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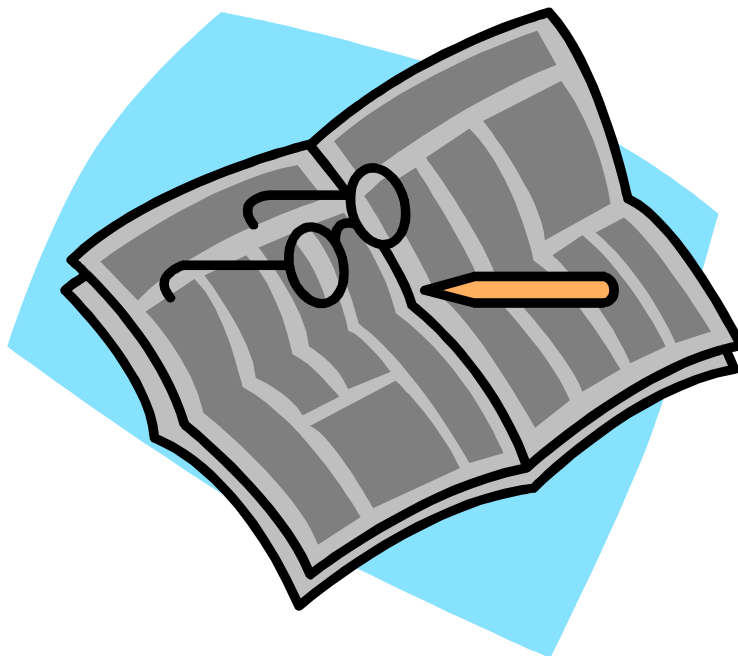
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Easy HR Newsletter  
September 2004

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# Let Us Know What You Think

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

Thanks to those who completed our online survey. Apologies to those who found the page unavailable. It was removed for a short time while we updated our website.

As a result of the survey, we will be issuing more regular, but shorter newsletters. We welcome your comments and suggestions at any time.

## Easy HR Gets A New Look

Yes that's right, we have updated our web site. Point your browser to our homepage to find out more about us or the services we offer. Have a look around, or download some or all our free tools and utilities. <http://www.easyhr.com.au>

## Easy HR Sydney CBD Training

We are fortunate enough to have secured a training venue in the heart of Sydney CBD. If you thought that Parramatta was too far to travel, now is your opportunity to take advantage of our centrally located CBD venue. Our training room is close to trains, busses and parking stations. We are now able to offer the Workcover accredited *OHS Consultation* and *Risk Managers For Supervisors & Line Managers* courses in both Parramatta and Sydney CBD.

Course details are on our website: <http://www.easyhr.com.au>

## Need A Safety Training Video?

We are able to provide you with a comprehensive range of safety training videos. We will have a complete catalogue available soon. In the mean time why not point your browser to <http://www.safetyvideos.com.au> to review our range of videos, or to take advantage of our free preview service.

We have a number of introductory offers. Visit the website for more details.

# NSW Police Fined For Booking Driver

NSW Police has been found guilty of not effectively managing the on road risks posed by laser speed detection.

A police sergeant and a senior constable were conducting a speed detection and enforcement operation at Noraville on 18 May 2000. They were using a laser speed detection unit on the side of Budgewoi Road. At approximately 5:00pm, the sergeant identified a car exceeding the 60 km/h speed limit. As a result he stepped onto the road and signalled the driver to stop. The driver accelerated and swerved towards the sergeant. The vehicle struck the sergeant and threw him into the air. As a result he was seriously injured.

The driver of the vehicle was later apprehended. He already had an extensive criminal history and was driving under the influence of alcohol. The vehicle was unregistered and uninsured.

The employer (NSW Police Service) was prosecuted for breach of s 15(1) of the Occupational Health and Safety Act 1983 (NSW). They pleaded not guilty, contending that an employer's responsibilities under the Act did not extend to controlling the risks created by the unpredictable and unlawful actions of third parties over whom they had no control. The driver in this case had, after all, been intent on hitting the sergeant.

