



Injury Prevention, RTW and Common Law Claims

George Williams – BTLawyers

What is culture?

- Beliefs
- Ideology
- Principles

Safety Culture

Starts with **accountability**

- Is safety important to us?
- Do we reward compliance?
- Do we punish non-compliance?
- Do we promote safety?
- What can we do to improve safety?

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Injuries in the workplace

- Inevitable
- You cannot legislate against “bone headedness”
- You **can** however learn from these injuries

Injury Prevention

Consists of:

- Effective communication
- Training
- Incident reporting and investigation
- Supervision
- Discipline
- Documentation

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Good safety culture

- Effective induction and skill-based training
- Documentation
- Emphasis on safety and wellbeing
- Positive enforcement of practices – supervision
- Clear discipline process for non-compliance
- Re-training
- No tolerance for repeated non-compliance

It involves “**US**” not just me. No person can achieve this alone.

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Poor safety culture

- Limited or no documentation – verbal training does not cut it anymore
- Limited or no supervision of inexperienced staff
- No penalties for non-compliance
- No emphasis for safety or wellbeing



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How does the workforce feel?

Good safety culture

- Content, supported and aware

Poor safety culture

- Unsupported, aggrieved and unqualified

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Return to Work – why its important

- RTW keeps workers positively engaged with the workplace following an injury
- RTW improves recovery time
- RTW minimizes injury severity
- Employers don't want to lose good people
- Nobody deserves to be injured

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Does RTW prevent CL claims?

- No
- However, it can positively impact:
 - Damages
 - Legal costs
 - Brand integrity

Culture and the Impact on Claims

Meat Processing

- 4 common law claims in 2 years from 1 area
- Poor knife handling practices
- Poor supervision
- Lack of enforcement of documented practices
- “Robust” workers

Impact on claims

- 4 common law claims in 2 years
 - Settled for \$90,000 – did not return to work
 - Settled for \$30,000 – returned to work
 - Settled for \$40,000 – returned to work and was promoted
 - Settled for \$150,000 – was promoted before resigning
- **\$310,000 and the loss of two workers**
- Poor safety culture, is uneconomical
- It breeds a culture of litigation

Average Damages - \$155,563 (2017 – 2018 report)

Poor response to claims

- Did not take any active steps to prevent injuries following the first claim
- Relied upon “common-sense” of workers
- Hostile reaction to injuries
- Following the last claim
 - Undertook retraining
 - Provided supervision
 - Disciplined non-compliance

Common Sense

- Doesn't exist in a workplace setting
- Does not absolve an employer from their duty to take reasonable care
- Reasonable care means: training, implementing a safe system of work and enforcing the system of work



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Impact on Claims

Good safety culture

Meat Processing – Different Area

- 2 common law claims in 4 years
 - Settled for \$50,000 – returned to work
 - Settled for \$40,000 – returned to work
- **\$90,000 – still significant but no further claims in last 2 years**

Average Damages - \$155,563 (2017 – 2018 report)

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Positive Response

- Investigated the first incident thoroughly
- Undertook retraining
- Changed the system of work
- Enforced supervision of the task
- Pragmatic approach to injuries

RTW and Trial

- *Maraki v Interport Cargo* [2017] QDC 26
 - Claimant injured his back at work
 - Was employed as a labourer at date of injury
 - Was made redundant following injury
 - Was working as a forklift operator at date of Trial
 - Earnings at Trial were comparative to pre-injury earnings
 - Judgement of: \$5,033 clear of *WCRA* refund

RTW and Trial

- *Wallace v RSL Care* [2017] QDC 161
 - Claimant suffered left ankle injury
 - Was employed as a personal carer at date of injury
 - Worked for 2 years before ceasing work due to injury
 - Was finishing her nursing degree at date of Trial
 - Was not working at date of Trial
 - Judge allowed loss of \$100 net per week until retirement (not \$1,000 as argued by Plaintiff)
 - Judgement of: \$480,784 (\$78,300 in FEL)

RTW and Trial

- *Walker v NNT*
 - Claimant suffered hand injury and secondary psych
 - Was working in the mines at the date of injury
 - Was made redundant in July 2013
 - Returned to mining in September 2018
 - Was working as an air conditioner installer at Trial
 - Judge allowed full loss until retirement age
 - Judgement of: \$999,506 (\$541,424 in FEL)

Remember - Good safety culture

- Effective induction and skill-based training
- Documentation
- Emphasis on safety and wellbeing
- Positive enforcement of practices – supervision
- Clear discipline process for non-compliance
- Re-training
- No tolerance for repeated non-compliance

Safety Culture

Important takeaways

- Learn from incidents – don't ignore them
- Take responsibility – Culture is "us" not "me"
- Always look to improve – why be good when we can be better?
- Value safety and your employees – nobody deserves to be injured – everyone deserves to go home

If you adopt these principles, you can have a positive impact on your workforce and common law claims

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