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Heavy Fines for First Conviction of Director under Victoria's OHS Act

Judge Allen of the County Court has handed down the first conviction for a breach of s144 of the *Occupational Health and Safety Act 2004 (Vic)* (**Act**) following the death of an employee trapped in the roller of a laundry ironing machine.

The company and the director were fined \$750,000 and \$65,000 respectively – a clear warning of the court's willingness to impose significant fines on individuals.

Section 144 deals with the liabilities of officers of bodies corporate and provides that if a body corporate contravenes a provision of the Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine (not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate).

An officer of a body corporate is defined to include a person who makes or participates in the making of decisions affecting the whole or a substantial part of the body corporate's business. It also includes a person

who has the capacity to affect significantly the body corporate's financial standing.

In determining whether an officer of a body corporate is guilty of an offence, the court will consider:

- what the officer knew about the matter concerned;
- the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned;
- whether the contravention by the body corporate is also attributable to an act or omission of any other person; and
- any other relevant matter.

The case

An employee of an industrial laundry business (the **Company**) sustained fatal crushing injuries as a result of becoming trapped in the roller of an ironing machine. The employee was cleaning the top of the ironing machine when his gloved hand caught in it.



The Company pleaded guilty to charges of failing to provide and maintain a safe work environment and for failing to provide adequate supervision and training for employees. The director, as officer of the Company, was charged and pleaded guilty for breaching s144 of the Act.

The court found that parts of the ironing machine were inadequately guarded. Tread-plate covers were neither fixed in place nor fitted with any form of electrical interlock to prevent access to the moving rollers. Furthermore, the covers did not completely cover the rollers.

CCTV footage, recorded and admitted as evidence, showed workers (including the deceased) accessing the top of the ironing machine while the machine was operating. It recorded employees using the tread plates on top of the machine as access platforms to replace broken fabric tapes, inspect rollers and unblock items of linen.

The footage also showed the deceased climbing on top of the machine and then using a cleaning mitt on the surface of a roller.

The court heard there was no evidence as to why the deceased went about the task as he did and that no one had previously seen him use a glove before the incident. Additional evidence was led to suggest the director had told workers not to attempt accessing the machine while it was on. However, Judge Allen said that while there was no reason for the deceased to be where he was when he was caught by the machine, the risk of injury or death was reasonably foreseeable and the director, as an officer of the company, had failed to take reasonable care for the safety of his workers.

There was no record of the Company having undertaken hazard identification or risk assessment since it was installed in the workplace.

The Company and the director were fined \$750,000 and \$65,000 respectively.

Conclusion

After the fatality, the employer immediately took steps to ensure the machine was adequately guarded, which Allen J regarded as proof that the risks could have been easily addressed and acted on earlier.

The court's willingness to impose significant fines on individuals is a warning to all company directors and leaders. Furthermore, Judge Allen stated that deterring other companies from breaching safety laws played a large role in his sentencing.

According to Acting Executive Director of WorkSafe Victoria, Stan Krpan, WorkSafe has several other OHS cases involving directors awaiting hearing or investigation.

Reminder

Section 144 imposes personal obligations on company directors and leaders to ensure safety in the workplace. Those obligations include:

- the establishment of robust safety systems;
- monitoring those safety systems;
- ensuring there is adequate workplace supervision and training;
- providing information to workers; and
- ensuring equipment is not only suited for the job but meets the safety standards required in Australia.

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