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**Easy HR™ Newsletter**  
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## What's happening at Easy HR

In July last year we moved into our new safety training premises at Surry Hills. Our training centre is only a short walk from Central railway station, and there are commercial car parking facilities nearby. In order to maximise the use of our training room, we have developed a number of new courses, and have commenced scheduling courses that were previously only offered as on-site or in house courses.

### Accident Investigation Training

Previously this was only offered as an in house course, but it is now available as a regular public course. As an introductory offer we are offering all participants who **book onto one of our public Accident Investigation courses an opportunity to bring a friend for free.** \*

[http://www.easyhr.com.au/training/ohs\\_accident\\_investigation.php](http://www.easyhr.com.au/training/ohs_accident_investigation.php)

### Manual Handling

As a Registered Training Organisation (RTO), we are able to provide you with Nationally Recognised training. Previously only offered as an onsite course, we now offer the nationally recognised unit 'TLID107C – Shift Materials Safely Using Manual Handling Methods' as a public course. **As a special offer to our Newsletter recipients, we are offering participants a 15% discount if they book a public manual handling course.** \*

[http://www.easyhr.com.au/training/ohs\\_manual\\_handling\\_tlid107C.php](http://www.easyhr.com.au/training/ohs_manual_handling_tlid107C.php)

### Safe Work Method Statements

We talk about, we here about them, but how do we write one? Come along to one of our practical 3 hour workshops to learn how to create a Safe Work Method Statement. **As a special offer to our Newsletter recipients, we are offering participants a 15% discount if they book into our public SWMS.** \*

[http://www.easyhr.com.au/training/ohs\\_swms\\_training.php](http://www.easyhr.com.au/training/ohs_swms_training.php)

**\* Offer Conditions:** Please call our office on 1300 667 331 to take advantage of these offers. Offer only valid for public courses conducted before 1 July 2010. Payment by credit card at time of booking required. Normal terms and conditions apply. Terms and conditions are on our website: <http://www.easyhr.com.au>

## Kirk appeal changes OHS in NSW

Legal commentary following the 'Kirk' High Court appeal decision now confirms the scale of the ruling's significance for both New South Wales and Australia.

The appellant company, Kirk Group Holdings Pty Ltd, was the owner of a farm near Picton, New South Wales. Mr Kirk was a director of that company, but did not take an active part in the running of the farm. He had no farming experience and was not in good health. He left the day to day operation of the farm to Mr Graham Palmer, who was employed by the Kirk company as a farm manager. Mr Palmer had run a large property of his own and Mr Kirk considered him to be a very competent person.

The company had recently purchased an "All Terrain Vehicle" ("ATV") on Mr Palmer's recommendation. Mr Palmer used the ATV to deliver three lengths of steel to fencing contractors who were working in the far back paddock of the farm. A formed road led to the area where the contractors were working, however, Mr Palmer left that road and proceeded on the ATV down the side of a steep hill where there was no formed road. The vehicle overturned and Mr Palmer was killed. It was unnecessary for Mr Palmer to take this route given the existence of the proper road.

Under the Occupational Health and Safety Act 1983 (NSW), the employer has a duty to "ensure the health, safety and welfare at work of all the employer's employees" and that "persons not in the employer's employment are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking". (The fencing contractors)

The outcome of the judgment in the High Court was to quash the original conviction against Mr Kirk and the employing entity. The penalty imposed against Mr Kirk (fines totalling \$121,000) was similarly dismissed and the High Court made an order that the matter not be reheard in the Industrial Court of New South Wales. The High Court also ordered WorkCover NSW to pay Mr Kirk's legal costs.

The decision was made on a number of bases, some of which have specific application to the way in which the New South Wales occupational health and safety regime (including under the current legislation) is administered. The High Court also made a number of comments which are of important general application to the prosecution of offences under occupational health and safety legislation in all jurisdictions, and will doubtlessly be closely examined by regulators in New South Wales and throughout Australia.

