

# SAFETY IN THE WORKPLACE

Welcome to our 2018 Spring Edition of “Safety in the Workplace – WHS Quarterly”. In this edition, we provide tips and tricks to minimise WHS risks as the festive season approaches and examine a recent decision demonstrating the importance of complying with both WHS legislation and the Australian Safety Standards.



## **Complimentary Christmas breakfast seminar**

Stevens & Associates Lawyers warmly invites you to our complimentary **Christmas breakfast seminar** on Thursday, 29 November 2018.

### **Topics:**

#### ***“Is UR Workplace OK?”***

*Examining mental health, performance management & stress and best practices for employers in light of the*

*new Productivity Commission Inquiry into mental health.*

#### ***Unpacking WorkPac: Casually Confused***

*Dissecting the ‘WorkPac v Skene’ decision and the increased confusion as to what constitutes a genuine casual engagement. Are your “Casuals” accruing annual leave and what is the proposed new “Permi-Flex” category?*

#### ***What’s New in 2019?***

*A summary of 2018 updates, amendments & what to look out for in 2019, and how they could affect your Company.*

#### **Venue:** The Lane

Shop 3, 20 Hunter Street, Sydney  
(Rear entrance Cnr Curtin Place & Hamilton Street – across from Ryan’s Bar, Australia Square)

**Time:** 7:15 for 7:30am start to approx. 9:00am

The seminar will begin with an opportunity to network before breakfast is served with the presentations to follow.

**Date:** Thursday, 29 November 2018

**RSVP:** To reserve your seat(s) please reply by email or call on (02) 9222 1691 by Monday, 26 November 2018.

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## ***Tips and Tricks to Mitigate WHS Risks During 'Silly Season'***

With the festive season and Christmas rush approaching, the workplace can become stressful and prone to Work Health and Safety (WHS) risks. Christmas Parties going awry are not the only workplace legal risks employers need to be aware of during the festive period. SafeWork Australia statistics reported that the months of January, November and December in 2017 held a higher proportion of workplace related fatalities involving workers and bystanders. Over the last decade, the weeks leading up to Christmas have produced the most deaths, with November and December representing 25 percent of workplace fatalities.

### **Deadlines**

Cutting corners and taking short cuts may be tempting as the pressure of deadlines loom and keeping up with demand increases leading up to Christmas. The risk of workplace injury increases as employees are forced to meet potentially unrealistic workloads, and rather than

turning a blind eye, employers must prioritise safety and adherence to policies and procedures.

Workers in hospitality, transport, construction and retail industries often work long hours during the busy festive period and are more likely to experience fatigue and weariness. The impacts of high levels of mental or physical exhaustion can impair clear thinking which can have serious implications when it comes to following WHS protocols, day to day risk assessments, and carrying out day to day tasks.

The responsibility of managing the effects of fatigue should rest on both workers and their employers as contributing factors can derive from inside and outside work. However, fatigue has been identified as a workplace hazard by the Work Health and Safety Codes of Practice 2011 for the purposes of s 174 of the *Work Health and Safety Act 2011* (Cth)(WHS Act) and employers need to be able to identify potential hazards in their workplace due to environment or the nature of the work (i.e. shift work). Under the WHS Act, employers are responsible for protecting their workers from the adverse effects of fatigue.

Employers can do the following to mitigate these contributory factors to increased WHS risks around the festive period:

- Monitor break taking to ensure employees don't skip breaks to cover increased demand;
- Avoid designating repetitive tasks for long periods at a time;
- Set realistic timeframes and workloads: factoring in extra time, additional staff or

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resources as required to ensure the job is completed safely;

- If work falls behind, implement an appropriate management plan that does not increase workload or stress levels of workers;
- Remind employees to take the time needed for an adequate risk assessment of a task before commencing work;
- Re-articulate drug and alcohol policies to staff;
- Avoid trading at extended hours where possible;
- Introduce stretching exercises;
- Remind workers of their legal duty of care to ensure their conduct at work is not harmful or placing others or themselves at risk, which involves making sure they are in a fit state to safely perform duties; and
- Avoid quick, lax onboarding of Christmas casuals.

Whilst the silly season can be a joyous time, it can also be a highly stressful period for many and can take a toll on mental health. Employers are urged to keep an eye on employee's displaying signs or symptoms that could impair their ability to conduct work whilst minimising WHS risks.

## Temporary Staff

During the holiday season many employers hire temporary staff or Christmas casuals to keep up with demand. Young workers and school leavers often join

the workforce around this time and are more likely to take unnecessary risks in attempts to impress employers. Whilst this is a busy time for managers and supervisors, it is essential that training and induction is adequately provided, and that communication and appropriate support is prioritised. In doing so, safety policies and procedures must be easily accessible and made clear, especially to new workers.

