

HEALTH & SAFETY COMPLIANCE



Understanding Duty of Care

INTRODUCTION

Many people do not realise that refusing or failing to observe company safety rules and safety procedures or instructions from their supervisor is, in fact, breaking the law.

People don't appreciate that, as an employee, they have certain legal obligations with regard to their own safety and the safety of other people in their workplace.

A failure to recognise and meet these legal obligations can result in:

- injury or harm to yourself;
- injury or harm to other people; and
- you being prosecuted.

Occupational safety legislation operates in the same fashion as other aspects of the law. Ignorance of the law is no defence for committing an offence.

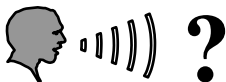
For this reason it is important that you recognise and understand what your responsibilities are under the Duty of Care.

Today we will discuss:

- the employee's duties;
- the employer's duties; and
- the consequences of not meeting your responsibilities.

WHAT IS THE DUTY OF CARE?

Many of you have probably heard the term "Duty of Care" before.



"What is Duty of Care and what is it designed to do?"

Duty of Care refers to the legal duties that employees and employers have to one another to provide and maintain a safe place of work for everyone.

One way of understanding how the duties of employer and employee fit together is to imagine the Duty of Care to be like a coin.

A coin can only have value when it has two sides. If you take one side away from the coin, you will no longer have a valuable commodity, just a lump of metal.



The same is true with the Duty of Care. Achieving a safe place of work requires both the employer and the employee to meet their respective duties.

For example, an employer is required, under the Duty of Care, to provide employees with adequate Personal Protective Equipment. Employees are required, under the Duty of Care, to correctly use and maintain the provided Personal Protective Equipment.

If both parties meet their duty to one another then the likelihood of accidents are reduced and the workplace is made safer. However, if either party does not meet its duty to the other, this cannot be achieved.

As we look at the duties of the employer and the employees in more detail, you will begin to see how the example of the coin makes sense.

EMPLOYEE'S DUTY OF CARE

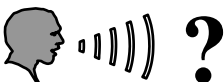
As an employee you have a general duty to:

- ensure your own safety and health at work; and
- avoid adversely affecting the safety and health of any other person through any act or omission.

The term “act” means doing something that puts people at risk.

The term “omission” means by **not** doing something, you would put people at risk.

However, as an employee, you have some other more specific duties.



“What are some examples of the specific duties employees have with regard to health and safety?”

You must follow instructions given by the employer for your safety or the safety of other people. This means:

- obeying company safety rules;
- following safety procedures; and
- following work instructions given by your Supervisor.

You must correctly use personal protective clothing and equipment that has been provided by the employer. This means:

wearing the correct type of Personal Protective Equipment for the work you are doing; and wearing the equipment correctly.

You must not misuse or deliberately damage any equipment provided in the interest of safety and health. This means you must not:

interfere or tamper with fire fighting equipment;
interfere or tamper with first aid equipment and facilities;
obstruct or deface safety signs; or
remove machinery safety guards without permission.

You must report hazards that you are unable correct yourself. This means that you should remove or correct any hazards that you identify in the workplace, providing:
you know how to safely do so; and
your own safety is not unnecessarily endangered.

You must report any injury or harm to health. This means that you must:
report all injuries no matter how minor; and
report the symptoms of any disease or illness that could be associated with work.

You must co-operate with your employer to allow them to carry out their Duty of Care. This means working actively with the employer to improve workplace safety and health.

EMPLOYER'S DUTY OF CARE

The employer has a general duty to provide a workplace where employees are not unnecessarily exposed to hazards.



“What are some examples of the specific duties that employers have with regard to health and safety?”

Employers must provide and maintain safe workplaces, plant and systems of work. This means employers must ensure:

- the layout of the workplace is safe;
- the storage and handling of all materials is safe;
- the location and movement of people and mobile equipment can be carried out safely.

