

Death from Fall a Timely Reminder to Maintain Safe Work Practices at Construction Sites



Introduction

New South Wales was once again faced with another tragic and likely avoidable on-site death of a construction worker in Sydney's West on Tuesday, 29 June 2021. At approximately 4:00 pm emergency services responded to reports that a worker had fallen from a substantial height at the Lennox construction site in the Parramatta CBD. Paramedics attempted to treat the worker's injuries onsite, but he was unfortunately pronounced dead shortly after.

The building industry retains the 3rd highest incidence rate of serious injury in the workplace with site workmen and machinery operators at the most risk. The most common cause of serious injury is falling from heights of 4 metres or less. In 2020 alone, NSW experienced 25 seriously injuries and 3 fatalities.¹

This incident serves as a stark reminder of the importance of maintaining the highest standards of work health and safety (WHS) at construction sites.

Legal Duties of Employers

It is imperative that employers and principal contractors remain fully informed of their legal obligations under WHS legislation and continue to ensure that their employees' safety remains the number one priority at construction sites.

Under the *Work Health and Safety Act 2011 (Act)*, the 'person conducting a business or undertaking' (PCBU), has the primary duty of care in relation to the health and safety of everyone in their workplace, including visitors.

This means that employers (directors, officers and those in key management positions) have a duty to ensure the health and safety of those people working in or visiting the workplace by eliminating health and safety risks so far as reasonably practicable; and if not reasonably practicable to do so, to minimise those risks.

¹ Housing Industry Association, 'SafeWork NSW focusing on falls from heights' (1 September 2020) <<https://hia.com.au/Publications/member-alerts/safework-nsw-focusing-on-falls-from-heights>>

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Although employees must take reasonable care for their own health and safety in the workplace and ensure that their actions do not put others at risk, employers are simultaneously responsible for providing proper training and instruction to employees on how they can carry out their work in a safe manner. This duty is best fulfilled by providing an initial safety induction to all workers, training them for their specific tasks, and maintaining ongoing supervision and follow-up training.

Maintaining Safe Work Practices

To comply with their legal duties for prevention of injuries, we recommend employers:

- **Identify hazards** by consulting with employees, inspecting the workplace, and reviewing reports and records. Employees must be consulted about any issues which directly affect their health and safety and must be provided with an opportunity to express their views and contribute to decisions relating to those issues. After all, the best WHS systems are those developed by a business in conjunction with its workers.
- **Assess risks** by considering the consequences which may result from employees being exposed to the identified hazards. For example, employers must seriously consider the possibility that employees may suffer serious injury or death if they are to fall while working at a height, even a relatively low one.
- **Control risks** by eliminating, or where that is not possible, minimising, the identified hazards through planning and prevention measures. At the design stage of a building project, employers should consider whether there are any suitable alternatives to employees working from heights so as to eliminate the risk of falls entirely. If it is necessary for employees to work at a height, they should be provided with proper fall-prevention devices, such as temporary work platforms, guardrails, and scaffolding. Where this is not possible, employers must at least implement a work-positioning or fall-arrest system to reduce the impact of a fall in the event that one does occur.
- **Review and maintain control measures** on a regular basis to ensure that they remain effective. Employers should continue to consult employees throughout this process to gain insight as to the adequacy and practicality of existing WHS systems, as well as potential improvements.

Key Takeaways

The recent death of a construction worker in Parramatta should act as a reminder to employers that WHS is the paramount priority at construction sites and can only be maintained through effective safe work practices.

The building industry remains subject to a high incidence rate of serious injury in the workplace with falls from heights, even those below 4 metres, being a leading cause of serious injury and death.

Employers must remember their legal obligations under the Act to ensure the safety of everyone on their construction site, including visitors, and to provide proper training to employees.

The ideal methodology for maintaining effective safe work practices is to: a) identify hazards; b) assess the associated risks; c) minimise or eliminate those risks through control measures; and d) regularly review and improve those measures in consultation with employees.

Employers should be aware that failure to minimize or eliminate risks may attract significant penalties - on-the-spot fines of \$3,600 apply for exposing employees to a serious risk of falling from a height, and a category 1 offence carries a maximum penalty of \$600,000 or 5-years imprisonment.

For more information on your duties for *Site Safety in Construction* contact the team at Construction Legal.

Contact