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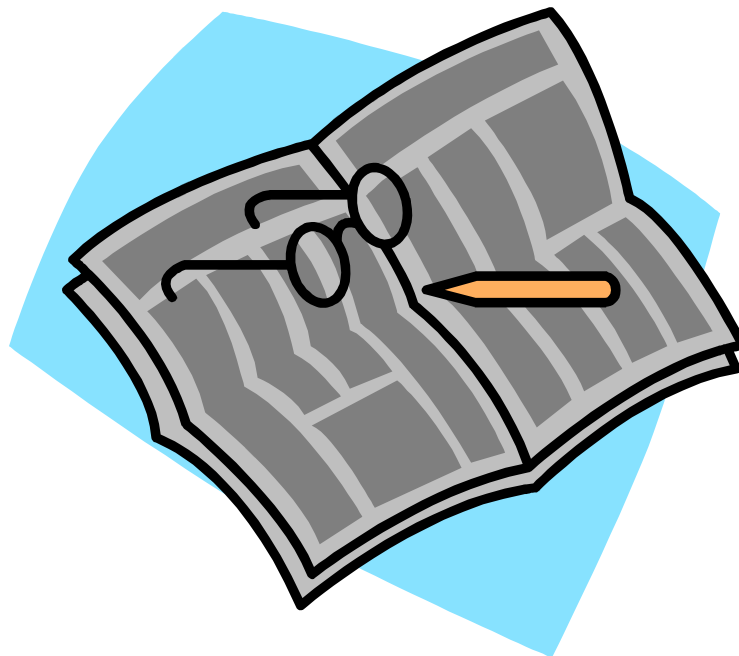
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Easy HR Newsletter
April 2004

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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 (For Committees and OHS Reps)

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 **New** Parramatta venue has plenty of free onsite parking.

3, 4, 10, 11 May / 7, 8, 16, 17 Jun / 1,2,8,9 Jul / 3,4,9,10 Aug /
6,7,13,14 Sep / 5,6,11,12 Oct / 1,2,8,9 Nov / 1,2,6,7 Dec

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.

27, 28 April / 29, 30 June / 24,25 Aug / 28,29 Oct

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

Accident Investigation

This 3 Hour course covers the processes involved in systematically investigating incidents, and identifying the underlying cause or real cause. Understanding and identifying the real or root cause of an accident is paramount in minimising and eliminating workplace incidents.

28 July / 30 Sept 2004

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

OHS Construction Induction

Workcover NSW Accredited

This 5 hour course satisfies the legal requirements for General OHS Construction Induction in NSW. Permitting a person to commence work at a construction site without having completed the required induction training carries a maximum penalty of 100 penalty units (\$ 11 000).

Course Cost: \$105.00 (GST Exempt)

30 April / 28 May

Regional NSW Training

Ask us about 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: <http://www.easyhr.com.au>

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

Please contact us for details – inhouse@easyhr.com.au or call us on **1300 667 331**.

Easy HR Sources New Training Venue

We have recently managed to secure the use of a new training venue in Parramatta. The new venue provides plenty of free parking, and is only a short walk to the station and Parramatta Westfields.

The venue boasts all the facilities we need and would expect in order to deliver top class training. Why not enrol in one of our courses and check it out yourself?

Go Straight To Jail, Do Not Pass Go

A woman who defrauded WorkCover has been sentenced to two-and-a-half years' jail, with a one-year non-parole period.

Marlene White of Victoria pleaded guilty to two charges of fraudulently obtaining WorkCover benefits and one charge of assisting another to obtain benefits.

In February 1999, Ms White lodged a compensation claim for an alleged back injury. This injury was allegedly suffered while moving furniture at her office in September 1998.

The 58-year-old woman received weekly payments until a WorkCover investigation in December 2000 revealed she had been working while receiving benefits.

Ms White received more than \$42,000 in fraudulent payments. She also helped her receptionist receive 29 fraudulent compensation payments.

Did You Know ?