## Weather Conditions

The Christmas season coincides with the hottest time of the year, which for large parts of Australia means storm and bushfire season in addition to generally hotter working conditions for many industries.

For the construction industry and other workplaces involving physical labour, hotter climates can lead to increased susceptibility to heat stress and heat exhaustion which, in some cases, can lead to heat stroke. Warmer conditions can lead employees to experience (among other things): tiredness and weakness; confusion; disorientation; or inability to concentrate.

In some circumstances even a momentary lapse in concentration can result in a workplace accident or injury. In adhering to their duty of care, employers should take steps to deal with these conditions as they arise. Some tips and tricks include:

- Regulating exposure and reducing time working in hotter environments including outdoor provision of sunscreen and water;
- Reminding workers to stay hydrated and encouraging workers to communicate with supervisors if they are not coping; and

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- Training workers on the impact of heat and the associated symptoms, to assist them with recognising if weather conditions are negatively affecting workers or their co-workers.

The cost of work-related injuries or fatalities far outweighs the time saved in compromising WHS policies and procedures to meet the demand of the Christmas time rush.

If you have any questions relating to mitigating increased health and safety risks as the festive season approaches or would like to discuss risks specific to your industry, please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.



## ***Big Fine for Company that Purposely Removed Machine Safety Features***

The New South Wales District Court (**NSWDC**) have imposed heavy penalties on both H & F Mechanical

Pty Ltd (**the Company**) and business partners Max Hoffman and Laurence Hoffman (**the Partnership**) for modifying a timber cutting machine and knowingly allowing an employee to use the modified machine. The Partnership was found to have a Primary duty of care under s 19(1) of the *Work Health and Safety Act 2011* (Cth) (**the Act**) and that contrary to s 32, the Partnership breached that duty.

The decision acts as a timely reminder that employers must be aware of obligations not only to WHS legislation, but how such obligations intersect with Australian Safety Standards, codes and manufacturers' directions.

### **The Facts**

Mr Coster (**the Worker**) was engaged as a labourer for the Company. During the period of 1 February 2014 to 16 May 2014 the Worker used a machine called 'the Rex' (**the Machine**) whilst at work. The Machine is designed to be towed onto site for the sawing and splitting of timber.

Prior to the commencement of the Worker's employment, the Machine was modified by a mechanic under instruction of an employee of the Company. The mechanic was instructed to remove the left handle of the Machine and re-weld it closer to the right handle. A rope was then tied between the handles allowing the user to operate the Machine with one hand. This modification placed the operator at risk as the hand that was free could now come into contact with the blade of the Machine. Crucially, the Partnership were aware of this modification to the Machine.

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## The Decision

The NSWDC held that the offence was not related to the manifestation of the risk (the Worker was not injured by the Machine), but rather the foreseeable risk of serious injury that the Worker was exposed to for an extended period. As the main operator of the Machine on most days, the Worker was exposed to a continual risk as a result of the modifications made to the Machine.

The NSWDC identified a number of aggravating factors in sentencing the Company and the Partnership:

1. The offence was committed over a period of time;
2. The alteration to the Machine breached the manufacturers specific instructions;
3. The Operators Manual (**the Manual**) imposed a duty on the owners of the Machine to provide new operators with training and an opportunity to read the Manual. This was not done;
4. The Manual requires that the hand lever operation should be checked daily. This was not done or the problem was ignored;
5. The modification failed to comply with Australian Safety Standard rules regarding the safe operation of machinery;

6. The modification was easily carried out and could have easily been reversed; and
7. The timber and wood industry is inherently dangerous.

With consideration of the above factors, the NSWDC held that the offence was in the mid-range level of objective seriousness. The Court imposed a fine of \$160,000 on the Company and \$64,000 fine on the Partnership. These amounts take into account a 20% discount which was awarded for a late guilty plea. Each Defendant was instructed to pay \$10,000 each for the prosecution's legal costs in addition to their individual penalties.

Read the full decision here: [SafeWork NSW v H&F Mechanical Pty Ltd, Max Alfred Hoffman and Laurence James Hoffman \[2018\]](#)

If you require any advice or assistance to ensure your firm is implementing effective and compliant workplace safety procedures please do not hesitate to contact Nick Stevens, Jane Murray or Angharad Owens-Strauss.

*This publication is intended only as a general overview of legal issues currently of interest to clients and practitioners. It is not intended as legal advice and should only be used for information purposes only. Please seek legal advice from Stevens & Associates Lawyers before taking any action based on material published in this Newsletter.*