

BEWARE OF RESOURCE MANAGEMENT ACT FINES

We have been advised by a client of an incident involving them in both a major fine and damages to a bridge in Southland. The client was asked by a management company for Dairy farms to clean out the stream bed on the farm and to provide the gravel for tracks and yard areas. The client was assured that a consent had been obtained. Unfortunately the consent document in the fine print stated that the Regional Council officer must be in attendance to check on the work. The client failed to keep far enough away from the bridge piles and during an ensuing storm there were heavy flows in the creek and the bridge was washed away. The client is likely to face a fine of perhaps \$100,000 plus a large contribution of say another \$100,000 towards replacement of the bridge. The message is – make sure that you obtain a copy of the consent and read it.



COMPANY DOCTOR FORMS

We again urge all clients to make sure that they issue our Company Doctor forms to the Company Dr (not the private Dr of the worker/s). Failure to put this in place will mean that you will lose your no claim bonus and the workers will be penalised financially by ACC e.g. they will run the risk of reduced weekly incomes if they have a prolonged rehabilitation.

INTERVIEW QUESTIONS FOR PROPOSED EMPLOYEES

We need to remind clients that when interviewing short listed potential employees, they must ask questions about health status, medical information and ACC claims of the individual. Failure to do so is a breach of the Health & Safety Act. The reason is quite simple. If you take on a worker who has HIV, VD, Hepatitis or some transmittable disease, you are exposing other workers to a risk which must be controlled. Similarly if the proposed employee has a weak knee and you pair this person with an existing non impaired worker for a team lift and the non impaired worker gets an injury, you are culpable for failure to identify this and control it. You must however ensure that the personal information of workers is kept secure in a confidential filing system. If you would like to obtain a set of the latest questions, please contact your local Consultant.

Consultant Name _____

Telephone/Fax _____

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The Duty of Care – Occ Health and Safety Act

The various Environmental laws of NZ are based on the United Nations statutes which are designed to protect third world nations against those that are much more wealthy. NZ is considered to be one of the wealthy nations even though our statistics place us in the lowest quartile of performance for most categories.

The Duty of Care under the Health and Safety Act means that all parties at a worksite have obligations to ensure that their actions or inactions do not cause injury to any other person. The Act needs to be studied from section 6 to section 19. You will find that there is NO ESCAPE for the person who brings forward excuses. Later on the Act makes it clear that ignorance cannot be used as an excuse and that managers, owners, supervisors and all in charge of work at a worksite are obligated to prevent serious harm (injury). Section 19 makes it clear that employees can be fined just like employers.

I recall on one occasion that the Business Coach (title for the Chief Inspector) of OSH was getting ready to go from Christchurch to Nelson in relationship to an accident. I asked him “who are you going to try and prosecute?” He quickly responded that he would interview the employer, the principal, the contractor, the person in charge of the place of work, the supervisor and the employee. All of them would be lined up for a possible prosecution and the Judge would decide.

Why do Local Authorities pay an extra margin for QA?

I find it hard to believe why so many managers cannot understand Quality Assurance and the fact that Local Authorities and Govt Departments actually do pay a margin for QA systems and certification. Most of NZ employers and managers cannot figure out why it could actually be possible for LA and NZG to give somewhere between 5% and 15% margin for QA Certification. So let us try to ascertain two very good reasons. One would be that the time delay of the incompetent and traditional thinking contractor would cause serious damage to the NZ economy and that the work must be done on time to the right standard. This is why NZTA often pays \$1 million for completion ahead of time to the right standard. The second reason is that the LA or NZG has to appoint and pay a Clerk of Works to supervise and check up on the traditional contractor who happens to ‘know it all but is not always reliable for quality.’ In contrast, the contractor who has QA systems in place will do self checking and have independent certification so that the LA or NZG does not have to waste money on supervision of projects.

2.

THE OSH PEOPLE TOLD ME THAT I DON'T NEED A SYSTEM

This is a common view expressed by people who do not want to meet proper compliance standards. It is often a mis-interpretation of what a DoL official has told them OR they have put their own "spin" on the conversation. It is likely that the official has said that "the Act does not specifically state that you must have a system but nevertheless you must identify and document all of your significant hazards."