The can opener was invented 48 years after cans were introduced

Cans were opened with a hammer and chisel before the advent of can openers. The tin canisters, or can, was invented in 1810 by a Londoner, Peter Durand. The year before, French confectioner, Nicolas Appert, had introduced the method of canning food (as it became known) by sealing the food tightly inside a glass bottle or jar and then heating it. He could not explain why the food stayed fresh but his bright idea won him the 12,000-francs prize that Napoleon offered in 1795 for preserving food. Durand supplied the Royal Navy with canned heat-preserved food while Appert would help Napoleon's army march on its stomach.

Tin canning was not widely adopted until 1846, when a method was invented to increase can production from 6 in an hour to 60. Still, there were no can openers yet and the products labels would read: "cut around on the top near to outer edge with a chisel and hammer."

The can opener was invented in 1858 by American Ezra Warner. There also is a claim that Englishman Robert Yeates invented the can opener in 1855. But the can opener did not become popular until, ten years later, it was given away for free with canned beef.

The well-known wheel-style opener was invented in 1925. Beer in a can was launched in 1935. The easy-open can lid was invented by Ermal Cleon Frazee in 1959.

*Since 1972, some 64 million tons of aluminium cans (about 3 trillion cans) have been produced. Placed end-to-end, they could stretch to the moon about a thousand times. Still, cans represent less than 1% of solid waste material - about one quarter of all cans are recycled. Worldwide, some 9 million cans are recycled every hour. Which is good news, considering that it takes a can **about 200 years to degrade** if you bury it. It takes paper about a month to bio-degrade, a woollen sock about a year, and plastic hundreds of years.*

Workcover NSW Construction Induction Changes

WorkCover NSW Chief Executive Officer, Jon Blackwell, recently announced that from 29 March 2004, WorkCover NSW will issue an OHS construction induction training certificate in a new credit card-sized format that provides a durable and portable proof of safety training.

"The new card will provide instant proof that the bearer has completed the WorkCover approved training for OHS General Induction for Construction Work in NSW," said Mr Blackwell.

The new certificate has been introduced to ensure a single, consistent and portable proof of safety induction. It is compulsory for each person as proof of completion of training.

"Workers who complete their induction training after 29 March 2004 will receive a Statement of OHS Induction, valid for 30 days, and will be able to gain the WorkCover OHS Induction Training Certificate on completion of the endorsed application form."

"The application form will be sent by the trainer to WorkCover to be processed through its industry database," said Mr Blackwell.

"Under the new system, WorkCover will issue the new card directly to the applicant at their home address," he said.

"Persons who have already completed the training will be able to convert to the new OHS Induction Training Certificate free of charge on production of proof of their previous training."

"The new system will greatly enhance safety in the construction industry and ensure accountability in the induction training process," said Mr Blackwell.

"The WorkCover OHS Induction Training Certificate will be the only accepted proof for persons trained after 29 March 2004," he said, "although existing proof of training prior to this date will be accepted until 29 March 2006." Existing proof of training would in most cases be the Workcover Certificate issued by the trainer.

In conjunction with this initiative is an amendment to the OHS Regulation 2001 that includes revised conditions for the conduct of the training and increased penalties for non-compliance.

"WorkCover is committed to ensuring that the OHS General Induction for Construction Work course is delivered to WorkCover's requirements and that all new entrants into the construction industry are provided with training that supports safety on construction sites," said Mr Blackwell.

Information regarding the certificate can be obtained by phoning WorkCover on **13 10 50** or by email: induction.construction@workcover.nsw.gov.au.

If you need to attend one of our construction induction training courses, please contact us on 1300 667 331 or via email at construction@easyhr.com.au

Thought For The Day

- *Anyone who is popular is bound to be disliked.*
- *Any theory can be made to fit any facts by means of appropriate additional assumptions.*

Man Fined For Impersonating Workcover NSW Inspector

A Sydney man has been fined \$1500 in the Chief Industrial Magistrates Court for falsely representing himself as a WorkCover inspector.

The court heard that on 12 April 2003, the defendant was stopped by police on the Pacific Highway at Cooperook for speeding and was issued with an infringement notice.

