

Workplace Relations

June, 08

Employee On-Site Accommodation – A Workers Compensation Trap

A decision of the South Australian Workers Compensation Tribunal handed down on 2 June 2008 should raise concern amongst employers who provide on-site accommodation for their employees.

The Tribunal held that injuries sustained in a fall by an employee within an on-site residence, which was unrelated to any of her work duties, was compensable because the employer had “*induced or encouraged her to live on its premises for its own benefit*”.

This decision should prompt a general review of the provision of on-site accommodation to employees and the terms on which this accommodation is provided to ensure that employers are not exposed to unnecessary risk of workers compensation claims and levy rate increases.

The Facts

The claimant was also a director of the company which employed her. The company owned and operated a roadhouse in Roseworthy. For convenience, the worker and her husband, the other director of the employer, moved into accommodation on-site at the Roadhouse. They then rented their previous residence.

The circumstances of the accident are unclear due to the fact that the Tribunal found both the claimant and her husband were poor witnesses and indeed found against them on all matters of credit. What was clear was that the worker tumbled down stairs located within the on-site residence and badly fractured her arm. In her evidence and in her claim forms, the worker had attempted to portray this incident as occurring immediately after she had been working on her computer attending to the business of the roadhouse. The worker’s evidence on this point was not accepted. The fall occurred at approximately 4.30am. The roadhouse opened from 8.00am to 7.30pm. The Tribunal did not accept the worker’s version of the incident nor the worker’s husband’s version of events.

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Ultimately, the Tribunal was satisfied that it was more likely that the worker had got up in the middle of the night to use the bathroom and had fallen on her way back to her bedroom.

The Decision

Notwithstanding the adverse findings on credit, the Tribunal did find that the injury occurred out of or in the course of the worker's employment. This was based on the finding that the employer, namely the claimant (in her role as director) and her husband (the other director) induced or encouraged the claimant to live on the premises.

The Tribunal held that the arrangement was to the benefit of the employer due to the fact that there was evidence that their location on site reduced break-ins and created greater efficiencies in managing the roadhouse. The business itself had an annual turnover in the order of \$3.9 million which the Tribunal found underlined the fact that the claimant was managing the business very effectively. The quarters were provided apparently free of cost.

Accordingly, his Honour found that there was an inducement and encouragement on behalf of the employer for the worker to live on site, that this arrangement was to the employer's benefit, and that consequently the fall, although not happening in the circumstances as originally claimed by the worker, arose out of or in the course of her employment and therefore the disability was compensable and the worker was entitled to income maintenance payments and medical expenses.

Implications

If employers provide accommodation to employees, great care needs to be taken to structure the offer and those arrangements to minimise the risk that any injury within that residence becomes compensable for the purposes of South Australian legislation. An important element of this is the capacity of an employee to choose accommodation. If there is a real choice of accommodation and an employee chooses to live on-site or on the job, as a matter of their own real, and not theoretical, choice, then the position would arguably be no different to the employee living in their own private accommodation.

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This decision should prompt all employers to review the arrangements in place for providing accommodation for employees and, if possible, to clarify or re-negotiate those relationships to minimise the potential risk to the company.

Launer v EML (Lauman Pty Ltd t/as Roseworthy Roadhouse) [2008] SAWCT 28

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