

Tougher penalties for health and safety breaches

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The first prosecution under the Health and Safety at Work Act (2015) led to tougher consequences than previously seen. How are New Zealand workplaces likely to respond?

The Health and Safety at Work Act (2015) has been in place since April 2016. The first significant prosecution has now passed through the courts, giving us more of a sense of what the new legislation means in practice.

The case involved Palmerston North-based Budget Plastics Limited. One of their employees lost most of their fingers tipping recycled plastic material into a machine. Six weeks before the incident, Budget Plastics had identified guarding issues on the machine. The judge recommended a starting point for any fines ranging between \$400,000 and \$600,000 but reduced it based on mitigating factors. The company was fined \$100,000, plus \$37,000 in reparation, based on its ability to pay.

By comparison, average fines for similar prosecutions under the Health and Safety in Employment Act were \$30,000–\$40,000. Despite being limited by Budget Plastics' ability to pay, the fine was significantly larger than under the previous regulatory framework. Plus, as a small to medium enterprise (SME), it will likely have a significant impact on the company's financial wellbeing.

If health and safety risks are not already firmly at the top of an organisation's risk management agenda, they might be now. There's a more urgent business case for

risk mitigation and capital improvement works. We may see health and safety-related capital works brought forward, which is likely to have an impact on workload for engineers involved in scoping and implementing the works.

There is almost always residual risk. If organisations become more risk averse, there might be a desire for more sophisticated, and costly, engineering-based solutions. The skills of design engineers are likely to be highly sought after and our profession has much to offer in this area.

There were six weeks between the site becoming aware of the hazard and the accident. But effective engineering controls for health and safety risks can require detailed design work so other significant risks are not introduced, particularly where people are involved – and that takes time.

Machine safety is a good example of this. Many machines can require engineering solutions more sophisticated than simply fitting a guard. Six weeks may not be a long time to apply a robust design management process and implement a solution.

So how can businesses mitigate risks, but still keep the lights on? Some organisations may hold off carrying out proactive hazard identification processes out of fear they won't be able to put any necessary solutions in place. However, ignorance will almost certainly be a poorer defence under the Act.

Putting engineering solutions in place quickly can limit risk exposure but may

compromise quality or effectiveness. The goal will be to strike the right balance between time and quality. That will take careful management. Interim measures will become essential to keep machines in service so companies can put longer-term solutions in place. Some companies might find taking a machine out of service is the only option. Company officers in SMES, and management in larger companies, will need to lead the way on making sound risk-based decisions on the best course of action.

In reality, an organisation will have multiple risk areas that all require their own hazard identification and risk management process. Putting in place systematic and robust management systems to prioritise timely planning for, mitigation and monitoring of all risks is a no-brainer. Engineers can make a significant contribution to reducing risks and harm at work across all our workplaces. ■

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Find out more

Go to worksafe.govt.nz for more information about the Budget Plastics case. To learn more about the New Zealand Society for Safety Engineering, search for NZSSE at engineeringnz.org