowledge of the policy.
 - Act quickly on any breaches of the policy.
 - At parties, provide the same amount of soft drink as alcohol and close the bar early if needed. You should also ensure low alcoholic beverages are available for those that request them.
 - Clearly define work functions from those that are not.
 - Consider travel arrangements. Travel home after the party may be complicated by the overindulgence of alcohol, or alternatively, there may be a lack of public transport to some destinations.

Smoking Tension

Managers are facing the challenge of easing tension between smokers and their non-smoking colleagues who are in a huff over the extra workload and loss of productivity they claim "smokos" cause, a survey from recruiter Kelly Services has found.

More than half of non-smokers said smokos lowered productivity. But some smokers argued that smoking breaks actually increased their productivity and provided informal networking opportunities where information is exchanged with other smokers.

In the absence of any formal policy, the matter was usually dealt with at the discretion of the manager, however anecdotal evidence suggested that smoking managers were more lenient on the amount of breaks permitted.

Some managers were getting stricter on unscheduled breaks, while others saw a focus "on the hip pocket" as the most effective way to deal with smoke breaks and were requiring smokers to clock-off during time away from their desk.

Workplace Stress

Two bone weary employees were working their little hearts and souls out. Their department was just too busy for staff to be able take flex time. But there had to be a way.....

One of the two employees suddenly lifted his head.

"I know how to get some time off work" the man whispered.

"How?" hissed the woman at the next workstation.

Instead of answering, the man quickly looked around. No sign of his Director. He jumped up on his desk, kicked out a couple of ceiling tiles and hoisted himself up.

"Look!" he hissed, then swinging his legs over a metal pipe, hung upside down.

Within seconds, the Director emerged from the Branch Head's office at the far end of the floor.

He saw the worker hanging from the ceiling, and asked him what on earth he thought he was doing.

"I'm a light bulb" answered the man.

"I think you need some time off," barked the Director.

"Get out of here -that's an order - and I don't want to see you back here for at least another two days! You understand me?"

"Yes sir' the man answered meekly, then jumped down, logged off his computer and left.

The woman at the adjacent workstation was hot on his heels.

"Where do you think you're going?" the boss asked.

"Home," she said lightly.

"I can't work in the dark."

Poor Management Style Is Not Sufficient Cause For Termination

When NSW-based electricity company Integral Energy tried to resolve tensions created by a bullying manager, the NSW Industrial Relations Commission found its disciplinary process led to a "witch hunt".

NSW IRC Justice Tricia Kavanagh heard how a problem arose with a newly-promoted business sales manager.

"His people skills were not refined, his dealings with other staff reflected the behaviour of a bully and his use of language towards others was sometimes offensive, certainly uncivil and entirely unacceptable in a working environment," Justice Kavanagh said.

Colleagues lodged complaints after one particularly heated meeting and the acting managing director launched an inquiry into the man's behaviour.

The acting General Manager called in a private consultant to launch a full investigation.

Much of the time the manager was kept in the dark as to what was going on. He had already volunteered to seek counselling for his behaviour and told the general manager he had been under stress. The inquiry expanded to interview some 27 employees, only a handful of who actually reported to the manager. This created "a 'witch hunt' environment", Justice Kavanagh said.

When the man returned to work after taking time off for the birth of his second child, he found out that he was being moved to "Special Projects". The commission heard that special projects was viewed as the "kiss of death" - "It was an acknowledged practice of [Integral Energy] to move employees from their contracted positions, without their consent, to Special Projects before they left the employment of the respondent".

The commission accepted the move put the man in an untenable position. In awarding a payout equivalent to 12 months' salary (\$172,000), the commission noted that after leaving Integral that he was unable to find work and "expresses concern as to the quality of any reference sought from the respondent". He had ended up selling his house and moving out of Sydney.

In a similar situation the Australian Industrial Relations Commission upheld the termination of a 50 year old supervisor in the a Newspaper's classified department.

THE AIRC held that the supervisor's management style, which was affecting staff morale, was *abrasive* and *belittling* and generally inappropriate, but did not amount to bullying stating that:

Not all personal misconduct that gives rise to difficulties and tensions and stress in workplace relations by necessity constitutes bullying or harassment. This is so although it may be tempting for those who give evidence in the contemporary environment to reach for such characterisations in an effort to validate the underlying grievance."

Given that the supervisor's behaviour did not improve after a series of discussions, a warning and a training course, the AIRC agreed with the employer to the extent that her conduct justified dismissal. It did not however, agree that "summary" dismissal was appropriate.

