

OPEN LETTER TO PROPOSED COMPANY DOCTOR

Dear Doctor of NZ

We are writing to you to help you understand the wishes of our client/s that would like to avail the Company Doctor scheme that is used by many large companies and some smaller ones that are prepared to operate back to work schemes with structured rehab policies.

For your benefit, we have a sheaf of forms that include an application form, an explanation of the procedures and forms for your use and completion by your staff. We attach a copy.

In simple language, ACC cannot legally require an employer to use its scheme for accident and case management. The ACC scheme is a very good one and has many advantages. It does however have significant disadvantages and where a victim presents several times to the Doctor, it is likely that the Admin Official in Wellington will make repeated notes on the file. It is further indicated that the Official will consider the appointment of a Case Manager plus associated Allied Health workers such as Physio and Occ Health.

What happens of course is that ACC collects the flow through costs and then imposes a penalty to the client. The range of penalty is supposed to be fixed at 50% maximum but we know of cases of 100%. A notable one was \$49k plus \$49k and was taken to court. The average medium employer can easily get a loading of \$10,000 per annum.

There are some things that you need to be clearly informed about.

1. Non use of the ACC scheme does not disqualify an employer or victim from future use.
2. The accident case belongs to the employer and not the victim contrary to ethical norms
3. The HSAWA law supercedes all associated workplace laws and requires that accident information be notified to other workers at the site and to Officials. It is not private and it must be released. This means that case notes for accidents normally need release.
4. If the victim wishes to go to his or her own Doctor, the worker will then be excluded from wage entitlements and will face reductions to 80% and then 70% of normal pay.

For best success, the Company Doctor scheme needs to have more focus from the Doctor. There will be a need to specify competency for limited work where this could or should apply. There will be a need to think about follow through treatment that would be indicated as appropriate where the Doctor prescribes a practical pathway for faster recovery.

Finally, you will find that about 5% of workers will resist the scheme as they want to have an ACC holiday as well as annual holidays. In some cases the worker will have had the accident in private time and does not want the claim to go against his or her account. Please note that an employer under the scheme may seek bi-annual health monitoring for some items.

SSL Manager Name _____

Telephone/Fax _____

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News & views from Summit Systems April 2017



NZ IS VERY (DIS)HONEST COUNTRY?

A former senior Auckland Transport manager who took more than \$1 million in payments and the contractor who bribed him have both been jailed.

Murray Noone, 53, was last year found guilty of taking what prosecutors say was about \$1.1m in bribes between 2006 and 2013. On Wednesday he was handed a sentence of five years' prison. His co-accused, Stephen Borlase, 52, who owned and ran engineering consultancy company Projenz, was sentenced to five years and six months' jail for bribing Noone and another council staffer.

Sentencing the pair in the High Court at Auckland, Justice Sally Fitzgerald said such offending seriously undermined confidence in the public service and risked damaging the international reputation of New Zealand, where public corruption was "virtually non-existent". She said while there was no evidence the payments had actually influenced the outcome of two council tenders in the period, the logical conclusion was they were meant to influence Noone. Prosecutor Brian Dickey told the court the offending had been large-scale, prolonged - nearly monthly over seven-and-a-half years - & the men had gone to lengths to cover it up.

If you think that the above case is isolated then think again. We would like to inform you of many cases in the education world and the health world and the local body world and the commercial transport world where corruption is rife and we know from our family transport business that transport is full of graft and backhanders. We know of a case with Infratrain where we were told that our training course was by far the best but the decision was that slightly safe would get the work and the official concerned happened to go on a world trip for one month but this was purely by chance. The imperative was that slightly safe would corner all of the contractors and force them to have coloured cards.



2.

\$30,000 TO FIX GUARDS CAN CRIPPLE A BUSINESS

We understand that there is a Duty Holder Reviewer with zero inspectorial experience that is punishing sites that happen across her pathway. In one case she sledged about 200 questions that were a complete waste of time and resources and highlighted her ignorance of what happens at a busy construction worksite. We think that she deserves a full report to the Board or Minister. We suspect that the same person is now forcing a site in Christchurch to remedy its guards and we think that she has required series of lightbeams or other means of guarding that will be hugely expensive. We are informed that the business will not be able to afford the expense but is being forced or blackmailed into doing this work.