The employer must also provide employees with adequate information, instructions, training and supervision so they can perform their work safely. This means the employer must:

- alert employees to hazards by providing warning signs, posters, booklets and other written materials;
- provide each employee with the relevant task and safety training required to do their job safely;
- instruct employees on how work and tasks are to be performed safely; and
- supervise employees to ensure safety and health rules, procedures and instructions are being followed.

The employer must consult and co-operate with elected safety and health representatives with regard to safety and health matters in the workplace. This is aimed at getting employees and employers working together with the common goal of improving safety and health standards in the workplace.

The employer must provide employees with adequate Personal Protective Equipment where certain hazards cannot be totally avoided. This means the employer must:

- provide the correct type of Personal Protective Equipment for the type of hazard; and
- train the employees in how to select, wear, and use the Personal Protective Equipment.

The employer must ensure the safe use of plant and substances in the workplace. This means the employer must ensure employees are not exposed to hazards from anything to do with:

- the transportation, storage, handling, use, cleaning, maintenance or disposal of plant; and
- the transportation, storage, handling, use, cleaning, maintenance or disposal of substances.

The term “plant” means all machinery, equipment, vehicles, appliances and tools used to perform work.

The term “substances” means any natural or artificial solid, gas, liquid or vapour in the workplace.

The employer must report all accidents involving fatal or major injuries to the relevant State Government Safety Inspector.



CASE STUDY REVIEW AND DISCUSSION

To reinforce your understanding of the Duty of Care we will now look at a brief case study.

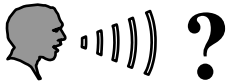
It is important that you read the case study carefully because we will be using this as an example throughout the remainder of the safety talk.

As you read through the case study, try to remember the various duties of the employee and the employer and identify which duties have or have not been met by each person in the case study.



Hand out sheet 1 - The incident

To make it easier to discuss the case study let's first take the time to review each one of the characters involved in order of appearance.



“In what way has Joseph Mthethwa failed in his duties as an employee?”



Hand out sheet 2 – Joseph Mthethwa

Joseph has affected the safety and health of another employee by not cleaning up the spillage.

Even though Joseph was capable of cleaning up the spillage he chose not to do it because: he had cleaned up three similar spillages in the past week; and he thought his routine work was more important.

Joseph knew he had a responsibility to do something about the hazard because he thought to “cover himself” by reporting the hazard to his Supervisor.

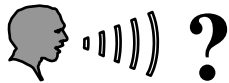
Joseph has not really “covered” himself at all and his failure to clean up the spillage has contributed to Frances' accident. Joseph was capable of correcting the hazard and chose to pass the responsibility on to someone else - the Supervisor.

Joseph was wrong in doing this and obviously does not fully understand what his duty is to other employees. It is true that he has a responsibility to report a hazard to his Supervisor **but only if he is unable to correct it himself.**

Joseph made no attempt to:

- clean up the spillage; or
- warn others in the area of the hazard.

The message is that if you identify a hazard in the workplace and you are capable of safely correcting it, then do so immediately. Leaving it for others to fix or merely telling your Supervisor about it is not meeting your Duty of Care to others.



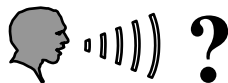
“In what way did the Supervisor fail to meet his Duty of Care?”

The Supervisor failed to protect the safety and health of another employee.

The Supervisor failed to take appropriate action after a hazard was reported to him.

Although the Supervisor “got tied up on the telephone”, this is not a valid reason for his lack of action.

The Supervisor should have arranged for the immediate clean up of the spillage and could have done this quite easily by instructing Bryan Smith to do it.



“In what way has John Mack failed to meet his Duty of Care as an employee?”



Hand out sheet 3 – John Mack

John Mack has:

- failed to ensure his own safety; and
- failed to ensure the safety and health of another employee.

John’s failure in meeting his Duty of Care was a major contributing factor in the accident and the injuries sustained by Frances.

Although he was personally unhurt by the accident his unsafe behaviour did put his own health and safety unnecessarily at risk.

The specific unsafe actions committed by John include:
driving the forklift too quickly;
driving the forklift recklessly; and
moving the forklift while Frances was still in the man cage.