The defendant falsely claimed to work for WorkCover and threatened to have the police investigated.

Upon fining the defendant, the Chief Industrial Magistrate commented on the serious nature of the offence.

WorkCover's Chief Executive Officer, Jon Blackwell, commented: "False representation of a WorkCover inspector is a serious offence and anyone found doing so will be prosecuted."

Source: Workcover NSW

Watch That Send Button

With one click on her computer keyboard Sharon Dyson accidentally sent a personal email to 30 people. That email has now been circulated throughout offices in the City of London and could cost Dyson her job.

Dyson, a student careers advisor with Hobsons, replied to an email from her boyfriend while on a business trip in Australia.

The email contained mostly personal chat, but included the remark "I have to write a sucky 'Thank you' email to clients now, w*nk, w*nk."

Instead of clicking the "reply" key she clicked the neighbouring "reply all" key, thus distributing the email to everyone on her boyfriend's original recipient list.

The message went to 30 friends of the boyfriend, a PR executive with Carat International. The friends forwarded it to their friends and it soon reached thousands of recipients including her employer.

Hobsons said it has "staffing procedures" in place to deal with such matters. The company was keen to stress that "the e-mail represented Sharon's personal thoughts and not those of the rest of our staff".

After several high profile lawsuits with multi-million dollar penalties concerning the contents of corporate emails, companies are increasingly aware that simply by using e-mail they are exposing themselves to legal threats. Some companies try to solve this problem by banning e-mail from their organization completely, but there are better ways in which companies can protect themselves, one of which is an email disclaimer.

Email disclaimers are statements that are either prepended or appended to e-mails. These statements are usually of a legal character but can also be used for marketing purposes.

There is no disclaimer that can protect against actual libellous or defamatory content. The most a disclaimer can accomplish in this respect is to reduce the responsibility of the company, since it can prove that the company has acted responsibly and done everything in its power to stop employees from committing these offences.

No Training Costs Company \$75 000

Failure to provide safety training to workers resulted in conviction and a \$75,000 fine for a construction company.

The Northside Storage Tunnel Alliance, formed by Transfield Pty Ltd, the Sydney Water Corporation, Montgomery Watson Australia Pty Ltd and Connell Wagner Pty Ltd, carried out construction work associated with the Northside Storage Tunnel Project at Northbridge, Sydney.

On 10 April 2000, a tunneller was repairing a conveyor system in the ceiling of the tunnel from a flatbed railcar, while a labour-hire worker was operating a 5 tonne locomotive pulling the railcar. When the locomotive stalled because of debris on the tracks, the driver, without warning the tunneller standing on the flatbed, put it in reverse in order to get a run-up in the forward direction. When the locomotive moved, the tunneller suffered severe crush injuries.

The tunneller's employer was prosecuted for breach of sec 15(1) of the Occupational Health and Safety Act 1983 (NSW) and pleaded guilty.

In the Industrial Relations Commission of New South Wales in Court Session, the employer submitted that no work method statement could have predicted debris on the tracks. The Court explained that the employer's obligation had been to ensure that workers be given warning when the rail carriage changed direction.

The Court said the breach revealed a lack of rigour being applied to the training of contract employees brought onto the site, as well as a systemic communication problem for those working underground.

While debris on the track may not have been foreseeable, giving the responsibility for driving a locomotive to an untrained worker would involve a foreseeable risk of injury. The employer was convicted and fined \$75,000

Inspector Vierow v Transfield Pty Ltd [2003] NSWIRComm 355, 6 November 2003

Builder Refused To Provide Scaffolding

A builder who refused to provide scaffolding was liable for damages to a worker who fell off a roof.

A self-employed man with his own roofing business was hired as a subcontractor for the construction of a house. While working on the roof on 23 August 1994, he slipped and fell about 2.5 m to the ground. He landed on his right knee and left elbow and felt pain in his lower back and legs.

He reported to the builder what had happened and asked for scaffolding for the roofing work. The builder refused to supply scaffolding and said that, if the subcontractor did not come back and complete his obligations under the contract, he would be taken to court.