The Industrial Relations Commission of NSW, in Court Session, said it was necessary to go behind the immediate cause of the accident and ask: (1) whether the employer had failed to ensure the sergeant was not exposed to a risk of being struck by a moving vehicle and (2) whether there was a causal relationship between any such failure and the consequent risk.

The procedure the police used for stopping vehicles involved wearing a reflective vest, stepping onto the carriageway and, using a reflective sign or hand signals, signalling the driver to pull over to the side of the road.

The training for using the laser speed detection unit was a one-day course. The resource manual for the course contained nothing about the safe operation of the unit when conducting roadside speed detection. The trainees had been told, "Consider carefully the stopping procedure before operating the Laser. If in doubt about safely stopping an offender, let him go - your safety is more important".

The Court found that it could not be said that there was any system of work in place to safeguard police officers conducting speed checks. The court also found that adequate information, instruction or training had not been given to ensure the officers safety when stepping onto the road on speed detection duty. The court found that a system that relied almost exclusively on an employee's skills and experience to ensure safety was no system at all.

It was also recognised that the employer had been aware of the risks associated with conducting speed checks, as proved by the warning, "If in doubt about safely stopping an offender, let him go". Having identified that there was a risk to safety in the stopping procedure, the employer had done nothing to manage it in an effective manner.

If the employer had instructed the sergeant not to step out on the road but place himself behind a barrier when conducting speed checks, it was beyond reasonable doubt that the sergeant would have obeyed. He would then not have been exposed to the degree of risk that he experienced on 18 May 2000. The court found that a causal relationship had existed, and as a result the employer was found guilty of the offence.

The employer claimed it had a defence under s 53(b) of the Act - it had done all that had been reasonably practicable. The Court noted that all the employer had done was to issue the warning, "If in doubt about safely stopping an offender, let him go". It had not been necessary to step onto the road to signal a driver to stop. The senior constable also on duty had only gone to the edge of the road and successfully pulled over another car coming from the other direction, whose driver was an eyewitness to the accident.

*(Inspector Covi v the Crown in the Right of the State of NSW (NSW Police) [2004] NSWIRComm 128, 28 May 2004).*

## How Does Your CV Shape Up?

A bad CV makes a bad first impression, which means you won't get a chance to make a second one – so you need to get it right. As the saying goes, *you won't get a second chance to make a first impression.*

Keep your CV as brief and concise as possible. Make it relevant for the position you are applying for. Agencies and HR professionals aren't impressed by form letters. If you can't make the effort to craft a custom application letter, why should they make the effort to give you an interview? When writing your letter, always address the selection criteria stated in the ad.

Break your CV down into sections (personal details, employment history, qualifications ,etc.) Always use bold headings for each subsection. Pay attention to formatting. Make the document as easy to read as possible.

If you use email to forward your resume electronically, don't use custom fonts that the recipient may not have installed on their PC. The document may look great on your PC, but may be less than perfect on the recipients PC.

Always make sure you are easy to contact. Include your phone number and a sensible email address. Try and avoid email addresses similar to [king-of-the-dudes@hotmail.com](mailto:king-of-the-dudes@hotmail.com).

Similarly, if you have voicemail, a professional approach is always noticed. Your potential employer may be turned off by a message that says "Heeeelloooo baaaybeeee, leave a message after the tone."

Use page numbers. If for any reason your CV gets separated, the reader will know that there are pages missing.

Always check your CV for spelling errors, and ask someone else to check it too. It can be very difficult to check your own work. Similarly don't have blind faith in your word processor. Always confirm that the suggested word is correct before clicking the *change* button.

