Lessons for employers in "low risk" industries from $1 million safety step fall

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Are you an employer in an office-based, "low risk" industry? Does your first aid kit consist of a few bandaids and paracetamol for the occasional paper cut or headache? Is work health and safety near the bottom of a long list of pressing issues demanding your attention?

If so, a recent decision from the ACT should serve as a wake-up call to remind *all* employers, regardless of their industry, that a failure to successfully identify hazards and manage health and safety risks in the workplace can have very serious, and very costly, consequences.

A step in the wrong direction

In *Coles Supermarket Australia Pty Ltd v Harris* [2018] (***Coles***), the ACT Court of Appeal upheld an earlier decision awarding a former Coles employee more than $1 million in damages for injuries sustained in a fall from a 360mm tall safety step.

The employee, Ms Harris, commenced employment with Coles on 11 November 2009 and attended an induction training day with other new starters. Ms Harris was also provided with a range of paperwork before commencing her first shift, which she claimed she had no time to review in detail before signing and starting work.

Coles led evidence that amongst the training materials Ms Harris was taken through during her induction was a document called a "Safe Work Practice" (**SWP**) for the use of the safety step, as well as a short video showing the step in use.

Source: RJ Cox Safe-T-Step

The SWP directed employees to always use the middle step when climbing and descending the safety step and to always step down backwards when dismounting the safety step. Ms Harris claimed she never received any personal instruction or supervision in the correct use of the step.

On 7 December 2009, Ms Harris was performing "presentation" duties, which involved her and another employee using a safety step to tidy up shelves on the supermarket floor. Ms Harris claimed that she saw her colleague repeatedly dismounting the step by stepping down to one side and kicking the step along the aisle to her next work area. Ms Harris copied her colleague's

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method of using the step as she performed her presentation duties.

On one occasion Ms Harris dismounted the safety step sideways by placing her right foot on the middle step. She claimed that her ankle then twisted, causing her to fall heavily on her right hip, ankle and shoulder. Ms Harris ultimately sustained a serious hip injury as a result of her fall and made a workers' compensation claim, which was accepted.

Coles's training and supervision gets the thumbs down down

At the first hearing in the District Court, Coles argued that the safety step was a common piece of equipment used in its supermarkets throughout Australia, the method of use of which was so obvious as to not require any formal training, and that in any event, the training provided to Ms Harris was adequate to discharge its duty of care.

The Court rejected these arguments, noting that a risk analysis and assessment conducted by Coles on the use of the safety step throughout its stores identified 385 safety incidents involving the step over a five (5) year period, 47% of which occurred when an employee was dismounting the step. The Court found that this data suggested the safety step constituted a hazard to be managed by Coles and that its training program for employees was inadequate, with the contents of the SWP conflicting with how the step was used in the seconds-long induction video and no evidence of any practical training or supervision at the workplace level.

On appeal, Coles once again pressed its argument regarding the obviousness of the use of the step, as well as claiming that the number of incidents occurring across its 750 stores over five (5) years showed that the risk of injury from using the safety step was "infinitesimally low". The Court of Appeal rejected both arguments, noting that Coles had considered the safety step a sufficient hazard to warrant conducting a formal risk assessment on its use and that an incident rate that amounted to 24 per year over the analysis period could not be dismissed as low risk.

Significance for Employers

The *Coles* decision demonstrates that work health and safety (**WHS**) hazards can be hiding in plain sight, involving the use of seemingly innocuous, commonplace equipment. Also, existing obligations to ensure safety of workers at work, and the due diligence obligations of directors, means that an organisation inevitably generates information about WHS risk.

All employers, including those in traditional "white collar" industries, should be using that information to continually refine their approach to safety. Businesses can take the following steps to discharge their legislative WHS duties:

- Undertake a risk assessment process of the entire business to identify any tasks, or items of plant or equipment, that could constitute a WHS hazard;
- Consider whether WHS hazards can be eliminated by changes to work processes or the purchase of alternative, safer plant or equipment;
- Consult with workers to obtain feedback on WHS hazards and risks and strategies for eliminating or managing them;
- Review existing safe work/operating procedures to ensure they are still appropriate and develop procedures for newly identified hazards;
- Provide training to all workers on any new or updated WHS policies and procedures; and
- Put systems in place to monitor the effectiveness of existing hazard management processes and identify any new risks as they emerge.

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