The roofing subcontractor was in a lot of pain but kept working for the next few days until he had to stop. He then sued the builder in negligence.

Medical evidence given in the Supreme Court of the ACT showed that the injuries had caused a high level of pain-related disability with psychosocial consequences and he was likely to remain a chronic invalid.

The court found the builder liable and awarded the subcontractor \$1 221 600

Schwenk v National Capital Homes Pty Ltd & Anor [2003] ACTSC 92, 14 November 2003

Verbal Notice Not Sufficient

The Australian Industrial Relations Commission has dismissed an application for the certification of two sec 170LK agreements as the employees concerned were only verbally advised of their right to union representation.

Pickering Transport Group (Pickering) sought to have two agreements certified under sec 170LK of the Workplace Relations Act 1996 (the Act).

Section 170LK(2) of the Act provides that an employer must give its employees at least 14 days written notice of the intention to make the agreement. Section 170LK(4) also provides that this notice must state that the employees are entitled to union representation.

The employees however were only verbally advised of their right to union representation.

Pickering submitted that in the circumstances of this case, verbal advice was adequate as the employees had experience with sec 170LK agreements and were familiar with their rights.

There had been no requests for union representation and the spirit of the legislation had been followed. Pickering also submitted that the agreements should be certified as the terms of the new agreements had already been implemented.

However, Mansfield C determined that it was clear that Parliament intended for employees to be advised in writing of their right to have an industrial organisation become involved in meeting and conferring with their employer.

In particular, the requirement for written notice ensures that:

- Each employee is aware that they may involve an industrial organisation to represent their interests in the development of an enterprise agreement
- An employee can make a request for an eligible industrial organisation to become involved, directly and confidentially
- There is clear evidence of the precise advice given to each employee.

As a result the court dismissed the applications for certification.

Pickering Transport Group and Anor AIRC (Mansfield C) (PR943516) 10/2/04.

Are you a Control Freak

Most of us have had to contend with control freaks. Control Freaks are those people who insist on having their way in all interactions with you. They wish to set the agenda and decide what it is you will do and when you will do it. You know who they are – they have a driving need to run the show and call the shots.

Lurking within the fabric of the conversation is the clear threat that if you do not accede to their needs and demands, they will be unhappy.

Certainly, infant businesses can't thrive without a founder's laser focus and passionate attention to detail.

But as chaos subsides and business starts chugging along, take-charge Dr. Jekyll's often turn into Mr. Hyde, the control freak. Usually, entrepreneurs are so involved in nurturing their baby businesses, so breathlessly invested in every step the baby takes, that they don't recognize the moment when the company actually walks on its own.

At that point the master problem-solver typically turns into the problem himself (or herself).

When owners can't let go, companies are stunted. Employees and opportunities hit the wall of a chief executive who insists on knowing every trivial thing, being at every routine meeting, calling each and every shot.

Seek help. Learn how to empower your employees, trust in them to know what to do, allow for mistakes - these are part of life. Learn to loosen the reins a little before you find nobody will work for you! Chances are your employees cannot work under the conditions you impose upon them.

Despite the entrepreneur's tendency to get everything done yesterday, don't rush into delegating. If you have staff ready to shoulder the load, suddenly shifting your responsibilities won't stick. It must be done gradually, so both you and they can grow into the unaccustomed roles. If you need to hire new help, move thoughtfully.

If you are a control freak, don't despair, help is available. Seek it. By acknowledging that other people's ways of doing things, of being, of living, etc. is okay; you are not making yourself "less" in any way.

You are still okay. You will always be okay. You don't need to try to organize and control everything and everyone around you. It goes without saying that holidays are the ultimate triumph for the control freak.

Harassment Dilemma

A decision by the Queensland Industrial Relations Commission has demonstrated the dilemma faced by some managers when attempting to resolve complaints of harassment by one employee against another.

While a manager is obligated to take steps to prevent harassment from occurring, and to take action against employees who do harass others, the manager must also be careful that procedural fairness is provided to all parties involved.

