



PO Box 72, Lennox Head
NSW 2478, Australia

t. +61(0)2 6687 4186
f. +61(0)2 6687 4207

e. info@savvyhr.com.au
w. www.savvyhr.com.au

Employers, Contractors & OH&S: make sure you're covered.

Business owners must take an active role in managing Occupational Health & Safety and not take for granted their contractor's OH&S credentials or rely on the expertise of contractors alone.

A recent decision by the NSW Industrial Relations Commission demonstrates that an employer cannot contract out their responsibility for Occupational Health and Safety and those employers engaging contractors must require written procedures before commencing any contracted work, verify their safety and nominate a suitably qualified supervisor.

“The ever-changing OH&S legislation demands businesses devote more time and resources to managing OH&S, yet many small businesses do not have such resources or do not fully understand their obligations in relation to the OH&S legislation. They rely on their contractors to ‘do the right thing’ and incorrectly assume they won’t be liable if something goes wrong”, said Craig McFadden, Managing Director of Savvy Human Resources, a Ballina based human resources consultancy.

The case involved a major transport company that contracted with a fuel supplier to remove fuel from an underground storage tank. The company agreed on a compliant method and was assured that the contractor had the necessary expertise and that an appropriately qualified person would be present to supervise the operation. Unbeknown to the company, the contractor then sub-contracted the operation. During the operation an employee of the sub-contractor decided the method was too slow and used a quicker, more dangerous process. This resulted in an explosion in which a worker suffered serious burns to his face and chest.

The fuel supplier was fined \$240,000 for its role in the incident and the transport company was fined \$150,000 (out of a maximum of \$825,000).

Mr. McFadden said that employers should ensure that:

- the contractor sets out a safe work procedure in writing prior to commencing work;
- the procedure is approved by an appropriately qualified person; and
- there is an appropriately qualified *supervisor* present for the entire period of the work.

“Employers should also be aware that their lack of knowledge about the work being completed and their attempts to engage appropriately qualified contractors with good safety records will not relieve them of their obligations and they may still be in breach of the Occupational Health & Safety Act and be penalized accordingly. Employers should consider all preventative measures as the availability of those measures may later be evidence of their failure to fulfill their OH&S obligations”, said Mr. McFadden.

“An employer’s obligation to identify, control or eliminate risks extends to the work being conducted and the workplace. Failure to do so may result in a criminal conviction, large fines or even imprisonment”, Mr. McFadden said.

For further information contact:

Craig McFadden Managing Director
Savvy Human Resources Associates Pty Ltd
office. Level 18 Riverside Centre 123 Eagle St Brisbane QLD
post. PO Box 72 Lennox Head NSW 2478
mobile. 0428 874186 fax. +61 (02) 66 874207
email. craig.mcfadden@savvyhr.com.au w. www.savvyhr.com.au

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