

Client Update

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SENDING YOUR EMPLOYEES TO ANOTHER COMPANY'S WORK SITE? CHECK THAT OH&S MEASURES ARE IN PLACE

By Gerard Phillips

In the recent decision of *Labour Co-operative Limited v WorkCover Authority of New South Wales (Insp Robins) [2003] NSWIRComm 51*, the NSW Industrial Relations Commission upheld a \$100,000.00 fine against Labour Co-operative Limited, highlighting the "special responsibility" of labour hire firms to ensure contract staff are appropriately trained and sent to safe workplaces.

In its decision the Full Bench made clear that a labour hirer owes a special duty of care to its employees when sending them to an unfamiliar workplace. The working conditions of the new site should be assessed thoroughly before the worker is sent there.

The decision shows that the Commission takes the view that labour hire companies should refuse to supply employees to host employers if safety practices are deemed to be inappropriate or insufficient.

The case involved a 1998 accident in which Julie Anne Lister, an employee of Labour Co-operative, was seriously injured while working at a CSR timber products site. Ms Lister was operating heavy machinery when she became trapped by a moving rack, resulting in crush injuries to her head, chest and trunk. CSR was fined \$150,000.00 in 2001 over the incident as the host company was held responsible for the design of the work method and the machine's safety features. In two separate decisions in 2001 and 2002, Labour Co-operative was also found liable and fined \$100,000.00 (including costs).

Labour Co-operative appealed against its fine arguing that Ms Lister had been transferred from a task for which she was appropriately skilled to one which was

beyond her competency to perform safely. Labour Co-operative asserted that they had neither the knowledge of the later transfer nor the power to prevent her from being assigned to a new task.

The Commission dismissed the appeal, finding that Labour Co-operative's duty of care was "non-delegable", despite the company being unaware of Ms Lister's transfer to other tasks, and despite the fact that it was not practicable for the company to supervise the work on the host employer's premises.

In their decision Justices Wright, Walton and Boland found Labour Co-operative should have taken a "positive and proactive approach", making the provision of labour hire services conditional on CSR implementing appropriate safety measures.

The decision serves as an important reminder to employers that just because you send your employee off to work at another establishment does not mean that they become an employee of that other establishment. From an occupational health and safety point of view they continue to remain your responsibility. n

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