Accordingly, the supervisor was awarded six weeks wages as compensation.

Brunette v Integral Energy Australia

Bann v Sunshine Coast Newspaper Company Pty Limited

Thought For The Day

Just imagine, for a moment, if there were no hypothetical situations.

Merry Christmas

Did you know that you can send you colleagues an electronic Christmas card from our website.

You are able to select your card's image, music, colours, and write your own personalised message.

This is a free service that we offer to our members. Membership is free.

Point your browser to <http://www.easyhr.com.au> for more information.

Compliance With Industry Practice Held Not To Alleviate Gravity Of OHS Offences

In an important decision handed down by the New South Wales Industrial Relations Commission in Court Session (the Commission), Justice Kavanagh imposed on Abigroup Contractors the highest penalty ever imposed by the Commission. The fines amounted to \$1.5 million and were in relation to two gas explosions in Kogarah, Sydney in 1995.

In this case, Abigroup Constructions submitted that the seriousness of the offences should be assessed from the perspective that it complied with "industry practices" applicable at the time of the breaches. Justice Kavanagh's rejection of this submission was both loud and clear:

"I reject the proposition *industry practice* can be used to alleviate the gravity of these offences. The defendant company must be proactive to ensure it provides a safe workplace for its employees and others. It must be vigilant and take all practical precautions to ensure safety."

It is now well established by the case law that compliance with an industry Code of Practice will not:

- prevent employers from prosecution for breach of their duties under the Occupational Health and Safety Act 2000 (NSW) (the Act): or
- alleviate the gravity of the offence when submitted as a mitigating factor in assessing a penalty against a company.

Accordingly employers must understand and accept that industry Codes of Practice are a minimum requirement for undertaking operations. Much higher standards are required to satisfy employers' general duties to be vigilant and proactive in ensuring for the health, safety and welfare of employees and visitors to their workplaces.

Life's Like That ...

Once upon a time, ACME Pty Ltd and Widgets Pty Ltd decided to have a competitive boat race on the Brisbane River. Both teams practised long and hard to reach their peak performance. On the big day, they were ready as they could be.

Widgets Pty Ltd won by a kilometre.

Afterwards, the ACME Pty Ltd team became very discouraged by the loss and morale sagged. Senior management decided that the reason for crushing defeat had to be found, and a project team was set up to investigate the problem and recommend appropriate action.

Their conclusion: The problem was that the competitor had eight people rowing and one person steering. They had one person rowing and eight people steering.

Senior management immediately hired a consultancy company to do a study on the teams structure. Millions of dollars and several months later they concluded that too many people were steering and not enough rowing.

To prevent losing next year, the team structure was changed to four "Steering managers", three "Senior Steering Managers" and one "Executive Steering Manager". The performance appraisal system was set up to give the person rowing the boat more incentive to work harder and become a key performer, we must give him empowerment and enrichment. This ought to do it.

The next year the Widgets Pty Ltd won again, but this time by two kilometres. The ACME Pty Ltd team laid off the rower for poor performance, sold off all the paddles, cancelled all capital investment for new equipment and halted development of a new canoe, awarded high performance awards to the consultants and distributed the money saved to senior management.

Electrical Testing & Tagging

Electricity has great potential to seriously injure and kill. To ensure electrical equipment in the workplace is safe, employers are required to regularly inspect, test and maintain all electrical equipment under the *Occupational Health and Safety Regulation 2001*. In addition, employers must also keep a record of all inspections, testing and maintenance of the equipment.

When applying the Regulation and supporting Australian Standard AS/NZS 3760:2001, many employers, electricians and testing providers have interpreted the legislative requirements to mean that all plug-in type electrical equipment must be inspected, tested and tagged.

WorkCover recognises the low risk level of some electrical equipment that may not warrant such a rigorous inspection and testing procedure. This position paper and the supporting Electrical Equipment Inspection Checklist aim to clarify the intention of the Regulation and show how an employer can apply an alternative risk assessment approach to managing electrical equipment used in the workplace.

WorkCover will apply the legislative requirement, '*regularly inspect, test and maintain electrical equipment*' to mean a procedure that ensures plug-in type electrical equipment is inspected and maintained in a safe condition.

To carry this out an employer must ensure that a documented electrical equipment assessment is used to determine the extent of equipment inspection needed and, when warranted, testing of identified equipment.

