

Manslaughter Charges In The Workplace

Employers Beware

Every employer and every company director faces the prospect of being charged with a criminal offence over deaths and injuries that occur in the workplace.

These charges can be in addition to any brought under occupational health and safety laws.

A typical example of this kind of prosecution is a criminal manslaughter charge brought against a company for the death of an employee caused by the company's gross negligence. Such prosecutions are rare but certainly no longer unheard of in Australia.

Reason For Manslaughter Prosecutions

There are two possible explanations why such charges are part and parcel of the Australian industrial relations scene:

- First, it is suggested that public opinion is turning in favour of a "*one rule for all*" policy. In other words, those responsible for death and serious injury in the workplace should be treated the same way as those who cause death and injury elsewhere in society. Supporters of this argument ask why it is that employers who are guilty of negligence should avoid liability when motorists cannot.
- The second possible explanation relates to the deterrent effect that highly publicised manslaughter cases may have on employers generally. It is argued that the push for prosecutions is driven by occupational health and safety authorities who want to raise safety attitudes and performance by providing examples of what may happen if companies do not shape up. To some extent, even the mere possibility of criminal prosecution should have this effect.

Whatever the explanation, the change in official thinking has occurred and companies must be mindful of their potential liability if they cannot show that they were not negligent.

Criminal Liability

When it comes to workplace deaths and injuries, criminal liability is based on direct (and not vicarious) liability.

This requires that the negligent act or omission be

performed by someone acting as the company, or alternatively that the corporate culture encouraged or did not discourage the conduct which led to the death or injury.

When people discuss this issue, they invariably conjure up pictures of a large industrial accident in which dozens are killed by a collapsed structure or a toxic chemical spill.

Most would be surprised to learn that the first Australian conviction for corporate manslaughter resulted from a truck accident. The negligence involved the company not ensuring that the vehicles' brakes worked properly.

The Problem of Ensuring Workplace Safety

It is probably fair to say that no workplace is completely safe. In between a structure collapsing and a major toxic spill are less obvious threats such as Legionnaires' disease and the risk of employees being injured, or worse, by violent colleagues.

In any workplace where death or injury occurs, company directors face a very real possibility of being held personally liable for negligently failing to institute safe work practices.

To avoid such liability, they must ensure that safe working conditions are maintained and that the culture of the company does not foster any attitudes that might be seen to contravene safety policies.

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