

**HARVESTING MACHINERY DEATH 2016**

There are no second chances with heavy machinery says WorkSafe after the sentencing of Easton Agriculture Limited today in Palmerston North District Court. The sentencing follows the death of a worker in August 2016 after he became trapped in a potato harvester on a farm in Shannon. The worker had been employed by the defendant for more than 30 years and was familiar with the machine he was operating.

WorkSafe's investigation found that the machine had no guarding over a nip point between exposed rollers on the machine, that Easton Agriculture had no lone worker policy in place and did not have a standard operating procedure for the safe operation of the machine. Guarding could have saved the worker's life.

WorkSafe Deputy General Manager, Investigations and Specialist Services, Simon Humphries said: "This fatality is a sombre reminder that some of the machines we work with have the potential to kill us. When it comes to big pieces of machinery, there are no second chances. Limbs and lives are lost.

"It's a new year. Take stock of your machines and the risks associated with them and spend the time to mitigate those risks – so that if you or your workers make a mistake – you just might have saved a life". Easton Agriculture Limited was charged under sections 36(1)(a), 48(1) and (2)(c) of the Health and Safety at Work Act 2015.

Notes: For reasons that cannot be published no fine could be imposed.

However the court said had a fine been available, it would have been \$330,000. \$85,000 in reparation to the victim's family was ordered and payable. \$3,500 in costs was ordered and payable.



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**YOUR VERY FIRST FREE APP FOR IPHONES**

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If you use the above link you can unload a free adobe app that will handle files in the field and I would like to ask you to try it out and see if your team can make it work.

We can supply the forms for use and we may need to make a new form that will be auto report daily or weekly and it will handle the following matters adequately

- a) incident problems or flow through from accident  
\_\_\_\_\_
- b) damage to plant or machinery  
\_\_\_\_\_
- c) maintenance work needed  
\_\_\_\_\_
- d) client requests or complaints  
\_\_\_\_\_
- e) I need help with something  
\_\_\_\_\_
- f) delays caused by something  
\_\_\_\_\_
- g) quality issues to discuss  
\_\_\_\_\_
- h) safety issues to discuss  
\_\_\_\_\_
- i) environmental issues to consider  
\_\_\_\_\_
- j) significant hazard or potential risk  
\_\_\_\_\_

## 2.

### **EMPLOYMENT LAW NZ STYLE – DOESN'T APPLY IN AUSTRALIA**

Hot heads, walk outs, and cool downs – a warning note for employers – Cavill Leitch lawyers (Jack Brown – Employment)

Picture this: Following a heated argument, an employee tells their boss to 'stuff' their job and leaves in a huff. Or an employee storms out of a disciplinary meeting claiming it is unfair and they quit. Seems pretty straightforward right, the employee has resigned? Not quite.....



While a statement or action by an employee may appear to be an unequivocal resignation, an employer who attempts to rely on such a statement or action which has arisen in the 'heat of the moment' may find itself in hot water and exposed to the risk of a personal grievance for unjustified dismissal.

#### Read more here.

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#### **Heat of the moment resignations**

The Employment Court has said that in a situation where an employee says or does something that could be construed as a resignation during a heated argument or conversation, a fair and reasonable employer "would allow for a cooling down period and then discuss with the employee what had occurred".

Only if after the parties had an opportunity to 'cool down' did the employee take further steps to end the employment, such as asking for final pay, would the employer reasonably be able to conclude that the employee wished to resign and accept the resignation. In addition, an employer must satisfy itself that the response is based on the employee's actual intentions, not just inferred from their conduct.

For this reason, after the cool down period, best practice is for the employer to request the resignation in writing. What a "reasonable amount of time" is for the employee to cool down is entirely fact dependent. It should be long enough to allow the employee to calm down and reflect on what has occurred.

#### **Heat of the moment dismissals**

In contrast to the situation above, an employee may believe that they have been dismissed by the employer during a heated argument or discussion. In this situation, on becoming aware that the employee believes they have been dismissed, and this is not the case, an employer must immediately seek to rectify the situation.

An employer who fails to do so "must suffer the adverse consequences of passively standing by and letting the employee think that a dismissal has taken place". An employer must therefore act quickly in clarifying the situation, or could find itself exposed to the risk of a personal grievance for unjustified dismissal.

Employers should be familiar with their obligations under section 4(1A)(b) of the Employment Relation Act 2000 to be "active and constructive in maintaining a productive employment relationship in which the parties are... responsive and communicative".

## 3.

### **ONLY THE NZQA COURSES ARE SUITABLE FOR NZ?**

This is what most people happen to believe. Unfortunately this is quite incorrect. Many NZQA courses are helpful particularly for school leavers or trainees that have been taught in look and learn manner and methodology.

For Safety and Quality issues the Laws, the Regulations plus Approved Codes of Practice and International Standards actually apply. You can get a wide range of such courses from us and in addition we have hundreds from OSHA USA.

- a) safety systems implementation and laws and regulations - several CD Roms
- b) systems reviews and updates to meet international standards
- c) system annual audits to meet international standards

Our competitors may have copied our lesson plans for some or all of the following:

- d) injury prevention training course – high quality motivational
- e) plant operator courses to identify serious risks
- f) slinging or crane courses
- g) confined spaces courses
- h) height work courses
- i) 10 steps for workers courses
- j) safety officer courses
- k) advanced safety officer courses
- l) safety representative courses
- m) safety supervisor courses
- n) safety manager courses
- o) site auditor courses
- p) quality auditor courses
- r) quality assurance supervisor
- s) quality manager courses
- t) fire warden courses
- u) we have about 30 high quality Australian courses at University level
- v) we have about 30 courses as listed on our website to get NZ Trade and Enterprise subsidy
- w) job task analysis courses about 50
- x) SWMS courses Australian trades about 50
- y) for 10 years we were with NZQA and able to do 100 NZQA courses. We finally got free.
- z) professional driver and supervisor courses.

