

Duty of employers to keep their employees safe

The Workplace Health and Safety Act provides a non-delegable obligation on employers to ensure the reasonable safety of their employees. The Court of Appeal has recently considered how far that duty goes, and held that the steps that need to be taken by an employer have to be reasonable in all the circumstances. In other words, there is no hard and fast rule.

A recent case involved an employee of an optometrist's business. She was frequently the only person at the "shop front" premises in what was generally agreed to be a peaceful inner Brisbane suburb. The premises consisted, relevantly, of a reception area with a counter and display frames, a consulting room with a sliding door, and a small workroom, which also doubled as the lunchroom. This room was fitted with an ordinary door.

An elderly customer entered the shop, and asked the employee to make a minor adjustment to his spectacles. She went into the workroom to do this, and while she was there, the customer assaulted her. Although her physical injuries were minimal, she apparently suffered major psychological injuries.

The trial judge took the view that the safety mechanisms were insufficient, particularly at a place where there was frequently only one employee. Although there appeared to be no evidence as to the efficacy of such measures, the judge considered that the employer should have installed either a self-locking door or some form of magic beam. At first instance, the employee was awarded damages in excess of \$600,000.

The Court of Appeal took the view that the protective measures considered by the trial judge were, in the circumstances, inappropriate. Even the employee gave evidence to the effect that the adjustment of spectacles was very much a case of "trial and error", and because of the need to keep bringing the spectacles out to the customer to be tried, the workroom door would probably be left open, regardless of what security fittings were attached to it. There was also evidence from the employer and others that there appeared to be no record of assaults of this kind in optometrists businesses over the previous twenty years.

The Court considered that any protective measures had to be appropriate in all the circumstances, and in the circumstances of this case there was no evidence that the employer had breached its duty. It therefore overturned the trial judge's decision, and found in favour of the employer.

This decision is consistent with another case a few years ago where a service station cashier, who was the victim of a robbery, claimed that the employer had breached its duty to her by not providing a security guard during the hours of darkness. The Court held that, given the various safety features that were

available (such as CCTV, the ability to remotely lock the doors and a panic button), it was unnecessary to provide a security guard as well.

While each case has to be considered individually, it is clear that the Courts are taking the view that employers should not have to go over the top in providing security features, and workplaces should not be turned into fortresses.

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