

Special considerations at common law when working with a young and ageing workforce

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Meet your moderator

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How to interact today

Select audio on the control panel to change between computer audio and telephone.

Click on the red button to hide and unhide the panel.

Type your comments and questions here.

Your comments and questions will appear here throughout the webinar.

The screenshot shows a GoToWebinar control panel window with a menu bar (File, View, Help) and standard window controls. The panel is divided into several sections:

- Audio Section:** Contains a dropdown menu currently set to "Audio". Below it are two radio buttons: "Telephone" (selected) and "Mic & Speakers". Further down, it displays "Dial: +61 3 8488 8992" and "Access Code: 862-129-254". A green status message reads "You are connected to audio".
- Questions Section:** Features a large text input area with a scroll bar. Below the input area is a placeholder text "[Enter a question for staff]" and a "Send" button.
- Footer Section:** Displays the webinar title "Sam and Rob Test" and ID "Webinar ID: 123-455-903". At the bottom, the "GoToWebinar" logo is visible.

Four blue arrows point from the text instructions on the left to the control panel:

- One arrow points to the "Audio" dropdown menu.
- Another arrow points to the red button with a white right-pointing arrow, which is used to hide/unhide the panel.
- Two arrows point to the text input area and the "Send" button in the Questions section.

After the webinar

- Webinar recording and presentation will be on worksafe.qld.gov.au in the next few weeks
- If we don't get to all of your questions, we will collect them and publish answers on our website afterwards
- So we can continually improve our level of service, we would appreciate you completing a short survey at the end of the webinar

Claims and costs



Meet your presenter

Bill Rogers
Assistant Crown Solicitor
Crown Law



Queensland
Government

Crown Law

Special considerations at common law when working with young and ageing workforce

- Young workers
- Aged workers

Your legal responsibilities

Anti Discrimination Act 1991

- Discriminating against someone on the basis of age is unlawful in Queensland.
- This legislation was introduced to “promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity such as employing, promoting allocating training etc.

Work Health and Safety Act 2011

Queensland employers have an obligation to ensure the workplace health and safety of all workers (regardless of age and fitness). You are responsible for:

- safe work areas, machinery and equipment;
- information, instruction, workplace training;
- personal protective equipment.

The Australian Workforce

It is forecasted that the workforce participation rate of people aged 65 and over will increase from 12.9% in 2014–15 to 17.3% in 2054–55.

Australia's aging workforce is being encouraged to remain in the workforce longer.

Ageing workforce

An older person is generally regarded as someone aged 45 years or over—they still have half of their working life to go.

Studies indicate that the more sedentary type occupations will experience a greater increase in older workers.



Common law claims

Duty of care

- Uncontroversial that an employer owes a duty of care to its employees
- Duty requires the employer to take reasonable care to avoid the foreseeable risk of injury to an employee
- If the employer does not take reasonable care they are in breach of the duty of care to an employee⁽¹⁾
- Employer's obligation is only to take reasonable care and not to safeguard the employee from all perils⁽²⁾
- Obligation is to take reasonable care to avoid risks
- Does employing a young or older person mean the employer is exposed to a higher standard of duty of care?

System of work

- An employer has an obligation to provide a safe system of work.
- While this is only a subdivision of the employer's general duty of care 'to take reasonable care to avoid foreseeable risk of injuries'⁽³⁾ the employer has to have in existence a system of work which obviates the risk.

System of work

For the young

- Inexperience
- Instruction/training
- Supervision
- Risk taking
- Peer influence

For the aged:

- Physical vulnerabilities
- Pre-existing conditions

System of work

- Induction and training
- Supervision and feedback

Foreseeability

- It will only be in a relatively few cases that the risk of injury will be seen not to have been foreseeable.
- This is because a risk of injury is foreseeable even though it is 'quite unlikely' provided that it is not 'far fetched or fanciful' (1).

Reasonable care

- The employer will be found liable if they fail to take reasonable care to avoid the foreseeable risk.
- A reasonable response must be determined having regard to the magnitude of the risk and its probability, weighed against the practicability of those precautions which may be taken to prevent it.

Duty to warn

- A failure to warn against an obvious risk may constitute a lack of reasonable care at common law.
- Training/instruction needs to be more specific and also closer supervision is likely to be warranted.

Preventability

- This is an important issue in a system of work.
- The plaintiff bears the onus of establishing a reasonably practical alternative system.
- Established by looking at cost, difficulty and probability.

Damages

- Young people are exposed to more severe injuries
- Longer until retirement
- Significant awards for damages
- Life expectancy increases and the retirement age, or capacity to continue work increases.

Rehabilitation

- Don't lose focus on providing rehabilitation just because a person is older.


Training/instruction

- Obligation to provide appropriate training
- Programs need to take into consideration the experience of the worker.

Summary

- Employers may be faced with a higher duty of care
- Young people—inexperienced and risk takers
- Ageing workforce—particular aged related vulnerabilities
- Place specific emphasis on:
 - system of work
 - training/instruction

What to consider

- Ensure that a person (regardless of age) is suited to the task and can carry it out safely.
 - Adapt duties to suit older workers' needs and abilities.
 - Provide ergonomically designed workstations for all workers.
 - Train all workers in injury prevention strategies.
 - Utilise flexible working arrangements for older workers.
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Cases

1. Wyong Shire Council v Shirt (1980-81) 146 CLR 40
2. Finn v The Roman Catholic Trust Corporation for the Diocese of Townsville [1977] 1 Qd R 29
3. Turner v South Australia (1982) 42 ALR 669

Questions submitted during the webinar

More information

The webinar recording and presentation slides will be available at worksafe.qld.gov.au in the next couple of weeks.

Upcoming webinar: '*Designing good work for young workers*'

Thursday 28 May 12 – 1 pm

Registration details will soon be available under 'Events' on our website