

FIVE EMPLOYMENT LAW MYTHS

1. An employee must be given a first, second and third warning before dismissal. There is no specific requirement under employment legislation to give three warnings prior to dismissal. You must however, ensure that the worker has a right to explain himself or herself unless it is a clear case of serious misconduct.
2. No contract in writing means no contract. Not necessarily so. A verbal contract can be an agreed contract especially if there is a witness to the statements.
3. It's illegal to give a bad reference. Not true. You can give a bad reference provided that it is true and can be substantiated. You need to be aware of the risk of making defamatory statements that can backfire on you.
4. Serious misconduct means you can sack on the spot. Serious or gross misconduct will usually result in summary dismissal. But notwithstanding, employers must still comply with the usual disciplinary procedures and the duty of good faith. This implies a need to investigate and hear explanations.
5. Deductions can be made from an employee's wages for things such as lack of notice or business losses such as materials. Not necessarily. If there is a clear written contract in place that provides for restitution or recovery, then yes.

SKILLSBANK NEEDS SUPPLIED

All clients are advised to contact us in relationship to worker training needs. We may be able to provide the training to enhance your ability to undertake contracts at a higher level of competency.

Most clients do not know that we can provide a wide range of training that will meet most training needs of the market especially those demanded for contractors and suppliers.

If you are running your Health and Safety system properly, you will carry out an annual audit of staff training needs. You will then talk with us about those needs.



ARCHIVED NEWS - go to Summit Systems

News & views from
Summit – July 2014



Consultant Name _____

Telephone/Fax _____

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HEALTH & SAFETY – SUBBIE IS FRIEND OR FOE?

Most managers think that they can carry on protecting subbies and shelter them under the Safety System operated by the Principal.

This was formerly the case when a) the Department would tend to focus on the behaviour and standards of the Principal; b) the Department would tend to accept court fines of \$5,000 plus reparations; and c) the Department would often not bother to prosecute Subbies. We even had some Inspectors encouraging Subbies to not worry about formal systems and told them they did not need to bother. The Inspectors have probably now been retired or not appointed to the new Worksafe NZ which is following the Australian law to a large extent. In Australia, the Subbie is required to have a comprehensive Subbie System that covers all activities in considerable detail – for example 40-50 pages. In NZ the Subbie has been treated as a friendly associate of the business. It has been afforded “favoured nation status” and treated somewhat like an extension of the staff.

The tides of change are now upon us. Any manager foolish enough to take a lax path or to ignore the reality of the new laws is running some huge risks. For example, the Principal that continues to shelter the Subbies will then by its actions implicate itself in the full liabilities of the Subbie. The risk of fines of up to \$3m will become a reality. The Principal may also face several charges at the same time for failure to identify all significant hazards, failure to notify and report by the entity most directly involved. The Principal may also by its failure to implement pre-qualification standards has indicated that it is only concerned about its own staff and not the impact on other trades or the community at large. The manager of the Principal will also by his or her actions take on unnecessary risk of prosecution in that s/he contrived for the Subbie to not bother about systems or training. The manager will become liable to a fine of up to \$600k.

We know from interaction in the marketplace that not all managers are taking this issue lightly. Some of the large companies are currently taking action to require all of their Subbies to get good quality systems in place and produce evidence of training for their work or for their trades. The responsible managers are (i) putting in place pre-qualification requirements for all subbies to complete; (ii) requiring Subbies to complete site specific safety plans (in Australia they are called swims); (iii) requiring formal contracts to make the Subbies responsible for the portion of the place of work or for designated work; (iv) requiring all Subbies to have a small but high quality safety plan. We invite all of our clients to obtain the above items from our Head Office for a modest fee.

2.

YES THE WORKERS MAY GET FINED

We recently did a review of what is happening with the general workers. The Dept of Labour in December 2000 produced a table of fines from the introduction of the HSE Act in 1993 and there were 2116 fines in total. Those under section 19 totalled 120 or in plain language 120 workers were fined. This relatively obscure information needs to again be brought to the light of day.

It should be noted that the tables do not include instant fines. These could easily number well over 200 per annum in our estimate.

We do not have any statistics for the years 2000 to 2007 but by extrapolation - there were 604.

