



NEWS BULLETIN

December 2004

TIMING COMPLIANCE

Employers should take note that the Compliance Branch of the Victorian WorkCover Authority is looking with particular interest at time delays in lodging claims.

When an employer receives a valid claim (that is, a properly completed claim form, and a valid medical certificate) for an injury that involves ten days or more lost time, and/or \$505 of medical expenses, it must be forwarded to the Claims Agent within 10 days of receipt.

A rural employer in Victoria has been fined \$750 for lodging claims seven days late. Remember if you are contacted by the compliance branch that the law only requires you to send the claim to the Agent within 10 days of you receiving the claim from the worker. When the Agent receives it is out of your hands.

Minor claims (i.e. claims with less than 10 days of lost time, or \$506 of medical expenses) should be lodged within three months of receipt.

CORRECT LABELLING OF SUBSTANCES

A suburban hotel has been fined \$25,000 by WorkSafe after an employee mistakenly used methylated spirits to clean a hot stove top, instead of the appropriate stove cleaner. The employee was hospitalised with severe burns. The containers used to hold the methylated spirits and the stove cleaner were similar in shape and size, with similar dispensing nozzle tops, and similar labelling. Flammable

substances used in the workplace should always be clearly and unmistakably labelled, and should be stored in a flammables cupboard. When bulk chemicals are decanted into smaller containers, the containers must be clearly marked. All employees using any type of chemicals in their work should receive appropriate training on the use, storage and safety precautions associated with the chemicals they are using.

BULLYING & HARASSMENT

Do you have a bullying and harassment policy in your workplace? A regional radio station recently incurred a \$50,000 fine after being prosecuted by WorkSafe. An announcer at the station had repeatedly verbally bullied and harassed the staff, and management had failed to take any action after becoming aware of his behaviour. The radio station had no policy about bullying and harassment in place, and no procedure by which staff could lodge a complaint and have the issue addressed. Management were clearly prepared to tolerate the situation rather than take action to stop it. The announcer was also prosecuted by WorkSafe, because of his intimidating and abusive behaviour, and was fined \$10,000. This reflects the requirements of the OHS Act which requires both employers and employees to maintain a safe workplace.

If you do not have a comprehensive bullying and harassment policy in your workplace, contact us for assistance.

WORKCOVER CHANGES

Following the now famous Hegedis apple peeler case, in which an employee peeling his



apple in his lunch break successfully obtained compensation payments, the definition of injury has changed yet again, with the following outcomes:

Any injury that happens in the workplace is compensable if it satisfies the following criteria:

- The injury is **SUDDEN** (at present there is no legal definition of “sudden”)
- The injury must be in course of employment (i.e. at the workplace, or during recess) but need not be related to employment.
- The injury must be physiological (i.e. a change to the normal function of the body or body part)

Heart attack and stroke are specifically excluded. However, this exclusion is only for injuries incurred since December 2003. Employers can confidently expect to receive compensation claims for heart attacks and strokes that occurred prior to December 2003. These changes significantly expand the range of conditions that are compensable, such as an epileptic fit, a burst appendix, migraines etc.

Not surprisingly, it is anticipated that there will be many legal challenges to denied claims.

One of the many concerns that these changes have brought to employers is that if employment is not required to be an essential contributing factor to any injury, termination of entitlement on the grounds of work “no longer being a material contributing factor” will not be possible.

Thus the asthma sufferer, or epileptic, will remain entitled to payments and medical expenses for their underlying condition.

Other changes which will affect employers relate to the 52 week obligation to provide alternate duties. From 1st March 2004, the 52 weeks starts from the date the claim is accepted, rather than the date of the injury.

Any period prior to the date of acceptance that the employer provided alternate duties will be deducted from the 52 weeks. This makes it all the more important that alternate duties be provided as soon as medically feasible, and not to wait until the claim is accepted.

UNSAFE USE OF FORKLIFT

It seems the message never gets through that a forklift cannot be used to lift people unless an approved person cage is fitted. A hotel in Melbourne’s outer suburbs has been found guilty and fined \$10,000 after being spotted by a WorkCover inspector using a pallet on a forklift to raise a person working on some gates. His co-worker stood underneath. The man on the pallet was raised over two metres above the ground, and at risk of significant injury if he fell. Despite there being no incident or injury, the situation was a clear breach of regulations, and reflected the employer’s failure to maintain a safe workplace.

This newsletter is published as an information service without assuming a duty of care. It contains information of general interest, and should not be relied on as a substitute for individual professional advice