

Employment & Industrial Alert

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WORKPLACE HEALTH AND SAFETY UPDATE ***Creating a system of work that works for you***

The preferred system of work is one that maximises productivity, minimises business expense and improves overall profitability for the business.

The system of work must also comply with *Workplace Health & Safety Act* obligations otherwise penalties can be imposed. Employee absenteeism due to injury or illness may also impact upon business productivity.

Another benefit from having a safe system of work in place, is that it minimises the risk of workers' compensation liabilities.

Recently, an employer's system of work was put to the test in the Industrial Court of Queensland. A worker failed to comply with the system of work devised by the employer. He developed his own system of work and suffered an injury and sought to obtain workers' compensation.

The Industrial Court of Queensland had to determine whether a worker was permitted to obtain workers' compensation benefits in those circumstances.

The evidence was that a worker had gone to his locker to sharpen a knife which he used in the course of his employment as a boner. The worker carried the knife blade up in his pocket. The worker wrapped the blade of the knife in paper but still managed to suffer an injury to his wrist as he walked with the knife in his pocket.

The employer's system of work required sharpening implements to be held at the work station not in a worker's locker minimising the risk of injury which might occur from a worker having to carry a knife to get it sharpened.

The Court had to consider whether the worker's actions in failing to comply with the employer's system of work constituted serious wilful misconduct. Section s.130 of the *Workers' Compensation & Rehabilitation Act* operates to make a worker non-eligible for workers' compensation benefits if their conduct causing injury amounts to serious wilful misconduct, and the insurer considers the work-related impairment (WRI) is less than 50%.

The evidence in this particular case of *Australian Meat Holdings Pty Ltd v Q-Comp* (C/2007/30) was that the worker had appreciated the risk the blade of the knife posed but had become complacent concerning his capacity to manage the risk as he had undertaken his own system of dealing with the knife sharpening process for some time. The Court considered the worker's complacency was relevant to the assessment of the seriousness of the failure to observe the employer's system of work. The Court also considered that the risk posed to fellow workers within the vicinity was also relevant for determining whether the behaviour amounted to serious wilful misconduct.

Momentary inattention or carelessness by a worker will not amount to wilful misconduct. However, where a worker blatantly fails to follow a system of work put in place by an employer, then there may be grounds to establish that there is serious wilful misconduct.

In *Australian Meat Holdings Pty Ltd and Q-Comp*, AMH could demonstrate a system of work and the worker's failure to comply with the system. The Court decided that the worker was not eligible for workers compensation as his actions amounted to serious wilful misconduct.

Without a documented system of work and proof of communication of that system to employees, it may be difficult to convince a Court that the actions of a worker contravening the system amount to serious wilful misconduct.

A well devised and documented system of work, communicated to employees improves overall profitability, and enhances workplace health and safety. A safe system of work ensures an employer fulfils *Workplace Health & Safety Act* obligations and can provide relief from workers compensation premium penalties where it can be shown that a serious wilful breach of the system of work by a worker led to the injury.

Compensation is payable for an injury sustained by a worker that is caused by the serious and wilful misconduct of a worker only if the injury results in death or the insurer considers the injury could result in a WRI of 50% or more. Only the most serious of injuries results in a WRI of 50% or more. Thus, having a system of work that is well documented and communicated to employees minimises the risk that an employer will attract workers compensation liabilities where a worker makes a positive choice to disregard the system of work.

For further information on Employment and Industrial or Workplace Health and Safety matters, please contact Susan Andersen

(07) 32236479
sandersen@qmtlaw.dcom.au