The Safe Side

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Developments in health and safety from New Zealand and around the world

March 2023 | Issue 44

This month, we cover the third successful Court Ordered Enforceable Undertaking (COEU) imposed under the Health and Safety at Work Act. The COEU was proposed by the defendant as an alternative to paying a fine. We also look at a case where the failure to ensure workers wear eye protection has landed a company with a conviction and significant reparation orders. This follows a very similar prosecution of a fencing company last year. In addition, we have articles about a prosecution that arose from an incident where a new worker was struck on the head and shoulders by a skip bin, an eyewatering AU$1.5 million fine handed to an Australian energy company after the death of a worker at a power station and how two companies ended up paying $28,000 because neither one of them notified Maritime NZ that a worker had suffered minor burns.

Company prosecuted after failing to ensure eye protection was used by trainee worker

A Northland company has been sentenced for failing to provide eye protection and ensure it was worn by its workers.

The prosecution arose after a trainee worker and his supervisor were repairing orchard fencing in April 2021. A high-tensile wire snapped, striking the 20-year-old's left eye. The injury required two surgeries and the victim's vision is now permanently impaired.

WorkSafe's investigation found the business failed to train and supervise workers and didn't monitor the safe use of PPE when workers were carrying out work. Neither the victim nor his supervisor was wearing safety glasses at the time of the incident and other workers also failed to wear protective eyewear while fencing. The business had no formal process in place to ensure workers were wearing PPE, leaving supervisors to instead fill the gap by managing the wearing of PPE in the field.

The investigation also found there had been a near miss one month earlier in similar circumstances, which was not reported to senior management by a supervisor until after the later incident.

The Court ordered that reparations of $62,185 be paid to the victim and a fine of $240,000 was imposed – although this was reduced to $0 due to the financial circumstances of the company and its inability to pay any fine.

This prosecution follows that of an agricultural fencing sole trader in August last year after the 17-year-old victim lost the sight in his right eye when a piece of metal flew into it while he was chiselling.

There is extensive guidance available from WorkSafe on protecting workers' eyes and PPE use in general. In short, PCBUs must provide eye protection to workers and ensure they wear it where there is a risk of eye injury from work.

Skip bin operator ordered to pay more than $350k after worker sustains severe brain injury

In March 2021, a Bay of Plenty worker halfway through his third day on the job was emptying a skip bin when the raised bin fell on his head and shoulders. He later suffered several strokes in hospital and is likely to experience difficulties with his vision and swallowing food for the rest of his life.

This month, the victim's employer was convicted and sentenced in the Tauranga District Court. It was fined $250,000 and ordered to pay $100,000 in reparations.

WorkSafe said the company failed to ensure that the risks when loading, unloading, or tipping a skip bin were identified, assessed, and minimised. In addition, the company didn't provide adequate information and training for how to rig skip bins, and how to safely empty stuck material. Instead, it relied on informal, on-the-job training to satisfy itself that the victim, who had no prior experience in similar work, was trained and competent to do all parts of his role unsupervised.

After the sentencing, WorkSafe commented that: "Doing it right is not necessarily about creating paperwork, but about ensuring existing staff have all they need to do the job safely, and getting new workers on the same page."

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Company's proposed Court Ordered Enforceable Undertaking agreed to by Court

A storage and logistics company has successfully persuaded the Palmerston North District Court that it should not pay a fine and instead will comply with its proposed Court Ordered Enforceable Undertaking (COEU). This shows that even if companies do not get an enforceable undertaking accepted by WorkSafe, they may still get a COEU agreed to by the Court.

Although WorkSafe opposed the request, the Judge entered a conviction against the company and adjourned the charge for 18 months to give the company time to comply with the COEU. The company will be released from the charge subject to their compliance with the COEU.

The prosecution arose after an employee received injuries from an electric shock while loading produce into a container using an electric mobile conveyor. The victim was able to plug the conveyor into an incorrect socket which was not fitted with an RCD. An RCD protects against serious electric shock by switching off the supply if something goes wrong.

The Court found that while the company provided training for new staff, including plugging and unplugging the conveyor belt, it failed to ensure the health and safety of its workers by providing adequate training about the safe use of the electrical plugs and leads and the risk of electrical shock in the event they were incorrectly used.

The company proposed a COEU consisting of 10 wide ranging activities including funding a health and safety upskilling and positive health and wellbeing programme as well as a training programme in fork hoist operation in cold environments. It also offered funding for RCD installation in community facilities. The company estimated the total cost of the COEU to be $240,000 not including independent monitoring and reporting. The Court assessed that the fine would have been $165,000 had the COEU not been imposed.

WorkSafe was supportive of two of the activities but was critical of the rest. However, the Judge found that with some amendments to one activity, the COEU addressed the purposes and principles of sentencing and HSWA.

WorkSafe also argued that an additional $25,000 reparations should be paid to the victim on top of substantial payments already made by the company. The Court, however, found that no additional payments were necessary. The Judge commented that as a matter of principle, the Court ought to encourage businesses to take responsibility at an early stage for acknowledged wrongdoing by voluntarily compensating a victim for harm suffered. This underscores the value of VL's Work Care/Work Accident cover which gives employers the ability to provide early reparation payments in certain cases of workplace injury or death. Work Care can be included as an optional section under VL's LegalEdge policy or added as an extension to VL's Statutory Liability policy.

The company was also ordered to pay $6,243.56 in costs and fined $8,000 for failing to notify the incident. WorkSafe was not informed about the event until over two weeks after it occurred when told by the victim's uncle.

Failure to notify an accident costs two businesses a total of $28,000

The failure to report a minor burn injury has resulted in the Court ordering two companies to pay combined fines and costs of $28,000. Maritime NZ prosecuted the companies after it took nearly a year for it to be notified about an incident where a worker sustained minor burns to their neck when welding in a confined area on a vessel.

Maritime NZ said it appeared that there was confusion between the companies about who should notify, but the policy should be, when in doubt, report. Or contact the regulator for clarification.

Of the two parties involved, one received a fine of $9,600 and was ordered to pay regulator costs of $13,000. The other was fined $8,400 and ordered to pay regulator costs of $9,560. Notifying injuries, illness and incidents is a legal obligation under HSWA. More information on notification is available from WorkSafe and Maritime NZ.

Australian energy company fined AU$1.5 million after arc flash fatality

An Australian energy company has been fined an eyewatering AU$1.5 million after a 54-year-old worker died in hospital with severe burns sustained in an arc flash and explosion at a power station.

The victim had more than 30 years' experience working at the station and had been carrying out his work in the way he had been trained to do so. The court heard the incident likely occurred when a control cable made contact with live components due to an inadequately attached infill panel on a switchboard cabinet.

The company, which entered a guilty plea, was fined $700,000 for failing to provide and maintain plant that was safe and without risks to health; $300,000 for failing to provide information, instruction and training; and $500,000 for failing to provide or maintain safe systems of work.

The company admitted it was reasonably practicable for it to have ensured any infill panels installed on high voltage switchboards were securely affixed. It also admitted that it should have provided, and required workers to wear, readily available arc-rated personal protective equipment (PPE), which provides thermal protection and is self-extinguishing. At the time of the incident, the victim was wearing flammable cotton overalls, which the court heard can increase the area, depth and severity of burn injuries.

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