

## **CG Workplace - December Bulletin**

This month's bulletin highlights the importance of employers adopting and enforcing essential safeguards and policies in the workplace, particularly, sexual harassment and workplace health and safety.

The following recent cases are some important recent decisions in this area which highlight the consequences of the either adhering to, or not adhering to workplace health and safety issues.

### **Sexual Harassment**

To reduce the employer's liability in the event that an employee has been sexually harassed, the employer must

A cleaner at a hospital made an allegation that a co-worker sexually harassed her by grabbing her left breast. The worker was suspended and after the cleaner made a written formal complaint. The worker was shortly dismissed by Queensland Health for a prior incident of physically assaulting another worker.

As a result of his dismissal, the sexual harassment claim was never investigated and the cleaner was not provided with any counselling prior to his dismissal.

The cleaner lodged a common law claim against the hospital, alleging that it was negligent in failing to provide a safe working environment. She also made a claim for economic loss as she did not work for a period of time after her husband suffered a serious back injury.

The hospital had taken steps to inform workers about sexual harassment. The hospital had a range of pamphlets and notices available and each staff member was given a copy of a code of conduct dealing with the issue. There had also been a workplace seminar about sexual harassment a few months before the incident.

The judge ruled that the hospital had acted properly in advising employees of sexual harassment procedures and there was no breach of its duty of care to the cleaner. He dismissed her claim for negligence, but awarded general damages of \$15,000 in finding that she was sexually harassed.

The judge also allowed a few weeks' wages for economic loss when she was on sick leave, but rejected her claim for all her time off work.

### **Risk assessments must consider all uses of machinery**

This case highlights the importance of risk assessing all uses and functions of dangerous machinery.

The incident occurred when an employee of a packaging company was changing the die in a cardboard cutting machine.

The worker placed the die onto the drum of the machine and began making the necessary arrangements using his right knee to press the control button. As he activated the button to rotate the die he didn't realise the glove of his right hand had become caught on a blade until it was dragged between the two drums of the machine.

The blade cut the underside of all four fingers on his hand and when he tried to reverse the roller using his knee again he hit the wrong side of the control, causing his hand to be drawn further into the machine. He suffered a crush injury and still has some residual disability.

The employer plead guilty to a failure to provide and maintain a safe system of work, which involved its failure to conduct a hazard identification and risk assessment of the die-changing process and a failure to guard the nip points of the machine.

After the incident, the employer installed a light curtain that prevented the rollers from moving if the beams were interrupted, and placed signs warning of the nip point.

A risk assessment had been performed, but this only covered its normal operation, and not the die-changing process.

Industrial Magistrate Ardlie said this meant the company had fallen short of its obligations.

He added that a previous conviction in Victoria should have alerted the company to the hazards of unguarded parts and the risks they posed to the safety of its workers.

Applying a 20 per cent discount for its guilty plea and contrition, he fined it \$14,000.

### **Workers' foolish actions did not lessen the employers' culpability**

fined an employer \$19,500 over a fatality after it failed to prevent workers from conducting dangerous repairs that they weren't qualified for.

when a worker was unable to re-start his truck after making a delivery.

He called the employer for assistance, but while he waited for help to arrive he attempted to adjust the rear brakes. He chocked up the back wheels with two bricks, put the truck into reverse gear and released the emergency brakes.

A second worker arrived and immediately got under the truck to inspect the vehicle. Shortly afterwards the truck moved and trapped him, and he later died from his injuries.

An investigation after the incident showed the emergency brakes on the truck were defective.

drivers regularly carried out maintenance on the trucks, despite the employer saying that he regularly told them not to because a mechanic was available for on-site maintenance.

Justice Staunton found there was a lack of clarity in the employer's oral instructions not to conduct "mechanical repairs". She accepted the truck driver's evidence that both he and the deceased worker carried out maintenance work on the trucks, and found that the employer failed to adhere to his instructions, by "turning a blind eye or deaf ear" to how his business operated.

By doing so, Justice Staunton said he presided over an unsafe system of work involving essentially unskilled employees adjusting truck brakes in circumstances that were inherently dangerous.

Justice Staunton acknowledged that the workers showed a foolish disregard for their safety, but said their actions had to be viewed in the absence of a proper risk assessment of the task at hand.

She fined the employer \$19,500 out of a maximum of \$55,000 as he was an individual with no prior convictions, giving him a 25 per cent discount for an early guilty plea, and taking into account his contrition and co-operation with WorkCover.

- have in place written procedures on what maintenance work was acceptable for workers to undertake;
- provide clear directions on what to do when a truck broke down; and
- assess the risks facing non-qualified workers when a truck broke down.

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