## **Workers Hand Trapped - \$15 000 Fine**

Sunbeam Foods has been fined \$15 000 - without conviction - and ordered to pay WorkSafe's legal costs of \$4 250 after a 56-year-old worker's hand was trapped in a processing machine's screw auger.

WorkSafe told Mildura Magistrate Muling that company supervisors knew workers cleared blockages with their hands and that the chute allowed physical access to the screw auger.

The injured worker was flown to Adelaide for emergency surgery after the incident in July 2002.

WorkSafe told Magistrate Muling there were no machine isolation procedures or instructions which required blockages to be cleared only when the machine was isolated.

WorkSafe's Executive Director, John Merritt, said the tragedy of this case is that it could have been predicted and prevented. "Guarding is one of the most basic safety provisions on any machine. It is a safety issue that goes back to the start of the industrial age. In the 21st century people should simply not have access to the inner workings of machines while they are operating. Allowing people to have that access and not providing the means to safely deal with blockages effectively creates a trap that will eventually catch someone."

He added that "WorkSafe prosecutes many cases each year as a result of body parts being trapped in machines. These are not 'accidents' as the incident can be foreseen. Employers have a responsibility to ensure they provide safe equipment and don't let the bottom line or other pressing demands to get in the way of the safety of the workforce."

*Source: Workcover Victoria*

# Choose Your Words Carefully

A recent decision of a full bench of the Australian Industrial Relations Commission (AIRC) has highlighted the fact that employers must exercise caution in informing their employees of their right to union representation in negotiating non-union certified agreements under sec 170LK of the Workplace Relations Act 1996.

A full bench of the AIRC quashed the certification of a sec 170LK agreement. It found that the employer's notice of its intention to make an agreement did not adequately inform its employees of their right to request union representation.

The notice stated: "If you are a member of a union, you can if you choose to do so, request the union to represent you during this bargaining period, however this is not mandatory."

The full bench held that advice to an employee that they may "request the union to represent you" did not indicate to the employee the nature of the representation they could request the union to undertake.

The full bench also noted that the words "this is not mandatory" confused the issue by raising the possibility that if a request for representation were made, there was no obligation on the employer to accept the organisation's representative role. Further, the use of the term "bargaining period" was confusing and potentially misleading as it had a specific meaning under the WR Act.

Therefore, the full bench concluded that the notice was inadequate and the Commissioner at first instance erred in certifying the agreement. As a result, the decision at first instance was quashed.

*Section 45 appeal against decision (PR945564) by Construction, Forestry, Mining and Energy Union AIRC (Giudice J, Acton SDP and Gay C) (PR947609) 7/6/04.*

## No Exit Means No Exit

The word "Exit" will no longer be used to indicate emergency exits but will be replaced with the internationally agreed egress pictograph (green & white - man running through door).

This is the result of revisions to Australian Standard AS/NZS 2293.1 - Emergency evacuation lighting for buildings - System design, installation and operation and AS/NZS 2293.3 - Emergency evacuation lighting for buildings - Emergency luminaries and exit signs.

# Keep Your IT Department Happy

1. *When you call us to have your computer moved, be sure to leave it buried under half a ton of postcards, baby pictures, stuffed animals, dried flowers, bowling trophies and children's art. We don't have a life, and we find it deeply moving to catch a fleeting glimpse of yours.*
2. *When an I.T. person says he's coming right over, go for coffee. That way you won't be there when we need your password. It's nothing for us to remember 700 screen saver passwords.*
3. *When you call the help desk, state what you want, not what's keeping you from getting it. We don't need to know that you can't get into your mail because your computer won't power on at all.*
4. *When I.T. support sends you an E-Mail with high importance, delete it at once. We're just testing.*
5. *When an I.T. person tells you that he'll be there shortly, reply in a scathing tone of voice: "And just how many weeks do you mean by shortly?" That motivates us.*
6. *When the printer won't print, re-send the job at least 20 times. Print jobs frequently get sucked into black holes.*
7. *When the printer still won't print after 20 tries, send the job to all 68 printers in the company. One of them is bound to work.*
8. *Don't learn the proper term for anything technical. We know exactly what you mean by "My thingy blew up".*
9. *Don't use on-line help. On-line help is for wimps.*

## Thought For The Day

*To accomplish great things, we must not only act, but also dream; not only plan, but also believe - Anatole France*

# **\$290 000 Fine After Hopper Injury**

A Chinderah waste recycling company has been fined \$290 000 by the NSW Industrial Relations Commission sitting in Court Session following injury to a worker in 2001.