A man who was employed as sales manager at a car dealership was offered a transfer to a smaller used car business owned by the employer after the dealer principal concluded that complaints of harassment lodged by two female employees against him were justified.

In the dealer principal's absence at the time of the complaints, two other managers investigated them while the sales manager was suspended with pay. Although the two managers found the harassment complaints to be valid, they proposed the sales manager could return to work under certain conditions. However, the dealer principal felt the terms of return to work were unworkable, particularly the requirement that another person be present whenever the sales manager had to deal with other sales staff.

The alternative job involved less responsibility regarding other staff, less decision-making authority and was in a lower-profile part of the business at a remote location, although its remuneration was similar.

The man refused the transfer and sought reinstatement, claiming he was constructively dismissed.

The Commission found that while the dealer principal was obligated to take action against the employee once he found the complaints against him were valid, the transfer to a lower position was nevertheless a breach of his employment contract and amounted to constructive dismissal.

The manner of dismissal was unfair. The man could have instead been dismissed with reasonable notice or offered suitable employment elsewhere within the business where he would not have contact with the complainants.

As reinstatement was impracticable in this case, the man was awarded compensation of one month's pay in lieu of notice.

Proposed Superannuation Changes

The Federal Treasurer recently released information on proposed changes to superannuation. Most of the changes related to how superannuation can be paid out of a person's fund on "retirement". However, one proposed change will have an impact on how superannuation is calculated for employer Superannuation Guarantee contributions (SGC).

"The Superannuation Guarantee (SG) requires employers to provide superannuation support for their employees. The minimum support required is 9% of an employee's notional earnings base. For most employees, the notional earnings base is remuneration earned in their normal working hours (without payments for overtime). This is commonly referred to as ordinary time earnings.

The SG legislation allows some employers to pay superannuation on an earnings base that existed back in 1991, before the SG was introduced. This means that an employee can be paid lower superannuation contributions than another employee in similar circumstances. This can have a significant impact on this person's standard of living in retirement.

To ensure all employees are treated in a consistent manner for SG purposes, the Government will remove these lower earnings bases. Ordinary time earnings will be the earnings base for determining SG liability for all employees.

Employers affected by this change will have until 1 July 2010 to meet this requirement."

Another proposed change could have a large impact on employees about to receive eligible termination payments (ETP):

"A person generally cannot access their superannuation benefits unless they have reached their preservation age and have retired. Since 1 July 1999, all new contributions to superannuation have been preserved to ensure superannuation savings are used for their intended purpose of supporting retirement income.

The general rule relating to the preservation of contributions does not apply to employer eligible termination payments that have been rolled over into a superannuation fund. As a result, such benefits can be withdrawn from a superannuation fund before preservation age, despite the fact they benefit from tax concessions which are intended to support their use for retirement income purposes.

The Government will remove this anomaly so that all employer eligible termination payments which are rolled over into superannuation from 1 July 2004 are preserved. The change will not affect employer eligible termination payments rolled over before that date."

Note: These measures will have to pass through both houses of Parliament before they will become law.

Did you know ...

Credit was first used in Assyria, Babylon and Egypt 3000 years ago. The bill of exchange - the forerunner of banknotes - was established in the 14th century. Debts were settled by one-third cash and two-thirds bill of exchange. Paper money followed only in the 17th century.

The first advertisement for credit was placed in 1730 by Christopher Thornton, who offered furniture that could be paid off weekly.

From the 18th century until the early part of the 20th, tallymen sold clothes in return for small weekly payments. They were called "tallymen" because they kept a record or tally of what people had bought on a wooden stick. One side of the stick was marked with notches to represent the amount of debt and the other side was a record of payments.

*In 1950, Diners Club and American Express launched their charge cards in the USA, the first "plastic money". In 1951, **Diners Club issued the first credit card** to 200 customers who could use it at 27 restaurants in New York. But it was only until the establishment of standards for the magnetic strip in 1970 that the credit card became part of the information age.*

Procedural Fairness When Terminating

It is essential that dismissal interviews be conducted in private, in order that they be procedurally fair.

