

Tough line on safety at work

ALAN KNOWSLEY
LEGAL MATTERS



The district court in a recent case has set out sentencing guidelines for breaches of the Health and Safety at Work Act. These significantly increase the starting point for penalties for breaches of health and safety.

Those guidelines introduce several new bands:

- Low Culpability – a fine of up to \$150,000.
- Low/Medium Culpability – a fine between \$150,000 and \$350,000.
- Medium Culpability – a fine between \$350,000 and \$600,000.
- Medium/High Culpability – a fine between \$600,000 and \$850,000.
- High Culpability – a fine between \$850,000 and \$1.1 million.
- Extremely High Culpability – a fine in excess of \$1.1 million up to the maximum of \$1.5 million for a Person Conducting a Business or Undertaking (PCBU).

Note that these fines only relate to a failure to comply with a duty and that if the charge is one of recklessness the maximum fine rises to \$3 million for a PCBU plus

up to five years in prison for individuals or officers of a PCBU.

In the case in question, the employer was a reasonably small company with only 16 employees. One employee went up to a mezzanine floor to get some records out of storage and she slipped and fell off the edge of the mezzanine.

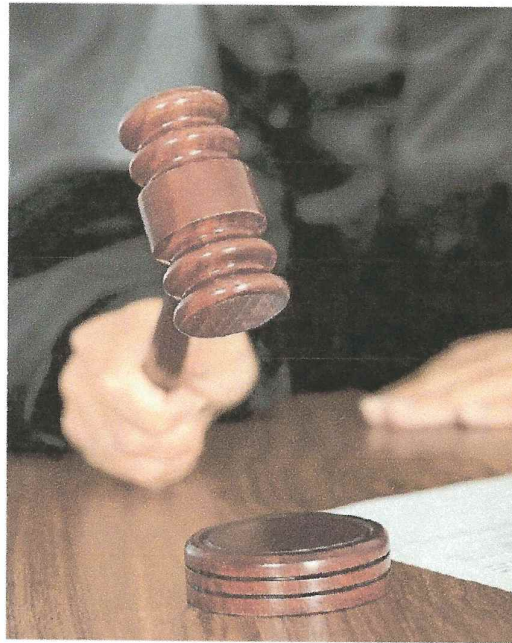
She suffered serious injuries including multiple broken bones and required a long period in hospital and a long recovery period before she was able to return to work.

The problem for the employer was that there was no balustrade on the mezzanine floor to stop anyone falling off the edge.

Interestingly, the employer had got in a consultant to look at health and safety issues and the lack of a balustrade was not even mentioned by the consultant as the area was only used for storage of old records and employees very rarely went up to that area. That, of course, was no defence for the company in this case.

The court held that the starting point for a fine for this matter was on the cusp between low/medium and medium and that a fine of \$300,000 would be appropriate.

From that a 30 per cent discount was given for the



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ordered to pay \$20,000 reparation to the employee.

In this case a single incident for a previously blemish-free company resulted in almost \$180,000 worth of fines and reparation and a serious injury to one of their employees.

The court held that the risk of an employee falling off the mezzanine floor was easy to identify, cheap to fix and had serious consequences if an employee did fall.

When you are identifying risks in your workplace make sure that you think carefully about all the risks and not just those in the main working area.

Column courtesy of RAINEY COLLINS LAWYERS phone 0800 733 484

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company's cooperation with the investigation, prior blemish-free safety record, remedial steps taken to prevent any accidents such as this happening again, the remorse shown by the company, and its willingness to attend restorative justice proceedings and pay reparation to its employee.

A further 25 per cent discount was given for the fact that the company pleaded guilty at the first opportunity. This reduced the fine to \$157,500, \$50,000 of which was to be paid immediately and the balance to be paid at \$1000 per week over the next two years.

In addition to the fines and the court costs, the company was also



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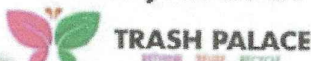
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