Right of appeal:- One of the characteristics of the New South Wales occupational health and safety regime is to limit the rights of appeal of parties convicted by the Industrial Court of NSW of OHS offences. Read in conjunction with the Industrial Relations Act 1996 (NSW), parties are prohibited from seeking a review of decisions in relation to OHS liability, except by reference to the Full Bench of the Industrial Court of NSW. Appeals to the Supreme Court are prohibited. The High Court was critical of this approach because the residual constitutional role of the Supreme Court in each state and territory is to review the exercise of jurisdictions conferred on lower courts, such as the Industrial Court of NSW, which operate beneath it.

In reaching the Kirk decision the High Court said there is a line of judicial authority guaranteed under the constitution. This ensures that every person has a right to have decisions against them reviewed by superior courts. That is, through the Supreme Courts in the states and the Federal Court at the Commonwealth level, and ultimately to the High Court.

The High Court said that any government or tribunal/quasi-court that thinks it can create statute or legal argument that can prevent review of decisions (as in NSW) is wrong and has misinterpreted the law of Australia under the constitution.

Obligation of prosecution to identify means of compliance:- One of the other grounds of appeal brought by Mr Kirk was in relation to a failure of WorkCover NSW to properly identify ways in which Mr Kirk and his company had failed to ensure health and safety so far as reasonably practicable. The High Court accepted Mr Kirk's argument in confirming that it is inadequate to commence an OHS charge on the basis that a failure to ensure health and safety has occurred. Following workplace incidents, and with the benefit of hindsight, prosecutors can identify that a failure to ensure safety has in fact occurred. The obligation then rests with the prosecution to properly identify and plead the ways in which the defendant ought to have acted to manage health and safety.

This is an important clarification from the High Court and relevant when assessing the strength of any health and safety prosecution. When defendants ask how it is they failed to take reasonably practicable steps to ensure health and safety of their employees, WorkCover NSW will now be required to respond.

The significant implications of this decision will relate to:

- the way in which charges are drafted by WorkCover NSW and other bodies who have the statutory right to prosecute OHS matters in New South Wales
- the approach which the Industrial Court of NSW must now adopt when adjudicating those charges both in terms of their interpretation of the law and also compliance with legal procedure
- the way in which prosecutors and the judiciary administer and interpret legislation in other states and territories which have similar legislation
- the question of appeal rights arising from a decision of the Industrial Court of NSW, and
- an increased awareness of what matters might offer scope for appeal because of jurisdictional error in courts and tribunals, particularly New South Wales courts and tribunals.

*More details:- <http://www.austlii.edu.au/au/cases/cth/HCA/2010/1.html>*

*<http://www.lexology.com/library/detail.aspx?g=c4b4c34b-e5e1-40fa-a1cc-ecfb8ee1ac21>*

## **Linfox held to account for trailer floor collapse**

Major transport company Linfox Australia Pty Ltd was convicted and fined \$170,000, after a driver suffered serious and preventable injuries when an adjustable mezzanine floor in a truck's trailer collapsed on him in 2006.

The company was also ordered to pay WorkSafe Victoria costs of \$41,270.

WorkSafe Victoria prosecuted Linfox Australia Pty Ltd under the Occupational Health and Safety Act 2004 – despite the company leaving the Victorian workers compensation scheme after the incident took place.

The Melbourne Magistrates Court heard that the incident occurred in Lemnos, near Shepparton, after the driver asked a forklift operator for help lifting an adjustable mezzanine floor in the truck's trailer into place.

The driver climbed into the trailer and engaged the corner supports for the floor, and the forklift operator started to lift the floor into place. During the lifting process, one of the support posts became detached, causing the rear floor of the trailer to collapse onto the driver.

He was treated in hospital for 12 days for injuries including a broken arm and leg, a fractured shoulder, broken ribs, and a torn knee ligament.

Acting Executive Director for Health and Safety, Stan Krpan, said WorkSafe's investigation revealed a lack of training, instruction and equipment for drivers and other employees who needed to adjust trailer floors.

"This is a large operator that has nearly 5,000 vehicles across 11 countries – working with adjustable trailer floors will be part of the job for many of their employees.