This of course is only part of the story and we need to understand that the DoL has prepared and issued a 3 Step plan and then a 6 point plan as examples of what must be provided for all work sites. We give away such formats at no cost.

Since we were getting thousands of excuses as to why it should not be necessary to have a management system, we decided to write to successive Ministers of Labour. We simply asked three Ministers in turn if the Basic 3 Step or the 6 Point Plan would be sufficient as a legal defence. All three of them responded in the negative and stated that the OSH documents named were just starter kits to get the employers on the way towards a comprehensive plan that should provide a proper legal defence.

It is also provable that two court cases in Wellington and Waitakere had lawyers mounting a defence based on the fact that the employer had completed and recorded proper training of all of the workers but had not seen it necessary to have a formal management system. In both cases the Judges ruled "If site safety procedures are not written down, they do not exist". The defence failed in both cases.

To make it even more abundantly clear we would refer to the 1995 HSE Regulations that stipulate that the training of individuals of the workplace must be both comprehensive and comprehensible and that proof (documentary) is essential.

INLAND REVENUE MAKES MISTAKES

Arising from the Christchurch earthquakes and subsequent upheaval to our business records, we had to identify all payments to IRD over 12 months. It was found that 4 out of our 21 payments had been mistakenly credited to the wrong entity by IRD.



MINISTER OF LABOUR ON TRAINING FOR YOUNG PEOPLE

We are informed that the current Minister of Labour has introduced regulations relating to WINZ to the effect that all 16 and 17 year olds must have training in selected or relevant trades and that failure to do so will result in the dole not being available to them. We are pleased to advise that we are able to provide competency courses embracing a group of unit standards so that young people will be able to meet the requirements and become suitable for work.

3.

WORKPLACE SAFETY DISCOUNT SCHEME CHANGES BY ACC

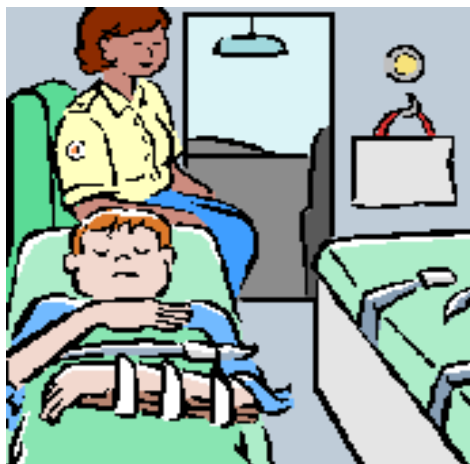
The WSD scheme still applies to sites with less than 11 full time equivalent (FTE) staff. The main change is that the maximum payroll is now increased to \$519,000 per annum.

UNDERSTANDING ACC EXPERIENCE RATING AND ACC DISCOUNTS

Experience rating may be referred to as minus 20 and plus 100. What this means is that a reduction of up to 20% is possible for zero claims but a penalty rate of up to 100% is possible for a bad record. The WSD scheme offers 10% discount for 3 years and the Workplace Safety Management Practices scheme offers up to 20% discount for 2 years.

LAND ENTRY – NATURAL HAZARDS

An amendment to the Health and Safety Act now provides that the landowner is not responsible for the trespasser and nor is he responsible for warning of natural hazards such as creeks, swamps or branches of trees blown around by the wind. There is however a duty of care to warn of all significant hazards for example the bridge in need of repair, the sheep hole, electric fences, the wild bull, chainsaw activity to fell trees. The list of hazards must be in writing as otherwise there is no proof of warning.



COST BENEFIT FORM IS NOW AVAILABLE

Clients are invited to phone our office or their local Consultant and obtain a copy of the cost benefit form that will help identify major savings for their business. It is estimated that most clients will save at least \$10,000 p.a. but some up to \$100,000 p.a.

THOUGHT TO PONDER

"He is no fool who gives away that which he cannot keep, to gain that which he cannot lose".