

Duty of Care and Negligence in the Workplace

Duty of care requires everything 'reasonably practicable' to be done to protect the health and safety of people who are in the vicinity or come into contact with a workplace. This duty is placed on:

- all employers (i.e. the school);
- their employees (i.e. teachers, staff, technicians and others); and
- any others who have an influence on the hazards in a workplace (ie students & volunteers).

'Reasonably practicable' means that the requirements of the law vary with the degree of risk in a particular activity or environment which must be balanced against the time, trouble and cost of taking measures to control the risk. It allows the duty holder to choose the most efficient means for controlling a particular risk from the range of feasible possibilities preferably in accordance with the 'hierarchy of control'.

This qualification allows those responsible to meet their 'duty of care' at the lowest cost. It also requires changes in technology and knowledge to be incorporated but only as and when it is efficient to do so.

The duty holder must show that it was not reasonably practicable to do more than what was done or that they have taken 'reasonable precautions and exercised due diligence'.

Specific expectations and duties for staff, students and teachers logically flow from the duty of care.

These include:

- the provision and maintenance of safe systems of work; (i.e. record keeping)
- safe systems of work in connection with equipment and chemicals (i.e. training; transport, use)
- a safe working environment and adequate welfare facilities (i.e. rest, food; water & first aid)
- information and instruction on hazards and supervision of people at work site;
- monitoring the health of individuals and related records keeping; (eg first aid forms)
- employment of persons to provide health and safety advice; (eg. Safety Officers)
- monitoring conditions at any workplace under their control and management.

Source: Industry Commission, Work, Health and Safety, Report No. 47, Sept 1995

Negligence

What are 'negligent acts'?

They are situations in which injury is not deliberate, **but it is foreseeable**. Usually, the negligent person will not be immediately thrown in jail; however the regulatory authorities investigating the accident may file statutory or criminal charges. In addition, the injured party may seek financial compensation (i.e. sue in common law). If due process has not been followed (i.e. a documented risk assessment procedure, appropriate training and recording processes), then these events will involve lengthy, extremely stressful court processes.

How Does It Affect Me?

In order to satisfy or 'discharge' that duty of care you must behave as a **'reasonable person'** would but taking into account your **position, specific skills, knowledge and experience**.

The duty of care requires you to consider the consequences of your acts and omissions and to ensure that those acts and/or omissions do not give rise to a foreseeable risk of injury to any other person.

Clearly one is not expected to guarantee the safety of others, merely to act reasonably.

Will being a supervisor affect my ordinary Duty of Care?

Yes. As a Supervisor in any capacity you have accepted the responsibility of leading others.

Where and How Does The Buck Stop? Duty of Care & Line Management Responsibility

In the event of a serious accident, subsequent inquiries and investigations will be aimed at determining the causes and preventative measures taken in relation to the accident. Examination of the relationship between actions, authority and the expected roles of people does not stop with those directly involved in the accident.

Ignorance is no longer bliss!

For example, the Principal of the school has an undeniable duty of care to ensure consultation, implementation and documentation of appropriate risk management strategies and practices for all activities undertaken by the School and its members.

Like wise, subject coordinators and workshop supervisors (teachers) must ensure that they have appropriate risk management strategies and practices in place and documented for all activities undertaken for any classwork and in any workroom over which they have control/authority and for any staff and students that they supervise. Teachers are expected to ensure students are aware of and comply with the OHS requirements and practices applicable to their activity.

Conclusion

It is not possible to lay down golden rules which if followed will preclude the possibility of a successful civil (common law) claim.

However, behaving responsibly and considerately is likely to mean that no injury will be occasioned in the first place.