

## Businesses face huge bills for employee injuries

Businesses and individuals are being warned that under new legislation they can now face hundreds of thousands of dollars of reparations to victims of crimes - as from 6 December 2014 The Sentencing Amendment Act 2014 may have a big impact where a company breaches health and safety legislation. It means that, if a company ends up in court after a workplace accident, the courts could now enforce substantial reparation payments to injured people.

One of the major areas affecting all New Zealand businesses where the Sentencing Amendment Act will have potential impact is the Health and Safety in Employment Act 1992 (and from 1 April the new Health and Safety at Work Act). Under this Act duties are imposed on a wide range of businesses and people including all employers, principals, self-employed persons, employees and volunteers to maintain a safe working environment. Where there is a breach of the Act the offender may face a criminal prosecution - and this could include claims from injured parties. The Act enables the courts to award reparation to victims of accidents to compensate the shortfall in ACC payments, which only cover up to 80% of a victim's loss of earnings.

In the previous legal environment, an injured party may have faced a shortfall in what they received from ACC: due to the 80% cap on weekly compensation payments, 20% of a claimant's loss of income is not recoverable; plus ACC payments are capped at a maximum of \$1,847.23 per week.

Through the changes introduced by the Sentencing Amendment Act the Courts will now be able to use sentences of reparations to top-up this shortfall of ACC payments and claimants will now also be able to recover medical bills and loss of benefits.

While it is not currently possible to insure for fines or penalties awarded for a breach of the Health and Safety in Employment Act, insurance policies will indemnify the insured where they are sentenced to pay the victim reparations.

Therefore, the liability arising from this change does not create an uninsured risk; however it does potentially impact the amount of cover that is now appropriate. The top-ups that can now be awarded through reparations are not insignificant.

- Example #1: Where the injured party is a healthy 40 year old earning an annual salary of \$50,000, who suffers a severe injury that prevents them working for the rest of their life, the 20% shortfall in their weekly income alone could amount to \$250,000.
- Example #2: An injured 40 year old executive on a salary of \$150,000, and additional reparations that can be awarded under the new legislation could be over \$1.2m.

Businesses should consider discussing the effects of these new changes with their insurance advisers.

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