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Easy HR™ Newsletter April 2006

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Compensated For Being Drunk & Disorderly

A SACKED insurance broker who repeatedly came to work drunk - and even urinated in a wastepaper bin - has been awarded \$10,000 compensation after claiming discrimination against his attention deficit disorder.

Workplace experts warn the Federal Magistrates Court's decision in favour of Jirra Collings Ware could open the floodgates for countless employees to claim ADD or depression in termination cases when the Federal Government removes unfair dismissal provisions.

Mr Ware admitted in court he had frequently returned late from long lunches - particularly on Fridays - when he consumed alcohol and had been warned not to come back to work inebriated. He also admitted he had alcohol problems and was a binge drinker. Mr Ware even negotiated a deal with his boss whereby he would not return to work on Fridays after lunch and would make up the time on weekends.

Mr Ware's branch manager at the time, told the court that on one occasion in October 2002, he stayed at a pub all afternoon before returning to the office drunk and urinating in a wastepaper bin.

Mr Crocker said the company was aware of Mr Ware's personal problems, including a marriage breakdown, and gave him time off for fortnightly psychiatric visits as well as lighter duties. But after still more unexplained absences, Mr Ware was demoted on September 13, 2003 and then dismissed on September 24, when he again failed to turn up for work.

Federal Magistrate Rolf Driver ruled Mr Ware had been discriminated against because of his "disability". "The real reason for the demotion was that Mr Crocker had exhausted his capacity to accommodate Mr Ware's condition," he said.

Mr Driver awarded \$10,000 compensation plus termination payments and other costs.

Experts warn the Federal Magistrate's Court decision in favour of Jirra Collings Ware could open the floodgates for employees to claim similar disabilities in termination cases when unfair dismissal protection is removed.

Construction Induction Update

From 29 March 2004 WorkCover began issuing a Construction Induction Certificate, in a credit card size format, to participants on completion of the OHS General Induction for Construction Work in NSW course.

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.

All green cards numbered "C" and all statements of training issued prior to 29 March 2004 will no longer be valid in NSW from 29 March 2006.

You must convert to a new Construction Induction Certificate by this date or you will have to undergo additional training before obtaining a new certificate.

Further details on WorkCover NSW website:

<http://www.workcover.nsw.gov.au/Training/ConstructionInduction/default.htm>

Healthy on the Inside

Staff at a packaging factory in Lund, Sweden recently took part in a research project to gauge the effect of a daily probiotic treatment. Over a period of three months, staff were given a drink of milk containing the lactobacillus reuteri bug whilst other staff members formed part of a control group.

Ten of the 94 workers who were given the 'live' drink reported sick during this period against 23 of the 87 workers in the control group that were given a placebo drink.

Studies have shown that probiotics improve conditions in the gut and boost immunity.

It has been estimated by the University of Western Australia that that 2 billion dollars can be lost in a year due to sickies in Australia, in the private sector alone. That could relate to a saving of one billion dollars if all staff could be encouraged to drink a little bug, and three times that amount if extended to the public sector.

What Jewellery Does Bob The Builder Wear?

Entertainer Jessica Hancock, 20, of Sydney, was sacked from her job portraying cartoon character Bob the Builder - because of a nose stud she wore beneath her costume, a Sydney court heard last week

Ms Hancock of Bangor, Sydney, won the first round of her legal battle for compensation when commissioner Ms Janice McLeay ruled that Ms Hancock was covered by unfair dismissal law and adjourned the case to allow both sides to consider further action.

For more than four years, Ms Hancock had donned her costume, rehearsed and paraded twice daily with other children's television characters on tours of clubs, shopping centres and fun parks, the NSW Industrial Relations Commission heard.

Sometimes she portrayed Lisa Simpson, sometimes Hop the Easter Rabbit, but mostly she played Bob the Builder.

Two years ago, Ms Hancock was assured by a company manager that she didn't need to sign a work contract any more because "you are reliable and will not let us down", the commission heard. But early this year, three weeks into a 12-week national tour with TV characters Barney and Friends, Ms Hancock was sacked.

The company's events manager, Lisa Currey simply rang up one night and said she was "no longer required", Ms Hancock told the commission.

Pressed for reasons why she had been dumped, Ms Currey "mentioned" various occasions when Ms Hancock had worn pants, headband and nose stud while performing - all beneath her costume.

After trying unsuccessfully to meet with Ms Currey about her \$23,000 contract Ms Hancock went to the Industrial Commission.

Her employer argued that she was not covered by unfair dismissal laws because she was a casual worker.

Commissioner Janice McLeay found that the company had "inexcusably" relied on payroll details that were both "wrong and misleading".

The case was adjourned to allow both sides to consider further action.

