



## Managers Liability for Workplace Safety

Occupational Health and Safety laws throughout Australia will generally hold the executive directors of a company liable where there is a failure to comply with health and safety laws. In some States, including NSW/ACT, Victoria and Tasmania the laws also provide that Managers or OHS representatives can be liable in the event of a failure to ensure workplace safety.

In NSW/ACT each director and the "person concerned in the management of a corporation" will be liable unless the person can provide a suitable defence, such as having exercised due diligence or being unable to influence business decisions. In Victoria a manager, who manages and controls a workplace will be required to ensure that the workplace was safe as far as is reasonably practicable.

It is important for all managers to be aware of their obligations and to provide for workplace safety because failing to carry out OHS responsibilities can bring high penalties. It is important therefore to provide regular OHS training programs for management to ensure OHS compliance.

## An Employer's Obligations When Taking Over a New Business in the Federal Industrial Relations System.

When an existing business is sold and a new employer takes over this is called a 'transmission of business'. There are important rules in regard to the transferring of employees into a new business and members should discuss these issues with those who are arranging the sale or purchase of the business on your behalf.

It is important to be aware of what awards or agreements affect the previous business if you are the new employer.

If at least one employee of the former business accepts employment with a new owner within two months of the transfer, the award or agreement covering the employee, or employees, will transfer to the new owner. The transmitted award or agreement will only apply to those employees who were employed by the former owner.

The WorkChoices legislation provides that the previous employer cannot terminate the employment of an employee prior to the transfer of the business so as to avoid the transfer of the old award or agreement to the new employer. The transmitted award or agreement will apply to the employees for a period of 12 months after which the employees will become covered by the employers own award or agreement.

Within 28 days of the transferring employees commencing new employment the employer must take reasonable steps to provide the employee with information about the new terms and conditions that will affect their employment. A copy of this notice needs to be provided to the Workplace Authority within 14 days of it being given to the employee.

If you have any queries please call an MGA Workplace Adviser to obtain an Information sheet or see our website.

## Unfair Dismissal & 'Genuine Operational Reasons'

Under the WorkChoices laws an employee cannot make a claim for unfair dismissal if the employer terminates the employee's employment for 'genuine operational reasons'. However, an application can be heard in the Australian Industrial Relations Commission to provide an employee with an opportunity to dispute the employer's claim.

The Industrial Relations Commission will carefully examine an "employers" claim that there were "genuine operational reasons" for a dismissal. The "reasons" may be based on economic, technological or structural factors that have affected the business. It is important for all employers to be able to demonstrate to the commission that the action taken was legitimate and not just a sham.

If you intend to dismiss an employee based on 'genuine operational reasons' it is advisable to discuss the issues with MGA before taking such action.

## Employers Only Liftout

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