

*This month we report on three prosecutions relating to falls from height – one that followed the death of a worker in a Te Kuiti meat processing plant, and a further two involving falls through brittle roofing materials and serious injuries to workers on opposite sides of the world. We also cover a recent sentencing for the death of a road user after a cloud of fertiliser dust engulfed her vehicle on a motorway. Lastly, and on a lighter (or perhaps a darker) note, we consider the emerging issue of safety for other-worldly workers as Halloween becomes ever more popular in New Zealand.*

## Meat processing company sentenced after death of a “helpful” employee

The tragic death of an “obliging and helpful” employee highlights the need for employers to ensure that high risk work is only carried out by workers who are properly trained to do it – and that if employees break these rules, there is a culture in place that encourages reporting.

The 56-year-old victim was employed as a general labourer at a meat processing plant in Te Kuiti and suffered from both an intellectual delay and epilepsy – which his employer was aware of.

The victim was known to be willing to take on tasks and volunteered to assist another worker with the “in between” clean of the legging stand. This became part of his usual routine although the task was not part of his role. He was seen on the legging stand by other workers on multiple occasions.

The legging stand is a platform over two metres above the ground. It is used by “leggers” to access carcasses hung from a railing system. The platform could not have edge protection put in place due to the risk of meat contamination. Therefore, the leggers who worked on it had to use harnesses to manage the fall from height risk.

However, as not all employees were required to work on the stand, not all workers were trained in the use of the harnesses. This included the victim.

On the day of the incident, the victim went onto the legging stand to press a button to move the carcasses. While there, he had a seizure and fell to the concrete floor below. He suffered severe head and chest injuries and sadly, died as a result.

The investigation found that the company failed to have effective steps in place to keep the victim away from the legging stand by way of supervision or exclusion zones. There were no signs to communicate that access to the legging stand was prohibited for workers other than leggers.

The Court imposed a fine of \$256,000. The victim did not have a spouse or children (although the Court noted he was a well-loved son, brother and uncle) and reparations of \$50,000 were ordered to be paid to other family members. Costs of \$13,060.63 were also ordered to be paid to WorkSafe.

## Roofing contractors fined after workers fall through brittle roofing materials

The hazard of falling through brittle roofing material has been well known for many years but as recent prosecutions on both sides of the world show, appropriate protections for workers are still not always put in place.

A [Hawke’s Bay roofing company](#) was sentenced early last month after a 14-year-old roofer stood on a brittle skylight which then broke beneath him. He fell 8 metres, landing on a concrete floor and suffered multiple fractures.

The teenager had been told not to walk on the skylights, but the WorkSafe investigation found that more should have been done to minimise the risk. This included putting a barrier in place to stop workers from inadvertently standing on the skylight in the older part of the roof.

WorkSafe also prosecuted the company for allowing someone aged under 15 years to work on a construction site in a breach of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016.

The company was fined \$25,000 and ordered to pay reparations of \$40,000 to the victim.

In sadly similar circumstances, a [construction company](#) in Leicestershire, England, was also sentenced in September after a worker fell 7 metres through the brittle roof he was repairing. He suffered severe injuries as a result. The UK’s HSE said there were serious deficiencies in the planning and supervision of the work and an absence of a safe system of work. Protections such as nets were not put in place. The company was fined £80,000 and ordered to pay costs of £9,981.

The HSE noted after the sentencing that work on fragile roofs accounts for around a fifth of all fatal incidents that occur in the UK construction industry.

There is [comprehensive guidance](#) available from WorkSafe on working safely on roofs including how to manage work on brittle materials.

## Company ordered to pay over \$658k after multi-vehicle crash caused by fertiliser dust “white-out”

A Bay of Plenty [fertiliser company](#) has been ordered by the Court to pay a total of \$658,649 after a woman was killed in a multi-vehicle crash. The amount was made up of a fine of \$360,000, substantial emotional harm reparations of \$210,000 and consequential loss reparations of \$88,649.

The fatal crash occurred when the fertiliser company was spreading lime at a dairy farm next to the Tauranga Eastern Link Road on 5 February 2020. A cloud of lime dust was carried across the motorway by the wind reducing visibility to almost nothing. A 64-year-old woman’s car was engulfed and collided with a car in front, and was then struck from behind. She later died in hospital.

A WorkSafe investigation found the company had failed to

undertake an appropriate risk assessment for the work and did not implement a safe system of work for spreading fertiliser on the farm. WorkSafe said there is industry guidance that makes it clear that there is a risk of wind drift and that this risk should be assessed before use, including considering the impact on operators, farmers, nearby moving vehicles, and the public.

WorkSafe also commented that it was only by luck that there were no further fatalities on the motorway and warned that the agriculture sector should take notice as the incident could have happened anywhere in the country.

[Guidance](#) on safety during ground fertiliser spreading is available from WorkSafe.

## WorkSafe review raises issues with an unclear strategy and lack of emphasis on legal responsibilities

An independent [Strategic Baseline Review](#) of WorkSafe was commissioned by the Government to determine whether the regulator was managing its resources efficiently and effectively. Overall, the review identified no significant issues with the way in which WorkSafe undertakes its regulatory role. However, it was critical of the absence of a clear overall strategy. It said WorkSafe should be able to describe its role, what it does to deliver on its regulatory responsibilities and how its activities link to its legislative functions and that it needs “... a clear and concise strategy that is compelling, specific and outcomes focused.”

Another key finding with potential implications for statutory liability was that WorkSafe needed to put more emphasis on the legal responsibility and accountability of PCBUs for workplace health and safety.

The review found that in the absence of this focus, there was a risk of business operators not taking their duty of care seriously and considering the likelihood of WorkSafe taking enforcement action as being low. It remains to be seen if any changes result from the review and whether it will lead to a sharper enforcement focus from the regulator.

## Halloween hazards can lead to health and safety nightmares for other-worldly workers

Halloween can be a health and safety nightmare for other-worldly workers. From cauldron scalds to exposure to bat-spread zoonoses, the hazards of Halloween are many and varied.



*Halloween health & safety.*

Ghost and Ghoulies Inc’s Chief Safety Spook, Michael Myers, explains that the most common causes of injury are

associated with reduced visibility. “Most of the work kicks off after dark and there’s a lot of mask-wearing or head detachment – so workers tend to trip, crash or go through stationary objects. We think more widespread use of hi viz could go a long way towards keeping everyone safe.”

“Added to this, there is some work at height – broomstick riding and high-level haunting are obvious examples. Clearly any work at height involves a risk of falls. And not all workers can independently hover. We’re recommending that workers keep two feet or other appropriate appendages on the ground at all times. Sure, it changes the nature of the work a bit, but no one wants an undead fatality on their big night.”

“Lastly, a key focus for us remains pointy and sharp objects – pitchforks, knives and pikes. They need to be well blunted. Look around at our workers and you’ll see the results of some nasty past interactions with sharp edges.”

Unfortunately, statutory liability insurers say that cover for the Halloween sector could be challenging given the ethereal nature of the work. Nevertheless, a Vero Liability spokesman says that if the demand is there, they will look at developing a product to meet the market. “At VL, we are experts in offering bespoke liability insurance solutions. We’re always happy to talk to brokers and their clients about the types of high-quality cover we can provide.”