Did you Know

- *In England, drunk driving became illegal in 1872.*
- *There is a Swiss Army knife with 31 features, including a tool for emergency tracheotomies.*

ANZ Settles With Staff

The ANZ bank will pay about 3000 staff a total of \$3.4 million in compensation for lost rostered days off over four years as a result of a fight since 2001 for the right to choose between working or having one rostered day off (RDO) each month. The staff who worked mostly in processing and call centres, would receive between \$500 and \$2000.

ANZ human resources manager Shane Freeman said eligible staff would now be able to choose between 152 hours a month with an RDO or 160 hours without.

The bank said it welcomed the resolution, which clarifies the interpretation of clauses in a 1998 Enterprise Bargaining Agreement relating to RDO entitlements.

Once the EBA changes are approved, eligible employees who have not received an RDO between 2001 and 2005 will receive a lump sum payment for the RDOs foregone in that time.

\$107 000 Fine For Company After Injury

A Hunter Valley company and its director have been fined a total of \$107,000 in the NSW Industrial Relations Commission sitting in Court Session, following injury to two young workers on their first day of employment.

Hunter Galvanizing Pty Ltd, of Tomago, was fined \$100,000, and director Kerry Bartholomew, \$7,000, after pleading guilty to breaches of Section 8(1) and Section 26(1) of the *Occupational Health and Safety Act 2000*.

The two workers, aged 17 and 20, were seriously injured on 24 March, 2004, when a one tonne steel headframe they were loading fell 2.3 metres from its supporting cradles and struck them.

One of the workers suffered a fractured skull, which required insertion of a metal plate, and a groin injury.

In handing down her judgement, Justice Backman said the two young and inexperienced workers had received cursory and inadequate instruction, and minimal supervision on their first day at work.

Justice Backman awarded costs and a moiety of the fines to WorkCover.

WorkCover NSW Chief Executive Officer, Jon Blackwell, commented: "The near-fatal incident which led to this prosecution is a terrifying example of what can go wrong when employers fail in their obligations to properly, induct, supervise and train young workers."

Source: WorkCover NSW

Write it Down

A recent case in the South Australian IR Court emphasised the importance of work procedures being committed to paper. A worker had been and needed hospitalisation when injured in a mishap where conflicting instructions had been provided.

The employee had been unloading crates of glass, working under the direction of a senior employee of the company. After the senior employee had left to answer a phone call, the incident happened.

Industrial Magistrate Hardy said: "At best the instructions were verbal and I think, imprecise. There was no evidence of any attempt to acquaint the employee with the dangers, masses or propensity to fall posed by the crates on end. Whilst this might have been to a degree, self-evident they were not spelled out as they ought to have been."

Paparella v BJR Logistics Pty Ltd (formerly known as Bee-Jays Roadlink Pty Ltd)

Policies Need To Be Enforced

In Victoria, Lisa Hannan heard that two employees of plasterboard manufacturer CSR Limited were injured in similar circumstances in February and June 2004.

The Court heard that CSR had policies in place requiring the machines to be turned off when cleaning work was done, but it was common practice for workers to ignore them and leave the conveyors running.

The Magistrate warned employers that to be effective, safety policies must be enforced.

Workplace Lingo

- *Ambitious (me) - brilliant, efficient and deserving promotion.*
- *Ambitious (you) - ruthless, toadying and not to be trusted.*
- *Negotiate - I put my point of view.*
- *Argue - you put your point of view.*

Drunk At Work

Bernd Naveke, 49, worked as a brewer and beer taster for 20 years until being forced to leave his job because he had become an alcoholic. In 2000 he sued The Brahma Brewery, saying that for the 20 years in their employ he had to drink eight litres (about two gallons) of beer daily and even more during holiday seasons. "I left work drunk every day," Naveke said.

Was it the brewer's fault that he was an alcoholic? The court thought so: Naveke was awarded \$30,000 and a monthly pension of \$2,600 for the rest of his life. But he thought it wasn't enough. In 2004 the appeals court agreed . . . and awarded him a lump sum of \$2 million.

Stop Moaning & Winging

Would it work here? Think not? Then why not complain about it - but it might just cost you your job.

Ramona Wonneberger, head of a German company does just that. She fires moaners, whingers and bellyachers and her right to do so is protected in their workplace agreements. The agreement states moaning and whingeing is forbidden... except when accompanied with a constructive suggestion as to how to improve the situation."

So far three employees have left the firm over the new restriction. Two were dismissed following warnings, the other chose to go claiming she was being "censored" and had nothing to talk about any more.

Mrs Wonneberger claims the firm's turnover has doubled thanks to the policy.

QLD Government almost prosecutes itself

The Queensland Government narrowly escaped a situation in which it would have to bring charges against itself for unfair dismissal or even worse, sexual discrimination.