RECENT FINES STATISTICS

Summary of decisions for the year 2006 99 fines.
Summary of decisions for the year 2007 88 fines.
Summary of decisions for the year 2008 69 fines.
Summary of decisions for the year 2009 84 fines.
Summary of decisions for the year 2010 104 fines.
Summary of decisions for the year 2011 51 fines.
Summary of decisions for the year 2012 49 fines.
The above does not include any warnings or notices and not does it include instant fines.



NEW WORKER TESTS NOW EXCEPTIONALLY IMPORTANT

All Clients are advised that they need to take time to test out workers thoroughly and to ensure that they do not fall into traps.

We have a series of survival tests that are based on real life examples of deaths and serious harms. The tests take less than one hour. It is a good idea to run the tests for several people at a time. For example those shortlisted for a job or a group of workers that are indicating inferior attitudes to workplace safety.

Another thing to do when taking on new workers is to demand that they produce a medical certificate from a local Doctor relating to drug tests prior to engagement. This is not bulletproof but will give you a quick indication. You should offer to pay for the fee if the person goes to the company doctor.

One measure that will save you thousands of dollars and maybe save you your business is to check with ACC on the number of accidents for the worker. If you use our HR system it provides for you to request ACC records relating to all previous accidents of the worker. You can then request the worker to phone ACC on 0800 222 776 and request a copy of his or her claims record by fax. Do not be surprised if you have a 29-year-old who has had 29 accident claims.

3.

TABLE OF FINES 1993-2000

Section 6	860 fines
Section 7	159 fines
Section 8	9 fines
Section 10	32 fines
Section 12	52 fines
Section 13	241 fines
Section 15	75 fines
Section 16	153 fines
Section 17	32 fines
Section 18	138 fines
Section 19	120 fines
Section 25	124 fines
Section 26	60 fines
Section 39	34 fines
Other sections	29 fines
Regulations	53 fines

Dunedin Workers fined over scaffolding accident 20 March 2014

Two workers have been ordered to pay a total of more than \$22,000 in fines and reparations over a scaffolding accident in Dunedin last year, which left a roofer with multiple fractures. Daryl Robertson fell three metres in April 2013 after alterations to scaffolding at a Crawford St address left a trap door in a mobile scaffold deck unsecured. He suffered serious injuries including three leg fractures and dislocation.

Two other workers at the site have been convicted under section 19 of the Health and Safety in Employment Act for failing to take all practicable steps to ensure that no action or inaction while at work causes harm to another person.

Che O'Neill was the site manager, in charge of managing and monitoring the construction site and subcontractors working on the project. He gave approval for two construction workers to raise the scaffolding deck by 500 millimetres, despite the fact that neither held a current Certificate of Competence to do the work. Mr O'Neill also failed to notify the scaffolding company APL Kwikform Pty Limited that alterations had taken place and needed to be checked. Mr O'Neill was today fined \$4,500 and ordered to pay \$7,844.25 in reparations.

Andrew Currier is employed by the scaffolding APL Kwikform. He conducted a regular weekly check on the scaffolding the day before Mr Robertson's fall and signed the scaffolding tag indicating it was safe to use. As he was about to leave the site he noticed that the scaffold deck had been raised, but based on his observations from ground level he thought it looked safe. Mr Currier was fined \$4,000 and ordered to pay reparations of \$6,450.75

Quad bike rider (employee) fined for not using helmet 14 May 2014

A Marlborough man has been fined \$15,000 for not wearing a helmet while riding a quad bike at work – and for carrying a helmetless child as a passenger. It is believed to be the first time someone has been convicted for carrying a passenger on a work quad bike. Herd manager Rangi Holmes was sentenced today at the Nelson District Court on two charges under the Health and Safety in Employment Act for failing to take all practicable steps to ensure his own safety and that of his passenger.

WorkSafe New Zealand took the prosecution after inspectors repeatedly saw Mr Holmes riding a quad bike in the Rai Valley while carrying children, without a helmet in sight. Over the 20 months from February 2012 five such incidents were observed. In August last year Mr Holmes' employer was issued a notice prohibiting the carrying of passengers on quad bikes and requiring the use of helmets. He was supplied with a copy of that notice, but on October 3 2013 he was again spotted carrying a child on a quad bike. Neither he nor the child had on a helmet.