Solo Waste Aust. Pty Ltd pleaded guilty to failing to ensure the health and safety of the worker under Section 15(1) of the Occupational Health and Safety Act 1983.

The court heard that the worker lost his left leg after attempting to clear a blockage in a recycling hopper at Solo's Lake Macquarie plant on 15 February 2001.

In handing down the penalty, Justice Boland said Solo's supervisor was aware that employees entered the hopper, and it would not have been difficult for the company to avoid the risk to safety.

WorkCover NSW Chief Executive Officer, Jon Blackwell, said: "There was an obvious and serious risk to safety in the operation of the hopper, which if addressed, would have avoided serious injury to the worker."

*WorkCoverNSW (Insp McDonald) v Solo Waste Aust Pty Limited – IRC182 of 2003*

Source: Workcover NSW

## **Unfair Dismissal Not unfair**

A Full Bench of the Australian Industrial Relations Commission has rejected the unfair dismissal claim of a casual employed for less than a year, heralding the end to its approach in the Cetin decision.

But the Full Bench allowed the employee's claim based on alleged discrimination (unlawful termination).

Section 170CBA of the Workplace Relations Act 1996 excludes casuals employed for less than 12 months from claiming unfair dismissal - an amendment made by the Workplace Relations Amendment (Fair Termination) Act 2003, which commenced on 27 November 2003.

"[A] casual employee with regular and systematic engagements and a reasonable expectation of continuing employment is by definition engaged for a short period, provided the employee's sequence of periods of employment does not last for 12 months", the Commission said.

"It is now clear that an employee with regular and systematic engagements and a reasonable expectation of continuing employment can be a casual employee engaged for a short period."

The Commission said that the approach in its Cetin decision was made under different legislative circumstances and is no longer appropriate: *Cetin v Ripon Pty Ltd t/as Parkview Hotel* (2003) 53 AILR 100-089.

The employee relied on Cetin as authority for the proposition that short-term casuals who have "regular and systematic" work can bring an unfair dismissal claim.

Moreover, the Full Bench indicated that its present approach was consistent with a previous form of the exclusion in *Bluesuits Pty Ltd t/as Toongabbie Hotel v Graham* (2000) 47 AILR 4-182 - namely, that the terms of the Act should be given their ordinary and natural meaning in Australian law.

But the employee was successful on the basis of a discrimination claim relying on s 170CK - employment not to be terminated on certain grounds.

While noting some reservations, the full bench was prepared to allow the appeal after considering parliamentary speeches regarding the intent of the legislation.

"It is hard to resist the inference that the bill was amended by the House, as proposed by the Senate, so as to ensure that a casual employee excluded from the unfair termination provisions might still be able to make application for a remedy for unlawful termination pursuant to s170CK."

*Nightingale and Little Legends Childcare, FB of AIRC (PR948229) (Giudice J, Ives DP, Grainger C) 23/6/04.*

## Did You Know ?

- The straw was probably invented by Egyptian brewers to taste in-process beer without removing the fermenting ingredients which floated on the top of the container.
- David Prowse, was the guy in the Darth Vader suit in Star Wars. He spoke all of Vader's lines, and didn't know that he was going to be dubbed over by James Earl Jones until he saw the screening of the movie.
- Dirty Harry's badge number is 2211.
- All porcupines float in water. (Please don't try this at home.)

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