"The bottom line is that people should not be in a position where they're working, unprotected, under suspended floor panels.

"We would expect Linfox - and other large companies which have considerable resources - to make safety a high priority at all levels of their operations," he said.

Linfox Australia Pty Ltd has two prior convictions from WorkSafe Victoria. These relate to health and safety incidents in Victoria only.

Background:

In 2009, the High Court upheld the right of the states and territories to take action on health and safety offences committed by companies before they joined Comcare.

Comcare was originally set up to deal with workplace compensation and safety in Federal government departments and statutory agencies. Companies who have joined Comcare are subject to Commonwealth OHS law.

*Source: Workcover Victoria March 2010*

## Lets Get naked!

Forget improving the level of OHS in the workplace as a booster to staff morale. Forget free neck massages, gym memberships or even drinks every Friday afternoon. A British business psychologist, David Taylor, was called in to help a marketing firm in England, where workers were feeling pretty low after a round of layoffs. His remedy for the blues? ..... Strip down and get naked together.

"Inviting an organization to go naked is the most extreme technique I've used," Taylor told the press recently. "It may seem weird but it works. It's the ultimate expression of trust in yourself and each other."

One of the female workers said this: "It was brilliant. Now that we've seen each other naked, there are no barriers. We weren't put under pressure. If we wanted to come in clothed or in our underwear, we could. But I love my body and wasn't ashamed."

*More information:- <http://www.glamour.com/health-fitness/blogs/vitamin-g/2009/07/omg-this-workplace-declared-na.html>*

## Job Vacancy

Outside the Bristol Zoo, in England, there is a parking lot for 150 cars and 8 coaches, or buses. It was manned by a very pleasant attendant with a ticket machine charging cars £1 (about \$1.40) and coaches were charged at £5 (about \$7).

This parking attendant worked there solidly for all of 25 years. Then, one day, he just didn't turn up for work.

"Oh well", said Bristol Zoo Management - "we'd better phone up the City Council and get them to send a new parking attendant..."

"No", said the Council, when contacted, ".....that parking lot is totally your responsibility."

"No, it isn't", said Bristol Zoo Management, "the parking attendant was employed by the City Council, wasn't he?"

"NO! He was NOT" insisted the Council.

So, sitting in his lovely villa somewhere on the South Coast of Spain, is a happy bloke who had been taking the parking lot fees, estimated at £400 (about \$750) per day at Bristol Zoo for the last 25 years.

Assuming 7 days a week, this amounts to just over £3.6 million (\$7 million)! And no one even knows his name!!

## Did you know ?

When Melville Stone started the Chicago Daily News in 1875, the price was a penny. At first, circulation was high but then dropped off sharply. Stone discovered that the problem was a shortage of pennies in the area. He brought in barrels of pennies and then persuaded merchants to start an “odd-price sale,” selling goods for a penny under the regular price. Thus goods were sold for an amount such as \$2.99 (instead of \$3). Pennies came back into circulation, Stone sold many newspapers, and we still have odd-price sales tickets.

## Mobile phone elbow

Can talking for long periods on a mobile phone really cause injury? Ever heard of “Cell Phone Elbow”

Cell phone elbow (CPE) is a numbness, tingling and pain in the forearm and hand caused by compression of the ulnar nerve, which passes along the bony bump on the inside of the elbow. You are probably more familiar with the ulnar nerve when it causes pain when you hit your “funny bone.”

It's a real medical condition that's known as cubital tunnel syndrome and is caused by prolonged flexing of the elbow, such as when you hold a cell phone to your ear. It's also an occupational injury suffered by people who type and others who work with their elbows bent tighter than 90 degrees.

Holding the elbow in a bent position for long periods can lead to decreased blood flow, inflammation and compression of the nerve.

Occupational therapists report this is the second most common compression syndrome. Carpal tunnel is most common.

Hand-free headsets can help alleviate symptoms. Another option: switch hands every ten minutes while speaking on a cell phone.