Due to the higher risks of some electrical equipment and working environments, the policy does not apply to plug-in electrical equipment used in the following categories:

- Electrical equipment that is used in construction work. This equipment must be regularly inspected and tested in accordance with the requirements of the WorkCover *Code of Practice - Electrical practices for construction work*.
- Hired electrical equipment. This equipment must be regularly inspected and tested in accordance with the requirements of the Australian Standard AS/NZS 3760:2001
- Workplace electrical equipment that has been serviced or repaired which could affect the electrical safety of the equipment. In this circumstance the equipment must be inspected and tested in accordance with the requirements of the Australian Standard AS/NZS 3760:2001 prior to the equipment being placed back into service.

Source Workcover NSW

Payslips – Best Practice

Employers in all States and Territories are required to keep time and wages records and/or issue pay slips to their employees (In Western Australia and Tasmania, only employers that are covered by the federal jurisdiction are required to issue pay slips).

Both Federal and State laws specify what needs to be recorded in their wages records and included on payslips. These requirements vary depending on which State or Territory the employer is in, and whether they are bound by a Federal or State award, agreement or legislation.

To help employers ensure they are complying with their time and wages records and pay slip requirements, regardless of whether they are in the Federal or a State jurisdiction, Federal and State Workplace Relations Ministers have agreed that templates should be jointly developed and made available to all employers on strictly a voluntary basis.

An employer who chooses to use the templates, and fills them in correctly, can be assured that he or she is complying with both Federal and State regulatory requirements in their State or Territory. However, as some awards or industries have additional requirements, it is recommended that employers considering using the templates also check their award to confirm whether there are any additional requirements.

Further information can be obtained from <http://www.wagenet.gov.au>

Did You Know

The 2 lines that connect the bottom of your nose to your lip are called the Philtrum.

KFC Franchisee Fined \$25,000 After 17-Year-Old Burnt In Hot Oil

The franchisee of a Cranbourne (Melbourne) KFC restaurant has been convicted and fined \$25,000 after a 17-year-old casual employee suffered severe burns after falling into a deep fryer filled with hot oil.

Southern Restaurants Pty Ltd was found guilty under the Occupational Health and Safety Act of failing to provide safe plant and systems of work.

Dandenong Magistrate Brian Clifford heard that on 11 December 2001, Daniel Guyomar was asked to clean an extraction hood located above deep fryers used to cook chicken.

The 17-year-old was standing on the deep fryers to reach the canopy when he slipped and fell into the oil.

The fryer was normally fitted with a lid, but in this case it had been removed due to safety concerns over a possible defective hinge.

The court was told that Mr Guyomar was subsequently admitted to hospital suffering serious burns to his legs and remained there for 19 days.

WorkSafe Industry Director Trevor Martin said this latest incident issued a timely warning to all Victorian employers. He called on employers to do more to protect the safety of young workers, especially during the holiday period.

"During the school holidays, a lot of young people are entering the workforce for the first time, and they are at greater risk because of their inexperience," Mr Martin said.

"Young workers are often placed in potentially dangerous situations, especially in food outlets where there are cookers and heavy machinery.

"There have been a number of incidents this year where young people have been seriously injured after being allowed to do potentially dangerous work unsupervised.

"Employers need to provide young and inexperienced workers with detailed training and high levels of supervision to enable them to do their jobs safely.

"It's simply not good enough to have procedures in place, they need to be followed. And that's why providing adequate supervision is so important.

"Employers need to anticipate what could go wrong, particularly where first-time workers are involved.

"We are calling on employers to be more vigilant and to understand that inexperienced workers may be reluctant to ask questions, even if they don't fully understand how to do something.

"We are also encouraging young workers to be more careful, and to ask their boss for help if they're not sure whether they're going about things the right way."

WorkSafe Victoria statistics show that in the last financial year, 1261 people aged between 12 and 20 were seriously injured at work, with approximately 10 percent of these injuries occurring in the take-away, café and restaurant sector.

Source: Workcover Victoria

Casual Entitled to Unfair Dismissal

An employee had his claim of unfair dismissal granted by the Australian Industrial Relations Commission (AIRC) despite being employed as a casual.

The decision builds on the legal departure by the AIRC to allow casuals with less than 12 months service, but who have the expectation of regular and on-going employment to make a claim of unfair dismissal under the *Workplace Relations Act 1996* (Cth) (the Act).

The employee worked at the Bath Arms Hotel (the Hotel) as a casual bartender for approximately four months. Other bar staff hired by the Hotel were also casuals except for bar managers who worked full time. The employee was paid award rates and was not entitled to sick leave or holiday pay. He was never given written confirmation from the Hotel that indicated he would be given an on-going position.