The affair arose when a schoolteacher at a government school visited a licensed brothel and told other teachers about a colleague who was moonlighting at the brothel.

Senior education bureaucrats were happy to turn a blind eye because the woman, in her 30s, was considered such a good teacher.

"She could not be fired because, technically, what she was doing was legal," an education insider said. "The Government would have been taken to the cleaners for unfair dismissal. "The department advised her there were some moral and ethical concerns about her working in the sex industry and asked her to quit her job as a prostitute."

"She agreed and was transferred to a different school and changed her identity." It was understood she was also given a promotion at the new school.

Australian Family Association state vice-president Mark Holzworth said the Government had washed its hands of the matter but he urged it to take responsibility.

"Teachers are role models and need to uphold standards the community expects," he said.

"You cannot moonlight in something that has a community stench and not have some influence on regular life."

Parents and Citizens Council of Queensland president Wanda Lambert said there was a fine line between what was morally right and legally right. "We would hope that every teacher who is standing in front of our children feels that they have a moral obligation to set an example," Ms Lambert said.

But Queensland Adult Business Association spokesman Nick Inskip said there was a cross-section of society employed in the sex industry. "It is their personal life . . . it has no impact on what job they might be doing."

Useless Facts

- *A cat has 32 muscles in each ear.*
- *A crocodile cannot stick out its tongue.*
- *A dragonfly has a life span of 24 hours.*
- *A goldfish has a memory span of three seconds.*
- *A shark is the only fish that can blink with both eyes.*
- *A snail can sleep for three years.*
- *A butterfly taste with it's feet.*

Can you contract out OHS Responsibility?

A principal contractor that failed to ensure a sub-contractor's employees worked safely at heights has been convicted and fined, with the NSW Industrial Court warning all employers that they can't contract out of their OHS obligations.

The head contractor at an industrial complex, Walker Group Constructions Pty Ltd had subcontracted with Garry Denson trading as Garry Denson Metal Roofing and JB Metal Roofing Pty Ltd to undertake the roofing work.

A WorkCover NSW inspector visited the site and issued two improvement notices to Walker Group. These required it to provide appropriate access to the roof area and to ensure that JB Metal's safe work method statement complied with the OHS Regulation 2001. The inspector also issued Garry Denson with an improvement notice regarding unsafe access/egress to the roof area.

About two weeks later, the inspector returned to the site to carry out a compliance inspection. While there, he observed four JB Metal employees working on the two roofs - two at a height of six to seven metres and the other two at a height of about three metres. The four workers were wearing harnesses, but they were not attached to any anchorage point, and one roof still did not have safe access.

Justice Kavanagh noted that Walker Group's breach occurred less than a month after it had been put on notice by WorkCover about unsafe work practices at the site.

She said Walker Group was "responsible for overall site supervision" and had failed to ensure it met its own obligation to supervise its sub-contractor's work.

Justice Kavanagh also said: "It must be emphasised no employer can contract out of its obligations under the Act."

For more details go to:- <http://www.agd.nsw.gov.au/ircjudgments/2006nswirc.nsf/d1efd3b3c2f68e05ca256736001f37be/5d6842f21ef6e617ca2571070013cc84?OpenDocument>

\$90000 Fine For 'Freakish' Accident That Killed Worker

Exo Pty Ltd, trading as Tibby Rose Auto, has been fined \$90,000 by the Industrial Court of NSW following an accident nearly seven years ago that left an auto-electrician dead.

The company was found guilty of breaching s15(1) of the Occupational Health and Safety Act 1983 in a decision published on 9 September 2004. The breach arose from an incident in November of 1999 when employee Matthew Whitehouse was killed while repairing an industrial rubbish truck.

The truck, operated by Bros Bins Systems Pty Ltd, used for the removal of industrial rubbish by means of a bin mechanism, was taken to premises operated by Exo as an auto-electrician business to fix a problem with faulty tail lights and traffic indicators.

In order to repair the problem, it was necessary to raise a hydraulically operated jib fixed to the back of the vehicle so that Mr Whitehouse could get access. The hydraulically operated jib was raised by the driver of the vehicle, Mr David Wood, who then left the vehicle temporarily. The jib was locked in place by use of hooks which were operated pneumatically.

While he was working on the rear of the vehicle the pneumatic hooks disengaged and the jib collapsed onto Mr Whitehouse, killing him.

The court found that Exo had failed, among other things, to have in place a system requiring its employees to ensure that the raised jib of the truck was properly secured so as to allow the servicing work to be carried out safely, as well as failed to ensure that a safety prop or some other means of support was provided and used to enable the upraised jib to be secured in the event that the pneumatic hooks should fail or otherwise cease to have effect.

