



NEWS BULLETIN

January 2005

Welcome to the New Year and to substantial changes in OHS and WorkCover legislation in Victoria.

UNION OHS VISITS

Employers need to be aware that the changes to the Victorian OHS legislation, which will allow union personnel right of access to workplaces for “OHS reasons” are not as dramatic as some publicity may have you believe.

1. The legislation comes into effect on July 1 2005, so any unannounced union visits before that time have no validity.
2. The person seeking entry must be a permanent employee of a registered employee organisation, and must hold an entry permit issued by the Magistrates Court. The entry permit must be shown on request.
3. The person seeking entry must reasonably suspect that a breach of the OHS Act or Regulations has occurred which affects members of the registered employee organisation, or employees who are eligible to be members of the organisation.
4. The authorised member of the employee organisation may enter only for the purpose of enquiring into the suspected contravention.

5. The authorised member of the employee organisation does not have the power to order work to cease.

We suggest to employers who are approached by union representatives demanding entry for OHS reasons that :-

- They sight the entry permit
- Seek specific details of the alleged breach of the OHS Act or Regulations.

WEEKLY PAYMENTS OF COMPENSATION

A reminder to employers to ensure that they make weekly payments of compensation to employees on time. A clothing retail business in outer Melbourne was fined \$8000 for failing to pay an injured worker WorkCover benefits for five months. Not only did the employer delay making payments, but also lodged the WorkCover claim late. WorkCover claimants are entitled to receive their weekly payments of compensation with the same regularity that they would normally receive their salary. Claims for lost time in excess of the first ten days must be lodged with the Claims Agent within ten days of receipt of a valid claim by the employer.

BENEFITS OF CONSULTATION

Being dogmatic and inflexible about company dress codes can lead to unnecessary expense and staff disruption. Female toll operators on a Sydney motorway felt that their wide sleeved shirts revealed more of their undergarments to passing motorists than they felt was appropriate, and took action to “close the gap”



by rolling their sleeves up to the shoulders. One female toll operator was requested to roll down her sleeves by management (*surely a man!!*) and was given a disciplinary warning when she refused.

Aggrieved by this, the operator lodged a dispute with the NSW Industrial Relations Commission (IRC). Both she and the management official went off on stress leave. Needless to say, the IRC found the woman's actions reasonable, and ordered the company to withdraw the disciplinary action.

All this unnecessary expense and aggravation could so easily have been avoided if management officials had asked why the women wanted to wear their shirts with the sleeves rolled up, and done something about the design!

OTHER CHANGES TO THE VICTORIAN OHS ACT

A new section in the Act places much greater emphasis on the need for employers to consult with employees about matters that may affect the health and safety of employees. It will be a mandatory requirement to involve employees in identifying hazards and assessing risks, and in decisions made on controlling risks. As such consultation will be a mandatory requirement, employers will be well advised to have good paperwork that can demonstrate the consultation with employees.

Your audit trail is a key part of a successful OHS Management system, which demonstrates that you have identified hazards and taken steps to control them as far as is reasonably practicable.

WORKCOVER CHANGES (VIC)

In keeping with the usual annual tinkering with the Accident Compensation Act, more changes were introduced in November 2004, of which the following are some of the more significant.

- Older workers who are injured within twelve months of the normal retiring age of 65 will be entitled to 104 weeks of weekly payments, instead of 52 weeks, as was the case previously. An automatic cut-off will apply at the conclusion of the 104 weeks.
- Injured workers who have a capacity for work, but whose employers do not provide alternate duties for them, will be entitled to payments at the 75% rate, instead of 60%
- There will be faster and easier access to common law for injured workers.
- The requirement for an injured worker to give notice of the injury within 30 days to be eligible for compensation has been effectively removed, as a sufficient defence for such failure is ignorance, mistake, absence from the jurisdiction, or undue influence or duress.
- Employers who fail to forward a claim to the Claims Agent within the time limit of ten days will be liable for any weekly payments made by Authority between the time the employer's liability is reached until the date the claim is received by the Agent.

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