In this case, the Queensland Industrial Relations Commission found that a Bundaberg church had unfairly dismissed an employee when she was informed of her dismissal in the kitchen, where the conversation could be easily overheard.

The employee had been employed by the church for just over a year, as an Office Secretary, working 20 hours per week between 9 am and 1 pm each week day. Her duties were given to her in a formal job description when she successfully applied for the position. At no time, she claimed, did she receive any counselling or warnings in relation to her work performance during the course of her employment.

In March 2003 she was dismissed. She then sought relief for her dismissal, which she claimed was harsh, unjust and unreasonable, and for an invalid reason.

The Commission accepted the pastor's claims that the secretary was not meeting some of the requirements of the job - she was not recording and passing messages on correctly, nor doing the banking each week as was required. She had also failed failing to properly record details of baptisms in the Church register. However, the Commission was clearly unimpressed by the pastor's complete failure to provide procedural fairness to the secretary, plus the manner in which the termination was carried out. It was clear that the vast majority of the alleged and real deficiencies raised by the pastor were not raised with the secretary in an appropriate way. Instead, the secretary had been informed of her dismissal in the kitchen area where other people could overhear the conversation from adjoining rooms.

The secretary claimed that the pastor had said to her that she "had beautiful telephone manners, great people skills but they had decided they wanted a member of the Uniting Church who had theological knowledge and experience". (The Commission accepted the secretary's evidence that these statements were made, in preference to the pastor's denial that they were made.) She also claimed that when she asked the pastor why this requirement was not in the original job description, the pastor had said that "they did not know what they were doing" when she applied for the job. The secretary alleged that she had tried to explain that she had theological knowledge and experience and Education Department endorsement to teach religion, but the pastor had said that he had made his decision and that she should leave immediately.

This inappropriate reason given for her termination, as well as the procedural deficiencies, made the termination harsh, unjust and unreasonable. As reinstatement or re-employment were not practicable the Commission awarded the secretary 13 weeks' wages and an additional amount in recognition of the inappropriate way the termination was communicated to her and the distress which the termination caused her - \$3,500 in total.

Guest v Uniting Church in Australia Bundaberg

Source: CCH

It's All relative

A noted doctor attending a dinner party was jokingly asked by the host who was carving the turkey, ..."How did I go doc. Do you think I'd make a good surgeon?"

"I don't know replied", the doctor..."let's see you put it back together again".

Is Your Job Important ?

"The only happy people I know are the ones who are working well at something they consider important."

Abraham H. Maslow

Fines Increased On Appeal

The fine was increased on appeal from \$65 000 to \$155 000 for an offence involving the death of an employee whose legs had been crushed in a mine.

On 1 July 1999, a mine employee died after his legs had been crushed during the installation of a conveyor boom onto a continuous mining machine. Another employee had narrowly escaped injury.

The employer pleaded guilty to a breach of sec 15(1) of the Occupational Health and Safety Act 1983 (NSW).

The Industrial Relations Commission of NSW in Court Session convicted the employer on 18 November 2002 and imposed a fine of \$65,000.

The prosecution subsequently appealed against the inadequacy of the sentence. Although the breach had been categorised as serious, the primary penalty had been assessed only as \$100,000 before a 35% discount was applied.

At the appeal, the prosecution claimed that the Court originally had failed to give appropriate weight to the nature and seriousness of the offence.

The employer had been aware of the risk to the employees and simple steps had been available to ensure their safety.

The Full Bench examined the evidence. Although the employer had had a system of safety management, it had not provided information, instruction or training to the two workers put at risk in the installation of the conveyor boom. That flaw in the safety system had fatal consequences.

The Full Bench agreed that the Court originally had not given enough weight to this failure.

The appeal was allowed and the original penalty was quashed. The Full Bench took into account the principle of double jeopardy, which required that the sentence to be imposed would be somewhat less than the sentence the appellate court considered should have been imposed at first instance.