In deciding the penalty, Justice Marks quoted from a previous ruling ([2005] NSWIRComm 226) against Bros Bins in which he described the accident as “freakish” and that it occurred “only because the lever which operated the pneumatic system was moved inadvertently or otherwise accidentally. “

“Nevertheless, the defendant is obliged under the Act to take measures to avoid that risk. The question of foreseeability does, however, play some part in the assessment of the overall culpability of the defendant...” Justice Marks said these observations also applied to Exo.

The company emphasised the fact that it had no expertise in connection with the hydraulic operations of the vehicle in question and that it relied on the statement made by the driver of that vehicle, an employee of Bros Bins, to the effect that the locking mechanism was in place.

In addition, the company stressed that there had been no prior incidents of any similar kind involving similar vehicles in support of a contention that foreseeability was somewhat remote.

“It must be borne in mind that this defendant as an employer is required by the Act to utilise such foreseeability as should reasonably be exercised to avoid any risk to injury which might be sustained by an employee”, said Justice Marks. “The failures of the defendant in this regard are those which were the subject of the findings earlier made by me, which I have set out above.”

WorkCover Authority of New South Wales (Inspector Ching) v Exo Pty Ltd t/as Tibby Rose Auto [2006] NSWIRComm 29.

Rest A Moment

A clergy man watched while a young farmer struggled to load a pile of manure back onto the cart after it had fallen off. Seeing him toiling in the hot sun, the clergyman said: "Why don't you rest a moment?"

"No," mumbled the young man, "my father wouldn't like it."

"But surely everyone is entitled to a break."

"My father wouldn't like it."

"He must be a real slave driver," said the clergyman. "Tell me where he is, and I'll talk to him about it."

"He's under the pile of manure."

Disrespectful, But Not Harassment

A recent unfair dismissal case examined three issues concerning sexual harassment:

- How serious the conduct has to be before it becomes harassment.
- The importance of how the conduct is perceived by its recipient.
- Whether conduct towards co-workers that occurred outside the workplace and outside working hours warranted the employer's intervention.

A man was dismissed from employment with the Queensland Department of Justice and Attorney-General for having allegedly sexually harassed two female work colleagues. The conduct involved touching both women and making comments to one of them. Part of the conduct took place outside the office and outside working hours, while the man was intoxicated.

The Department claimed that the man's conduct had breached the Public Service Code of Conduct, as it amounted to both sexual harassment and failing to treat co-workers with respect. The man had apologised for his conduct and shown considerable contrition for it.

The Queensland Industrial Relations Commission concluded that the extent of his contrition "should carry considerable weight".

The commission found on the balance of probabilities that the conduct was not serious enough to amount to sexual harassment, but it involved acts of "disrespectful familiarity". The employer should have taken greater account of the man's intoxication at the time and his contrition afterwards.

The co-workers had not been offended by his conduct and were prepared to continue working with him, although they had concerns about his alcohol management rather than his physical conduct. It was considered that the conduct was not grave enough to warrant the employer's intervention in "outside work" incidents that did not reflect seriously and adversely on the employer.

The commission found the dismissal to be unfair and ordered reinstatement.

Johnson v Department of Justice and Attorney-General (2006)

Employing Children in WA

A major revamp of the WA Child Welfare Act has been undertaken. A new Act, the WA Children and Community Services Act 2004 (the CCS Act) with new provisions about the employment of children, came into effect in March 2006.

While the new Act prohibits the employment of children less than 15 years of age there are no prohibitions for children employed in:

- a family business;
- a musical performance or any other form of entertainment; and
- the making of an advertisement.

There are also exemptions for children who are:

- over 13 years and are engaged in delivery work, work in a shop, retail outlet or restaurant (this list can be extended by regulation) if the work is between 6 am and 10pm;
- between the ages of 11 and 13 years of age can carry out delivery work between 6 am and 7.00pm provided accompanied by a parent or a person authorised in writing by a parent.

The WA Children and Community Services Act 2004 is not the only legislation regulating the employment of children. The WA School Education Act 1999 (the School Act) must also be considered.

In broad terms, the School Act prohibits the employment of a child during school hours (although there are some exceptions which must be authorised under the Act). The school leaving age was recently raised in Western Australia to 16 years. The leaving age will be raised again in 2008 to 17 years.

So while the CCS Act does not regulate the employment of 15-16 year old children, the School Act currently does. The exemptions set out in the CCS Act (allowing the employment of children under 15 years in certain instances) must also be read in conjunction with the School Act.

For example, while the CCS Act allows a 13-year-old child to work in a shop between 6am and 10pm, the School Act would prohibit the child from being employed during school hours. Restrictions do not apply where children are engaged in employment as part of an official educational program.

For more information regarding the employment of children provisions under the CCS Act please contact Wageline on 1300 655 266. To find out more information regarding the school leaving age, you can contact the Department of Education & Training on 9264 4111 or visit their website at www.det.wa.edu.au

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