The practice of the Hotel had been to prepare weekly rosters for employees, however for the majority of the employee's tenure the rosters had been prepared a month in advance. The employee was expected to be able to attend shifts when scheduled or swap shifts with other employees if he was unable to attend. On occasion the employee was called in to fill in for an employee who was sick. The hours worked by the employee varied from week-to-week depending on the needs of the Hotel.

The Hotel argued that the unfair dismissal provisions of the Act did not apply in this instance because the employee was hired as a casual for a short period. However, in a similar case decided before the Full Bench of the AIRC, an employee who was hired as a casual was able to claim unfair dismissal because she had the expectation of regular on-going employment because she worked regular hours. Accordingly, the AIRC determined that the preparation of monthly rosters had given the employee the expectation of continual employment and therefore concluded that the employee was entitled to make an unfair dismissal claim.

The decision is unlikely to have a major impact for employers, because of the recent commencement of the *Workplace Relations (Fair Termination) Act 2003* which specifically excludes casuals engaged for a short period.

Corey Damien McNamara v Roc International Pty Ltd t/a Baths Arms Hotel (AIRC) (Harrison SDP) (PR941271) 28/11/03

Source: CCH

Postie Sacked For Pumping Fuel

Australia Post has been ordered to meet with union officials after it allegedly threatened a postie with dismissal, following the discovery that he might have been working at a petrol station during his shift.

The postie, claimed he was on a toilet break at the time.

Communications, Electrical and Plumbing Union (CEPU) Victorian secretary Joan Doyle claimed that the postie normally stopped at the service station for a toilet break, but took to reading a newspaper when he found out the toilet was occupied.

After a while he decided to deliver some more mail before returning to the service station toilet, when the attendant asked him if he "Would you just mind the place? I've got to change the prices for a few minutes," Doyle said.

"His supervisor came in and went mad at him. They misinterpreted what he was doing, he wasn't doing anything wrong, he was just going to the toilet and he was within his time," she said.

The supervisor, who was making safety checks, assumed the postie was working at the station after seeing him both times at the service station.

"Nothing more was said until the next Monday when he was [made the subject of] an inquiry and the inquiry officer made a recommendation that he be sacked," Doyle said.

Australia post have agreed to meet with the union, and will attempt to resolve this matter.

Improvement for Screen Based Workers

The standard for screen based workstations is being revised to incorporate new international ergonomic standards.

AS 3590 - *Screen based workstations* was published in 1990. As a result of developments in visual display terminals the standard needs to be revised to include these technological advancements.

ISO 9241 - *Ergonomic requirements for office work with visual display terminals* will be the main international standard that Standards Australia will be looking at incorporating into the revision.

A revision that may be included will be the section in the ISO standard on using flat panel displays. The current Australian Standard only deals with monitors using cathode ray tubes.

Since the trend is towards flat panel screens, users will need guidance on ergonomic requirements for them.

Committee SF-038, "Screen based workstations", will be working closely with the committee dealing with standards for office furniture to ensure the requirements do not contradict each other.

In addition to updating your workstation, we strongly suggest you implement an exercise regime that ensures that you get up from your desk regularly and do leg exercises while sitting at your work station. New Zealand researchers have found that sitting at a computer for hours on end can cause fatal blood clots, just as long flights can lead to deep vein thrombosis (DVT), known as economy-class syndrome.

Our **Easy Restbreak** software has been developed to remind users to take a break at the required time. For more information, please give us a call or visit our website to download a free trial. <http://www.easyhr.com.au>.

ANZ - First to be Prosecuted Under New OHS Act

For exposing employees to the risk of injury during a robbery, the ANZ Bank has been convicted and fined \$156,000. The first prosecution under the *Occupational Health and Safety Act 2000* (NSW) (OHS Act) was brought by the employees' union.

On 17 June 2002, three men held up the ANZ bank in Brookvale. Two of them jumped the counters and scaled a six-foot high anti-jump barrier.

A gap of 0.4 m between the top of the barrier and the ceiling allowed the men access to the cash-handling area, which was manned by two bank employees. The robbers took about \$39,000 from the bank vault and from customers before they got away.

The robbery was similar to two earlier robberies of ANZ banks. Both in Katoomba on 3 January 2002 and in Annandale on 28 March 2002, armed offenders had gained access to cash-handling areas by climbing over internal walls which did not extend to the ceiling.

