

Countering Common Law Actions

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Introduction

As previously stated the employer must:

1. provide and maintain competent staff
2. provide and maintain a safe place of work
3. provide and maintain safe plant and appliances
4. provide and maintain a safe system of work

The above must be approached from the view-point of the 'reasonable man of ordinary prudence'. These four general duties are all-embracing and impose a considerable obligation upon employers.

The following practical advice is given:

1. Statutory Requirements Given the fact that if a breach of statute (*Workplace Health and Safety Act 1995* (Qld) is proved, the case for damages for injury arising out of the breach is automatic, one must be especially conscious of ensuring compliance with relevant legislation. Ensuring all employees wear hard hats, safety glasses, hearing protection and seat belts as appropriate is an excellent start.
2. Other statutory legislation in Qld, *The Radioactive Substances Act*, *The Coal Mining Act*, to name two such pieces of legislation, provide excellent guidance in safety matters even though there is often no legal requirement to abide by them. It is not uncommon in common law claims to call up other legislative requirements regardless of their jurisdiction; the other legislation is referred to as examples of safe, alternate, and reasonable practice adopted by other employers and other industries.
3. All relevant Australian standards and Codes of Practice should be complied with (where no Australian guidance is available, overseas publications should be examined). The fact that a Standard or Code of Practice is not called up in legislation, is not a valid excuse.
4. New employees should be trained and employees changing to alternate jobs must be trained in relevant safe job procedures. Regular retraining should be considered. Relying upon the training, a tradesman receives during his apprenticeship may be deemed insufficient.
5. Personnel must be placed in occupations where they are fully competent and physically and mentally suited to the rigours of their job.
6. All options must be considered to deal with employees who demonstrate they are not competent to carry out their occupation.
7. Employers must regularly examine work areas and work operations to ensure a high standard of safety.
8. Equipment purchased must be of high quality and must be regularly maintained.
9. The employer must keep up-to-date with modern methods in order to identify safe alternative methods.
10. Complaints regarding safety matters must be thoroughly investigated and appropriate action taken.
11. Caution signs, warning signs, job instructions, etc. must be adequate, reasonable, and properly communicated to employees. Their understanding should be checked.
12. Personal protective equipment must be of highest quality, appropriate to the risk, employees must be trained in its use, it must be properly maintained, and its use must be supervised and enforced.
13. Adequate, properly trained supervision must be available at all times.
14. The employer and his staff personnel must always provide the best safety example possible.

General defences

Voluntary Assumption of Risk

Previous court cases have taken the view that if an employee continues to work at a particular job, knowing well the risk involved, this does not mean that he has voluntarily accepted that risk. This, in effect, means that voluntary assumption of risk on behalf of an employee is not an adequate defence for the employer.

Contributory Negligence

An employee may have his claim defeated, or more likely, his damages reduced because of contributory negligence. The onus of proving contributory negligence is on the plaintiff.

The courts usually take a lenient view where employees are concerned, and consider such factors as fatigue, slackening of attention due to repetition of similar operations, noise, production pressure, employee's state of health at the time, and so on.