For the record, we believe that the Official has limited powers to make such demands and must come up with an affordable means even if it means fencing off machinery for parts of the day or uses other techniques to control the risk. The law is specific in application and specifies that solutions must be both practical, economically viable and affordable.

It is our view that Officials must not put their interpretation on what is required and must not try and be experts on points of law unless they get detailed supporting clarifications from Head Office. Most Officials are well aware of the need to protect kiwi jobs and to try and promote growth of businesses rather than close them down. Some have personal agendas.

RESTRUCTURE THE BUSINESS

All clients are reminded of the need to look carefully at situations where they have totally unfit workers who have played themselves out or have been caught with drugs or sabotage. It is astonishing to us to find that 95% of Officials in MBIE do not understand that most of the claims made by workers are frivolous, vexatious, designed to create sabotage or otherwise punish the employer.

In our opinion, you should consider having about half of workers appointed as independent contractors and make sure that they have capability to work for another party without conflicts of interest or they get to be GST registered.

Make sure that you update your employment contracts and you have that opportunity on an annual basis unless you have fallen into some trap that prevents changes to conditions as required or external reviews on an annual cycle. You need to ensure that you have a clause that where a worker is disaffected or considers that s/he has a grievance or dispute against the employer then a) the matter must be put in writing and must be issued to the employer and b) the employer is to be given 7 days to consider and rectify or negotiate with the worker.

c) The worker and the employer must both agree to appoint an independent third party as mediator NOT being a lawyer or employment relations consultant and in no circumstances will the employee refer the matter to the employment tribunal until the matter has been arbitrated by the agreed third party and it was not possible to resolve.

One avenue that we strongly recommend is to consider a restructuring of the business to circumvent the person/s that are causing problems. Notice must be given to all staff of the proposal to restructure, the timetable that will apply, submissions must be invited, all views of workers to be considered, workers to be considered for the new / altered positions. The company must also try to help any workers that are no longer required to find new jobs.

3.

WHY TO USE OUR HEAD OFFICE FOR ACCIDENT REPORTING

Firstly and foremost we can talk with Worksafe NZ without disclosure of your name or address and get an opinion as to what they are likely to want to know and how they will rate the case or incident.

Secondly, we can make a report that does not incriminate you or your workers or your business. Remember the golden rules: You are legally NOT required to make a formal report other than a notification form. You are legally NOT required to make any statement that will incriminate you or the business. You are NOT required to sign anything or admit anything but you ARE required to (i) give your full name and address and (ii) supply any item or document or thing that Worksafe wants as evidence and this can include systems information, files of staff, photos, maintenance records etc. You ARE required to give early notification of an event that is notifiable and you ARE required to submit a form 1 within 48 hours of the happening or incident.

If in our opinion, it would be helpful to make a statement then we ensure that the following takes place: a) your statement should be headed up PRIVILEGED STATEMENT and will be short and sharp with the five things that exonerate your situation and will end abruptly with the comments "I have nothing further to add". There will be no signature. For clients on hotline service, we will contribute all time involved in dealing with questions from you plus an hour of otherwise payable time for formal report required.



ROSCO CONTRACTORS LTD – WORKER KILLED, 1992 LAW FINE

The Defendant company provides drivers, excavators, dozers, trucks and dump trucks for mining operations. The victim, a trades assistant employed by the defendant, was operating a hydraulic ram and power unit while assisting a colleague in servicing a dump truck.

The victim was hit in the chest with high pressure hydraulic oil. He suffered a severe traumatic injury to the left anterior chest with fractured ribs and sternum and a severe tearing of the left ventricle. The victim died. Fine imposed \$52,500 plus reparations 100k.

REMEDIAL ACTIONS REQUIRED

Ensure that a hydraulic ram is assessed or rated for a safe operating pressure and a maximum pressure;

Ensure that a formal procedure was in place and that instructions were made available to employees for the use of the hydraulic ram with the hydraulic power unit; and

Ensure suitable training and supervision for employees in the use of the hydraulic ram with the hydraulic power unit.