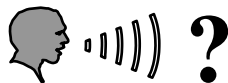
By driving too fast and driving recklessly John has breached company safety rules and safe operating procedures. In doing so, he failed to follow instructions issued by the employer. More importantly, if he had driven at the correct speed he may have been able to stop before reaching the oil spillage.

John also failed to in his Duty of Care by allowing Frances to illegally “ride” in the man cage of the forklift. A man cage should only be used to raise and lower personnel and not to carry them.

Although it was Frances who elected to stay in the man cage it was not her decision to make because John was responsible for ensuring the safe operation of the forklift. John should have refused to move the forklift until Frances had exited the man cage.

Meeting your Duty of Care requires you to act and work in a way that does not put your safety or the safety of others at risk.

It means following company operating procedures and safety rules while using:
equipment, machinery and vehicles; and
warning other people when you see them doing something that is unsafe.



“In what way has Frances White failed to meet her Duty of Care as an employee?”



Hand out sheet 4 – Frances White

Frances White failed to meet her Duty of Care as she failed to ensure **her own** health and safety.

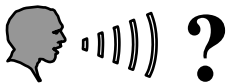
Frances should never have stayed in the man cage while the forklift was being driven to rack G. She should have exited the man cage and walked over to the rack.

The fact that Frances was thrown from the man cage as it skidded indicates that she was not wearing any type of fall restraint while working inside the man cage.

Since she was working from an elevated work platform, Frances should have been wearing an approved fall arrest harness with a lifeline attached to the man cage. She has failed in her duty to correctly wear the provided Personal Protective Equipment.

Meeting your Duty of Care means:

following company safety rules and procedures;
not taking shortcuts to save time or effort; and
correctly wearing and using Personal Protective Equipment when it is required to safely perform work.



“In what way has the employer failed to meet his Duty of Care?”



Hand out sheet 5 – The Employer

The employer has:

- failed to provide a safe system of work;
- failed to provide adequate supervision; and
- failed to ensure the safe use of plant.

This was the fourth oil spillage on the warehouse floor from a forklift within a week. This indicates that there is:

- inadequate maintenance of equipment; and
- inadequate pre-start checks of equipment by operators.

Alas, forklift operators are not being adequately supervised to ensure that they are carrying out their equipment checks.

This type of hazard occurred many times in a short period of time. This indicates that the company either does not have an effective hazard reporting system or that it is not being used properly. The Supervisor failed to take action when the hazard was reported to him.

The unsafe behaviour of employees, particularly John Mack and Frances White, demonstrates that employees are not being regularly checked to see if they are following safety rules and procedures.

The employer has not provided a safe place of work for his employees.

THE CONSEQUENCES

When employees and employers fail to meet their Duty of Care responsibilities, there is always the likelihood of an accident occurring.

However, there are also legal penalties which can be imposed when an employee or an employer fails to meet their Duty of Care responsibilities.



Hand out sheet 6 – The Consequences

If you fail to meet your duties as an employee you are liable to be fined. The amount varies and could be severe in certain circumstances.

If employers fail to meet their Duty of Care responsibilities they can receive severe financial penalties and even prison sentences.

SUMMARY

As employees, you have certain legal obligations with regard to their own safety and the safety of other people in your workplace.

A failure to recognise and meet these legal obligations can result in:

- injury or harm to yourself;
- injury or harm to other people; or
- you being prosecuted.

As an employee you have a general Duty of Care to:

- ensure your own safety and health at work; and
- avoid adversely affecting the safety or health of any other person through any act or omission.

You can meet this general Duty of Care by:

- following all safety rules, procedures and instructions given by the company for your safety or the safety of other people;
- correctly using the Personal Protective Equipment and clothing provided by the company;
- not correctly using or deliberately damaging any equipment provided for your safety and health;
- reporting any hazards that you are unable to correct yourself;
- reporting any injury, harm or hazard to your health; and
- assisting the company to meet its duties as an employer.

