



JULY 2010

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Losing your cool may cost

Most modern managers avoid tantrums, but sometimes people still get angry. The consequences of losing your temper can be severe for employers, especially when dealing with health and safety concerns in the workplace.

In *Koning v Industrial Services Limited* an employee successfully claimed a personal grievance for constructive dismissal. Industrial Services Limited is a water blasting company. The manager arrived on site one morning to find employees, some of whom were not wearing the correct safety gear, 'milling around'. When the manager was told by one of the employees that they could not begin work immediately because the truck battery was flat, the manager lost his temper and used offensive language toward the employee. Hurt by the words, the employee felt he had no other option but to leave the site and resign.

While the reaction of the manager may seem relatively mild to some, particularly in light of what appeared to be sloppy appearance and behaviour toward health and safety from the employees, the Employment Relations Authority held that the manager used 'abusive language directed in a personal way'. The employee was awarded three months' wages and \$5,000 in compensation, showing that a sloppy appearance will not justify a sloppy reaction.

Other cases have also shown that the courts will not hesitate to punish unprofessional behaviour from employers. When an employee notifies his or her employer that there is a potential health and safety risk or breach in the workplace, the employer must ensure that it is dealt with in the correct manner.

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In *Lockley v M J and Pelham Limited* the driver of a truck informed his employer that he would not continue to drive the truck until faulty brakes were repaired. The employer swore at the driver and told him he 'may as well go home'. Another employee was then instructed to continue driving the truck. The employer was held liable for constructive dismissal, and was ordered to pay \$6,000 to the driver. If the Department of Labour had become aware of the case, ignoring a health and safety risk may also have led to prosecution.

An employee at a veterinary practice raised issues with her employer about the hours and conditions of her work. Rather than attempt to resolve the issues, the employer suggested that they 'part ways'. The employee was unsure whether she had been dismissed and left messages on her employer's phone. These weren't answered, and the employee returned to work later that week to find that her key no longer worked in the locks. In *Macdonald v Giffkins t/a Grey Lynn Veterinary Clinic* the Employment Relations Authority held that the employee was unjustifiably dismissed and awarded her over \$22,000, including \$8,000 for humiliation, loss of dignity, and injury to feelings.

What does this mean for your business?

It is unhelpful for everyone if an employer loses control of their emotions at work. Reacting unprofessionally, whether it be swearing at a staff member or changing the locks so they cannot come to work, could result in a costly punishment for employers. Instead of paying out in compensation, it is far more constructive to pay attention to the concerns of employees and deal with all health and safety matters in the correct manner.

If you have any concerns about the way your business responds when employees raise health and safety issues, please feel free to contact one of our health and safety experts.

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Machinery can often present dangerous hazards, and there is an obvious need for planning and controls to be put in place to address them. Despite this, many businesses still get in trouble by not doing the basics. All businesses can expect more vigilance from the Department of Labour around guarding, as the Department has indicated guarding is now a priority enforcement area.

Hazard identification and the importance of risk-assessments for all machinery were highlighted in two recent cases.

Bernard Matthews NZ Limited was fined \$40,000 and ordered to pay \$15,000 in reparations after an employee's arm was seriously injured in a conveyer belt. The employee worked as a cleaner, and during her rounds noticed a meat pack sticker on a rail between the sides of a conveyer belt. She reached into the gap to remove the sticker and her arm became trapped between the conveyer belt and rotating cogs. The Court confirmed that employers must ensure employees receive information on all the hazards in their workplace, even if some are not hazards the employee would commonly confront. Once a trapping hazard is identified the employer must isolate dangerous points or put in extra machinery guards.

Failure to identify hazards resulted in Apollo Pac Limited being fined \$21,000 and ordered to pay reparations of \$4,000, after an employee's finger was amputated in an apple sizer machine. The machine had been relocated and had been worked on by various engineering staff but no hazard identification had been undertaken on it.

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The Court confirmed that Apollo Pac should have carried out hazard identification, identified the hazard of machinery to workers, and had the unguarded machine fitted with guards.

Risk assessment of machinery is not just an issue in New Zealand. In England, a company's failure to specify how recently installed machinery should be cleared of blockages led to prosecution under the English Health and Safety in Employment Act. Morgan Est plc pleaded guilty after an engineer employed by the company sustained serious injuries when he tried to clear a blockage inside an unguarded machine. Morgan Est should have ensured that the commissioning of the new equipment was thoroughly risk assessed. As it knew that blockages had occurred previously on the machine, an appropriate method for dealing with them should also have been set up and then communicated to workers who used the machine.

What does this mean for your business

Failure to undertake hazard identification or risk assessments on machinery can become an expensive mistake. You need to comply with all your legal obligations to maintain a safe working environment and avoid your day in court.

If you are not sure about how to manage the hazard of new or existing machinery in your workplace, please feel free to contact one of our health and safety experts.

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Several recent cases have highlighted the consequences for employers if workers receive inadequate training before using machinery, or are left to use unserviced equipment.

In *Department of Labour v Arbor Reman Limited*, an employee who had worked for the company for five years had been trained to operate a wood filleting machine. One day the employee ran out of wood for the machine and was directed by the site supervisor to use a band saw to cut more. The employee had not been formally trained on how to use the band saw and had only used it once, a few days earlier. The employee severely injured his hand in the band saw whilst cutting timber. The company was fined \$55,000, and ordered to pay the employee \$20,000 in reparations. The Court commented that employers are obliged to ensure only employees with formal training on specific machinery are permitted to use that machinery.

Inadequate training of employees cost Carter Holt Harvey Limited \$39,000 when a worker fractured his skull after falling from a two metre high maintenance platform. The employee had left his work station to investigate a noise from a nearby conveyor belt, where he discovered a length of timber jammed in between the conveyor belt and a conveyor frame. During attempts to remove the timber, without first isolating the machinery, the employee climbed up a fixed ladder to the platform. He lost his balance, fell from the platform and suffered fractures to his skull. The subsequent investigation found that whilst there was a health and safety manual, and appropriate training and procedures in place, when the injured employee received training, he had been shown, in breach of the internal policies, how to clear blockages without first isolating the machinery.

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The Court held that Carter Holt had failed to take all practicable steps to ensure the safety of its employee by not ensuring that all employees were shown the isolation procedures for clearing blockages.

A recent English case has highlighted the importance of regular maintenance of machinery. A worker cheated death when a machine exploded, by leaving his desk ten minutes earlier than usual for a coffee break. An investigation found that the employer, Moseley Rubber Company Limited, had not adequately maintained or serviced several machines. The company had cancelled its scheduled week long maintenance shut down and had failed to take advantage of later production lulls to maintain the machinery. Only good luck saved the employee.

What does this mean for your business?

These cases are a reminder for manufacturing businesses that they should take their health and safety responsibilities seriously, including not cutting back on safety to make short term gains. Any employer who does not train workers or maintain machines, runs the risk of injuring workers and being prosecuted by the Department of Labour

If you have concerns about training or machinery servicing in your organisation, please contact one of our health and safety experts.

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