The Secretary of the Finance Sector Union of Australia brought proceedings against the bank for breach of sec 8(1) of the OHS Act. The bank pleaded guilty. It had placed employees at risk of injury because it had failed to carry out an adequate risk assessment of the security needs at the Brookvale branch and failed to provide adequate plant to ensure their safety, namely anti-jump barriers that extended to the ceiling.

The Industrial Relations Commission of NSW in Court Session heard in evidence that the union had written to the bank on a number of occasions in 2000 and 2001 about the faults of the anti-jump barriers. On 5 February 2002, the union had written to the bank about the Katoomba robbery, describing the gap between the barrier and the ceiling as "an immediate obvious hazard that should have been detected and corrected some time ago". On 3 June 2002, the union had written to ask the bank why the hazard created by the gap above the internal wall at the Annandale branch had not been detected and eliminated before the robbery.

A consultant hired by the bank had inspected the branches in the northern region of Sydney on 28 and 29 May 2002. On the day of the robbery, he had submitted a quote for the installation of security mesh between the top of the barrier and the ceiling at a number of branches, including Brookvale.

The Court acknowledged that the bank had begun to rectify the problem with the anti-jump barrier before the Brookvale robbery. However, the risk to safety had been serious and, from the time of the Katoomba robbery, it had taken the bank over four months before even engaging with the consultant, and no alternative measures to eliminate the risk had been put in place in the meantime. The steps required to rectify the hazard had been relatively simple and straightforward, and the bank had no satisfactory explanation for the delay.

The gravity of the offence indicated a penalty level of \$240,000. Because of the subjective factors of the guilty plea, the bank's commitment to OHS and its prior good record, the Court allowed a 35% discount. The bank was convicted and fined \$156,000

Derrick v Australian and New Zealand Banking Group Ltd [2003] NSWIRComm 406, 21 November 2003

Source: CCH

Missing Hinge Costs Employer \$100 000.

A car sales yard that did not have a hinged gate had to pay over \$100,000 damages to an employee who was injured while carrying the gate.

One of the regular tasks was to lift off the gate in the morning and carry it to storage and put back in place at the end of the day. Staff had been instructed that the gate was to be moved by two people. Staff had complained about the need to carry the gate twice a day, stating that other car sales yards nearby used hinged gates.

In the afternoon of 22 June 1998, it began to rain and was very cold. As a result the injured employee decided not to wait for a colleague, and carried the gate on his own. As he was lifting the gate into position, a spike from the lower rail of the gate caught on his trouser leg and he slipped and fell to his knees. He sustained injury to his back in the fall.

The salesman sued his employer for negligence.

In the Supreme Court of the ACT, the employer argued that the accident would not have occurred if the salesman had obeyed the instruction to move the gate only with the assistance of another person. The court agreed that it was probable that the accident could have been avoided and that there had been a measure of contributory negligence by the worker.

The court also noted that the employer had devised the system of work and insisted on maintaining it in spite of repeated complaints. Only after the accident had the gate been replaced by a hinged gate.

The court found that by contrast to the employer's negligence, the salesman's contributory negligence was minor. As a result the court found that 90% of the negligence was attributable to the employer and only 10% to the employee.

From a calculated award of \$100,955, the court deducted 10% for contributory negligence and awarded the salesman \$90,860

McGee v Bacova Holdings Pty Ltd [2003] ACTSC 71, 5 September 2003.

It's Hot Outside !

Forecasts of a very hot summer has prompted Worksafe WA to issue a media release advising workers and employers of the dangers of heat stress and heat stroke.

Worksafe Acting Executive Director Nina Lyhne said, "Heat causes increased sweating which depletes the body's fluids and can lead to tiredness, irritability, inattention and muscular cramps -- these are the symptoms of heat stress."

Heat stroke is a more serious condition and symptoms include cessation of sweating, high body temperature and hot, dry skin.

Because of the heat, workers can lose up to a litre of fluids per hour. It is therefore important to drink water at regular intervals.

"The effects of extreme or sustained heat can seriously affect a worker's concentration levels, and the consequences can be tragic", said Ms Lyhne.

Ms Lyhne reminded employers that "Guarding against heat stress and heat stroke is part of providing a safe and healthy workplace, and I urge employers to ensure that preventative measures are in place before the hot weather begins".

10 Tips For Success

1. Be visible. People have to be able to find you, but first they need to know you exist. Make it easy for your prospective clients to know about you and what you offer.
2. Don't wait for others to open the right doors for you. Be proactive. There's really never a good time to do anything. You just need to do it without judging yourself or over-preparing.