The employer was fined \$155 000 in place of the original fine.

Morrison v Powercoal Pty Ltd [2003] NSWIRComm 416, 28 November 2003

The Donkey In The Well

One day a farmer's donkey fell into an abandoned well. The animal cried piteously for hours as the farmer tried to figure out what to do. Finally, he decided the animal was old and the well needed to be covered up anyway, so it just wasn't worth retrieving the donkey.

He invited all his neighbours to come over and help him. They each grabbed a shovel and began to shovel dirt into the well. Realizing what was happening, the donkey at first cried and wailed horribly. Then, a few shovelfuls later, he'd quietened down completely. The farmer peered down into the well, and was astounded by what he saw....

With every shovelful of dirt that hit his back, the donkey was doing something amazing. He would shake it off and take a step up on the new layer of dirt. As the farmer's neighbours continued to shovel dirt on top of the animal, he would shake it off and take a step up. Pretty soon, the donkey stepped up over the edge of the well and trotted off, to the shock and astonishment of all the neighbours.

Moral:

Life is going to shovel dirt on you, all kinds of dirt. The trick to getting out of the well is to not let it bury you, but to shake it off and take a step up. Each of our troubles is a steppingstone. We can get out of the deepest wells just by not stopping, never giving up! Shake it off and take a step up!

Interesting Thought

When you are confronted by any complex social system, such as an urban centre or a hamster, with things about it that you're dissatisfied with and anxious to fix, you cannot just step in and set about fixing with much hope of helping.

This realization is one of the sore discouragements of our century.

Jay Forrester has demonstrated it mathematically, with his computer models of cities in which he makes clear that whatever you propose to do, based on common sense, will almost inevitably make matters worse rather than better.

You cannot meddle with one part of a complex system from the outside without the almost risk of setting off disastrous events that you hadn't counted on in other, remote parts.

If you want to fix something you are first obliged to understand, in detail, the whole system, and for very large systems you can't do this without a very large computer.

Even then, the safest course seems to be to stand by and wring hands, but not to touch. Intervening is a way of causing trouble.

Lewis Thomas, from the essay "On Meddling" in the collection "The Medusa and the Snail", The Viking Press, New York, 1979

Employees Drilled On Safety

The machine operators in a machine shop had an elaborate cleaning regime to keep drill bits off the floor. The Machine operators often cleaned around their respective machines. A cleaner was employed, however the cleaner's job was to clean the shop generally.

The cleaner could not clean the whole shop in one shift so he prioritised his duties, cleaning the areas that most needed it in the time available to him.

Drill bits often fell to the floor of the machine shop, and rolled some distance. The machine operators had not been given specific instruction about storing the drill bits - as skilled tradesmen it was regarded as inappropriate to tell them how to handle their drill bits.

Because of pressure of work, a machine operator would not always promptly retrieve a fallen bit and bits could also fall unnoticed because of the noise in the shop.

On 9 April 1998, the cleaner had almost completed his shift when he trod on a drill bit. He did not see it because he was pushing a scrubbing machine to its storage place. He lost his balance and fell.

The cleaner sued the occupier of the machine shop in negligence, seeking damages for his injury.

The District Court of South Australia found that the cleaning regime was adequate. The machine shop, including its floor, was unusually clean. Both the occupier and its employees were aware of the hazard posed by drill bits on the floor and were systematically taking care to eliminate that hazard. There was no evidence that the drill bit that caused the accident had been long on the floor or, indeed, that a search for it had not already been in progress when cleaner trod on it. On the basis of these facts, the court was satisfied that the occupier had not been negligent.

The court also commented that the duty imposed on the occupier by sec 19(1), 23 and 23A(2) of the Occupational Health, Safety and Welfare Act 1986 (SA) was not more extensive than that required of the occupier by the law of negligence. The court was not satisfied that the occupier had failed to ensure, as far as reasonably practicable, the safety of the cleaner from injury. The claim was dismissed.

Kelly v BAE Systems Australia Ltd [2003] SADC 165, 21 November 2003