

First Health and Safety at Work Act 2015 sentencing demonstrates the new legislation's teeth

September 2017

Businesses across New Zealand have been awaiting – not without some trepidation – the first sentencing under the Health and Safety at Work Act 2015.

And the result is a significant fine, demonstrating that the Act does indeed have teeth.

Budget Plastics Ltd was prosecuted for health and safety breaches after a worker's hand was dragged into a machine while he was pouring recycled plastic into it on 6 April 2016. The company appeared in the Palmerston North District Court on 23 May 2017 for sentencing, and in a judgment released on 22 August 2017 the court fined the company \$100,000 and ordered it to pay reparation to its worker of \$37,500.

Key points from the sentencing:

- Budget Plastics was charged under Section 36 (1)(a) of the Health and Safety at Work Act 2015, which provides that PCBU (Person Conducting a Business or Undertaking) must ensure, so far as is reasonably practicable, the health and safety of the workers who work for the PCBU, while the workers are at work in the business or undertaking;
- The maximum penalty under the Act for a breach of this nature is a fine not exceeding \$1,500,000;
- The judge's starting point for the fine was between \$400,000 and \$600,000 for the level of culpability evident in this case. This was reduced to between \$210,000 and \$315,000 based on mitigating factors;
- The judge set the fine in the range of \$275,000 but reduced it to a final fine of \$100,000 based on the company's ability to pay;
- The court ordered reparation of \$37,500 for emotional harm;

By way of contrast, under the Health and Safety in Employment Act 1992, fines for machine guarding cases ranged from \$30,000 to \$40,000 on average.

In a noteworthy move, WorkSafe suggested that a starting point of \$900,000 for the fine was appropriate – demonstrating, as anticipated, that they will be seeking high fines.

Of particular concern in the case was that six weeks before the incident there were issues identified with the guarding on the machine which injured the worker. In its news release on the sentencing, WorkSafe General Manager Operations and Specialist Services, Brett Murray, said, "The lesson here is to fix machinery as soon as risks are identified. If you can't fix it, then take it out of service until it is safe to use."

“The failure of Budget Plastics Ltd to take action to this known risk left their employee with a life-long injury. Sadly, it could have been avoided by acting quickly and guarding the machine properly,” said Mr Murray.

WorkSafe has reported that its investigation found that the company had inadequate systems for identifying and managing risks; that their safe operating procedures were outdated; their policies and processes for training staff were lacking, and key safety features such as emergency stop buttons within reach of the operators were absent.

If you would like more information regarding the above, or have any questions, please contact us.

Shelley Eden, Partner

Contact her on +64 9 300 8756 or Shelley.Eden@shieffangland.co.nz

Tony (Tae Yong) Sung, Solicitor

Contact him on +64 9 300 8766 or Tony.Sung@shieffangland.co.nz

The original Worksafe article can be found at:

<http://www.worksafe.govt.nz/worksafe/news/releases/2017/take-immediate-action-to-manage-known-risks>

www.shieffangland.co.nz

© Copyright 2017 Shieff England

This article gives a general overview of the topics covered and is not intended to be relied upon as legal advice.