3. Take action. Do something on a daily basis that will get people to know you.
4. Give valuable information. Collaborate with colleagues, offer information to others, do what you can to help others be successful.
5. Market yourself without hard-selling. There's a difference between promotion for self-serving purposes and adding value to someone's life.
6. Open up your space. Creative flow cannot happen when you're blocked for time, physical space, money, or other entanglements. Eliminate the non-essentials. Let go of the excuses.
7. Work with others for creative ideas. Get all the ideas you can to move forward and then take responsibility and move.
8. Give your efforts time to develop. Allow yourself at least 90 days before you change course. People don't always respond immediately. If it's not working by that time, modify what you are doing. Be careful to modify only one aspect of your plan at a time, otherwise you won't know what it was that actually worked for you.
9. Follow up. Don't assume people will call you. Call them. Call them often enough to get noticed without being a pest. Always offer something of value to them when you call.
10. Let go of the outcome! Put yourself out there and then let it go. Just keep moving forward.

OHS Fine Increased On Appeal

A driver contracted to deliver timber to a hardboard production company was unloading his truck in the company's log yard, when a log weighing approximately 680 kg fell from the trailer. The driver was fatally crushed. The subsequent investigation found that a stanchion extender pin had not been in place and no other form of log restraint had been used.

The investigation also established that the company had provided induction training and required drivers to have appropriate certificates and skills. However the induction training had not specifically addressed the safety risks associated with the unloading of the timber and therefore did not comply with the *Code of Practice: Safe Loading and Unloading of Logs*.

The company was prosecuted for breach of sec 16(1) of the Occupational Health and Safety Act 1983 (NSW). It pleaded guilty because it understood the nature of its obligations under the Act. The Court found that, in view of the driver's experience, the company's breach had not been very serious, so it was convicted and fined \$18,750.

The prosecution appealed, arguing that the risk of injury had been reasonably foreseeable.

The Full Bench of the Industrial Relations Commission of New South Wales in Court Session agreed with the appellant. Too much weight had been placed on the existence of the induction program in spite of its shortcomings and too little weight had been given to the lack of supervision and surveillance of the unloading work at the log yard.

In assessing a more appropriate penalty, the Full Bench took into account the company's guilty plea, its generally good safety record, the cooperation with the WorkCover Authority and the measures it had taken after the accident, as well as its lack of prior convictions.

The Court also considered the principle of double jeopardy and the need to impose a sentence somewhat lighter than it considered should have been imposed at first instance. The previous penalty was quashed and replaced with a fine of \$70,000.

Inspector Buggy v Weathertex Pty Ltd [2003] NSWIRComm 273, 12 September 2003

NSW Workplace Deaths At 4 Year High

While the NSW State Government boasts that the number of workplace injuries has fallen for six consecutive years, the number of deaths has blown out to a four-year high.

At the same time, the number of notices issued by WorkCover has fallen to a five-year low.

Figures provided by Industrial Relations Minister John Della Bosca to Labor Council secretary John Robertson show that WorkCover can take some credit through safety awareness campaigns for driving down workplace injuries.

For example, in 1995, 42,505 workers were injured in the workplace. The injury rate reached a recent high in 1997, with 44,654 workers injured. For the past three years, the figure has hovered at or just under 40,000, with 40,205 workers injured last year.

But the death rate has jumped in recent years.

In 2002, 68 workers lost their lives. This compares with 47 in 2001, 64 in 2000, 61 in 1999.

In 1998, WorkCover issued 12,611 improvement notices, 1758 prohibition notices and 2802 penalty notices. Last year WorkCover issued 10,571 improvement notices, 786 prohibition notices and 1471 penalty notices.

While WorkCover last year established a fatalities investigations unit, and NSW has the highest penalties in Australia for companies and individuals breaching OH&S laws, Mr Della Bosca's own data shows that sentences handed down for breaches of the Act consistently are soft.

The maximum penalties are \$55,000 for the first offence and \$82,500 for subsequent offences by individuals, and \$550,000 for the first offence and \$825,000 for subsequent offences by corporations.

In 23 per cent of cases defendants were fined just 5 per cent of the maximum, in 48 per cent of cases just 10 per cent of the maximum. And at the time of writing no individual or corporation has ever been fined 80 per cent or more of the maximum penalty.

Source: The Daily Telegraph 31 October 2003