JOHN OWENS PTY LTD

Newsletter – December 2017

Practical Implications

Welcome to our final newsletter for 2017!

2017 has been an important year for WHS, as we are now starting to see the courts fully apply the 2011 'Harmonised' WHS Legislation. Why the 6-year gap? It takes a long time for prosecutions to reach the courts, and it also takes time for the cases to test every aspect of the legislation. Now we know exactly what we're dealing with: the key practical WHS issues facing Australian businesses today.

Our December newsletter focuses on these issues, along with the growing focus on Mental Health in the workplace, workplace drug and alcohol testing, and Christmas Party safety.

In JOPL news, we have partnered with the Australian Federation of Employers and Industry (AFEI), to deliver WHS training on their behalf. An outline of available courses can be found on their website - http://afei.org.au/training.

Merry Christmas!

Philip Groves
General Manager

Case Note: *Safe Work (NSW) v Activate Fire Pty Ltd & Anor.* [2017] NSWDC 66.

A worker was seriously injured after suffering an electric shock in a roof space. A Safe Work Method Statement identified the risk, a thorough risk assessment was completed, daily toolbox talks were conducted on the specific risk topic, and the worker was trained and qualified. Also, an independent expert confirmed the specific risk was not foreseeable.

While the fine ($10,000 for each company) was minimal, a conviction was recorded.

Why? Because the court found the risk controls were not satisfactory. Better options were available (isolating the power supply), and a key manager was named and shamed for his dismissive attitude and approach to risk management.

Lessons: Risk assessments must be meaningful and relevant. You need to justify the controls you use. Is guarding enough? Is that sign sufficient? What are others in our industry doing?

Christmas Parties

It's that time of year again. The time when we see Scrooge-like messages cautioning good behaviour and bemoaning the risks of fun.

Let's keep it simple. A company-sanctioned function is a work activity. Everyone needs to remember that – the same rules apply as if it were a normal day at work:

- Look after your safety, and look after others' safety.
- Understand the risks, and control them.

Tips for keeping your workplace Christmas party safe:

- Make it clear to your workers that intoxication and illegal drug use is not acceptable.
- Make it clear that everyone getting home safe is the priority.
- Be clear that there is never an excuse for poor behaviour.
- Find a location where alcohol is served responsibly (a licenced premises), and where safety standards are high (e.g. check that balconies have railings).
- Have a process to call a taxi if necessary
- Set boundaries. The party ends at 11pm, go home.

Drug and Alcohol Testing

JOPL held its six-monthly fuel workshop in Newcastle last month. Ian Jameson, from Integrity Sampling, joined us and gave an overview of how drug and alcohol testing has become a critical requirement in Australian workplaces. No matter how strong your safety systems may be, the human factor is always present. When drugs or alcohol are added to the mix, no matter the industry, the risk increases exponentially.

Integrity Sampling offers a number of services, which may be relevant to your business. We encourage you to contact Ian and check out his website:

www.integritysamplingaust.com.au
Ian Jameson
Director – NSW
0414 401 585
i.jameson@integritysampling.com.au

Mental Health at Work

According to the NSW Government's *Mentally Healthy Workplaces in NSW – Discussion Paper*, released September 2017, "A mentally healthy workplace" is one that:

- Promotes mental health and wellbeing.
- Develops strategies to reduce the risk of mental ill-health and promote mental resilience among staff.
- Creates a culture that facilitates early identification of mental illness to promote mental resilience among staff.
- Ensures that staff who do develop mental ill-health are supported and receive quality, evidence-based interventions to promote recovery.
- Takes the approach that mental health and wellbeing is everyone's business, including managers, colleagues and individuals (Mental Health Commission of NSW and the Black Dog Institute 2016, p. 8)."

Is this practical? Is it possible?

Some of these elements are relevant and very positive, and most employers follow them without thinking about it. For example, a happy workplace is a productive workplace, and most managers are sensitive to workers' needs and emotions.

Importantly, a few of the concepts listed above seem dangerous and/or misguided. Do we expect businesses to identify mental health issues? Where does privacy kick in? Is it really *everyone's* business? Could this approach risk further discrimination or marginalisation?

There appears to be a fundamental conflict here, and we need to clarify it. Work may trigger or exacerbate mental illness, but employers are not necessarily responsible for the full extent of the social 'problem' of mental illness. The approach above risks alienating employers, and taking a big step backwards in society's response to an increasing problem.

We have developed a training package for managers, to support them in navigating the complexities of workplace mental health. Contact us for more information.

Risk Assessments and Controls

Recent prosecutions have highlighted the importance of risk controls. When a risk is identified, it must be managed. The legislation requires it to be eliminated. If elimination is not possible, controls must be implemented.

While we typically speak of a 'hierarchy of controls', it is not a perfect hierarchy where every step is better than the one below.

Instead, the legislation (Work Health and Safety Regulation 2017 (NSW), clause 36) requires you to:

1. Eliminate the risk.
2. If the risk cannot be eliminated, do something physical to minimise the risk (isolate, substitute, or apply an engineering solution – for example guarding machinery).
3. Use administrative controls (training, procedures etc.), to minimise the **remaining** risk.
4. Use Personal Protective Equipment (PPE), to minimise the **remaining** risk.

The key word here is 'remaining'. You must work your way down and at least attempt point 2. There is no jumping to point 3 or 4. They are the last resort. And, they are to be used together where possible (multiple controls are often required).

When the risk is one of serious injury or death, an organisation (PCBU) must take this control framework very seriously. You need to ask these questions:

- What controls are available? (what could work?)
- What is everyone else doing? (How are your competitors handling this issue?)
- How much will the control cost? (Is the cost commensurate with the risk?)
- How serious is the risk? (Will is hurt someone?)
- Can we apply a more effective control? (What is realistically possible?)
- How can we combine controls to achieve maximum effect? (Can we innovate?)

As we have started to see, the courts look to your thinking processes when things go wrong (e.g. your risk assessment tools, forms, and emails). Why did you implement that control?

For more information on any of the topics discussed in this newsletter, or to discuss how we may support you and your business navigate safety, environment, quality, and risk management, please contact us.

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