If you know of employees whose tasks require frequent elbow bending, look into modifying their workstations so the elbows aren't overly flexed. And let them know that frequent cell phone use can contribute to this syndrome.

The most effective treatment for cubital tunnel syndrome is the cessation of activity that is causing the problem. Other treatment may include:

- a splint or foam elbow pad worn at night (to limit movement and reduce irritation)
- elbow pad (to protect against chronic irritation from hard surfaces)
- anti-inflammatory medications
- surgery

Full details: <http://www.safetynewsalert.com/move-over-carpal-tunnel-now-theres-cell-phone-elbow/#more-2586>

## Men guilty of selling device to foil drug tests

The American manufacturers of the Whizzinator have pleaded guilty in US federal court to two conspiracy counts, putting an official end to their product.

The company, Puck Technology, sold the device that helped men pass drug tests.

The Whizzinator is a prosthetic penis that comes with a heating element and fake urine. It was sold from 2005 through this year.

Federal prosecutors claim the product helped people circumvent federal workplace drug-testing programs. They cited customer testimonials on the company's Web site, including one in which an employee bragged about using the device to pass a drug test required by Department of Transportation regulations.

The Whizzinator entered public consciousness three years ago when former Vikings running back Onterio Smith was caught with one in an airport.

The device made news a second time when a couple asked a convenience store clerk in McKeesport, PA, to heat one in a store microwave so the fake urine would attain body temperature. The store clerk called police. The woman, who wanted the fake urine to pass a pre-employment drug test, pleaded guilty to disorderly conduct and agreed to pay to replace the store's microwave.

United States OSHA regulations prohibit the use of microwaves to heat food once bodily fluids have been in them.

## Left or Right ?

Be "right" when delivering that safety message.

Research has shown that most of us prefer to be addressed in our right ear and are more likely to perform a task when we receive the request in our right ear rather than our left. In a series of three studies that looked at ear preference in communication between humans, three researchers from the University "Gabriele d'Annunzio" in Chieti, Italy, showed that a natural side bias, depending on hemispheric asymmetry in the brain, manifests itself in everyday human behaviour.

The three studies specifically observed ear preference during social interactions in noisy night club environments. 72 percent of interactions occurred on the right side of the listener. These results are consistent with the right ear preference found in both laboratory studies and questionnaires and they demonstrate that the side bias is spontaneously displayed outside the laboratory.

In a second study, the researchers approached 160 clubbers and mumbled an inaudible, meaningless utterance and waited for the subjects to turn their head and offer either their left or their right ear. They then asked them for a cigarette. Overall, 58 percent offered their right ear for listening and 42 percent their left. Only women showed a consistent right-ear preference. In this study, there was no link between the number of cigarettes obtained and the ear receiving the request.

In the third study, the researchers intentionally addressed 176 clubbers in either their right or their left ear when asking for a cigarette. They obtained significantly more cigarettes when they spoke to the clubbers' right ear compared with their left

On the other side of the world, a six-year study at UCLA and the University of Arizona team evaluated more than 3,000 newborns for hearing ability before they left the hospital. Researchers Sininger and Cone-Wesson placed a tiny probe device in the baby's ear to test its hearing. The probe emitted a sound and measured the ear's otoacoustic emission (OAE).

The researchers measured the babies OAE with two types of sound. First, they used rapid clicks and then sustained tones. They were surprised to find that the left ear provides extra amplification for tones like music, while the right ear provides extra amplification for rapid sounds timed like speech.

"We were intrigued to discover that the clicks triggered more amplification in the baby's right ear, while the tones induced more amplification in the baby's left ear," said Sininger. "This parallels how the brain processes speech and music, except the sides are reversed due to the brain's cross connections."

"Our findings demonstrate that auditory processing starts in the ear before it is ever seen in the brain," said Cone-Wesson. "Even at birth, the ear is structured to distinguish between different types of sound and to send it to the right place in the brain."

*More detail:-: <http://www.sciencedaily.com/releases/2009/06/090623090705.htm>*

*<http://www.sciencedaily.com/releases/2004/09/040910082553.htm>*

## Harmonisation of OHS laws

The new occupational health and safety (OHS) reform agenda aims to harmonise OHS legislation across Australia and reduce the incidence of workplace death, injury and disease.

Currently all states, territories and the Commonwealth are responsible for making and enforcing their own OHS laws. Although these draw on a similar approach for regulating workplaces, there are some differences in the application and detail of the laws.

Safe Work Australia is the principal national organization driving policy development in OHS and workers' compensation matters. It was established on 1 July 2009 and works in partnership with governments, employers and employees.

One of Safe Work Australia's primary functions is to progress harmonisation of OHS legislation across Australia.

The model legislation will consist of a model Act, supported by model regulations and model Codes of Practice that can be readily adopted in each jurisdiction. This requires each jurisdiction to enact, or otherwise give effect to, their own laws that mirror the model laws.

The model Act sets out the general duties of care and will be followed by more detailed requirements in model regulations. Model Codes of Practice will also be developed to provide practical guidance on how to achieve the requirements of the Act and regulations.

A target date for all jurisdictions have implemented the model Act and regulations is by December 2011.

[http://www.safeworkaustralia.gov.au/NR/rdonlyres/03A5EEE7-9CA2-4E1F-A7EC-63E9A3153D8A/0/SafeWorkAct2009\\_RTF.rtf](http://www.safeworkaustralia.gov.au/NR/rdonlyres/03A5EEE7-9CA2-4E1F-A7EC-63E9A3153D8A/0/SafeWorkAct2009_RTF.rtf)

## **Bosses rapped for valid sacking over safety breaches**

THE nation's industrial umpire has ruled that a long-term employee who was legitimately sacked for repeated safety breaches must be reinstated and paid compensation because of his poor education and poor job prospects.

In the latest ruling to concern business, Fair Work Australia found the worker had engaged in "relatively serious misconduct", but ruled the sacking harsh due to his length of service and the fact he was a poorly educated middle-aged family man, *The Australian* reported.

The Australian Chamber of Commerce and Industry said the ruling sent the wrong message, and "really exposes employers to double jeopardy".

"Here we have an employee repeatedly failing to observe health safety obligations, a valid reason for dismissal found to have existed, but the company still found to have acted unlawfully," said the chamber's workplace policy director, David Gregory.

"It makes it very difficult for employers to try and work their way through this maze of what seem to be competing obligations contained in different pieces of legislation.

During a shutdown at Norske Skog Paper Mills in Albury last September, Paul Quinlivan and a colleague were cleaning out a tank that captured staples from recycled pulp, when he repeatedly removed his safety glasses and was told four times by a manager to put them back on.

The tribunal accepted that his repeated failure to wear the safety glasses and his disdainful and abusive response to management amounted to serious misconduct.

But the tribunal said the sacking was a "disaster" for Mr Quinlivan, taking into account that he had worked at the mill for 20 years, was married with two daughters, aged nine and 11, and had a mortgage of about \$70,000.

"If the applicant had substantially lesser service; had not been a middle-aged man with very poor employment prospects for whom the dismissal has such serious personal and economic consequences; or if it had been brought home to him at any time on 2 September, 2009, that a further breach would have serious consequences, I would not have concluded that the dismissal was harsh," vice-president Michael Lawler found.

He said Mr Quinlivan should have been warned rather than sacked. He ordered his reinstatement and that he be paid \$16,000.

*Source: The Australian*

## ***Annoying co-workers.***

We came up with this list for those quiet days when you really don't have much to do in the office. Our only word of advice – try these at your own risk.

- ONLY TYPE IN UPPERCASE.
- Repeat yourself constantly.
- Sing the Batman theme incessantly.
- Practice making fax and modem noises.
- Repeat yourself constantly
- dont use any punctuation
- Pretend your computer's mouse is a CB radio, and talk to it.
- Repeat yourself constantly
- Deliberately hum songs that will remain lodged in co-workers brains.
- Repeat yourself constantly
- Use homonyms in your e-mail that the spell checker would not see as misspelled.

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