

## CASE STUDY

# Reasonable care in the workplace

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**The Work Health and Safety Act 2011 (the WHSA) imposes a duty of care on all persons conducting a business to ensure the health and safety of their employees and others whose work they control while those people are at work.**

This includes ensuring a safe work environment, safe equipment, safe systems of work and provision of training, instruction and supervision.

The WHSA states that all persons at a workplace must:

- take reasonable care for his or her own health and safety
- take reasonable care that their acts and omissions do not affect the health and safety of others
- comply with instructions from, or policies written by, their employer in relation to health and safety.

The WHSA also requires that workers are consulted in relation to the identification and management of risks to health and safety. Workers can also appoint a representative of their choice to interact with the employer.

The *Workers' Compensation and Rehabilitation Act 2003* (the WCRA) allows a person to claim workers' compensation if they are:

- a worker and
- they sustain an injury and
- their work is a significant contributing factor to that injury.

It is an offence under the WCRA for an employer to seek to prevent an injured worker from making a claim for workers' compensation.

Workers' compensation can be paid, regardless of fault, providing the three circumstances set out above are satisfied.

If a claim is accepted, WorkCover manage return-to-work programs,

including light duties, which employers and workers must adhere to.

If an injury is sustained in circumstances where someone can be said to be "negligent" – that is, they did not do the right thing and their action or inaction caused a worker to sustain injury – the worker is eligible to bring a claim for common law damages.

## Reasonable care in the workplace scenarios

### Scenario 1

Kelly is an Assistant in Nursing employed by an agency, and was working in the sterilisation department in a large public hospital when she sustained an injury to her back. She was handling a canister weighing 2kg, which slipped from her hand and which she tried to catch. She had received general manual handling training from the agency but nothing at the hospital. She had never been specifically trained in how to handle this piece of equipment. She was aware the equipment was very expensive and that is why she tried to catch it when it slipped from her hands, so it did not fall to the ground and break.

Kelly had already had some problems with her back but they had never caused her to take time off work before. The injury she suffered is so bad that she has to have surgery to her back. The first lot of surgery did not go well and she had a second lot of surgery, which did more damage. She is unable

to return to her work as an Assistant in Nursing, or indeed any employment.

### Scenario 2

James is a Registered Nurse working in the emergency department of a public hospital. He has been trained by his employer in safe manual handling techniques. He knows that to transfer a patient from a stretcher to a bed required a three-man lift and the use of a slider sheet.

The department, however, is often short staffed and it is impossible to comply with the requirements. It is an unwritten rule that you do what you can to assist patients and all staff, even supervisors, do not comply with the procedure. In October 2012, James and a colleague who was an agency worker were transferring a critically injured patient to a bed. James moved the patient before his colleague was ready to do the transfer. James injured his back and his colleague injured his shoulder.

### Scenario 3

Mary is studying to be an Enrolled Nurse. She works as a Disability Support Worker in a high care needs residential house housing four residents. All require a high level of care. Mary works a regular nightshift to enable her to complete her studies during the day and also to care for her three children. Mary hopes to continue to work for her employer when she qualifies as an Enrolled Nurse, while she studies to become a Registered Nurse. Mary injured her back when she was 19 and in a car accident. It has niggled her over the years but never caused her to take time off work.

Mary is always rostered to work the nightshift alone. Although the residents are in bed for the majority of Mary's

shift, they require assistance during the night with going to the toilet and one of the residents, who has an acquired brain injury, will often try to escape.

Three of the four residents are not able to mobilise without assistance—two of those are female and one is a male who is clinically obese.


The house is fitted with ceiling hoists, however, these have never worked while Mary has been employed. There is a portable hoist but it is temperamental and only works some of the time.

There is a book in which Mary and other carers are able to note issues with facilities in the house. When Mary first started work two years ago, she would regularly record issues with the hoist and other equipment in the house. Mary was told by her line manager that she did not need to continually record these issues as her employer was aware of them and would get them fixed. It was also hinted that she would find it more difficult to obtain a position as an Enrolled Nurse with the same employer if she continued to be “difficult” about workplace health and safety.

In April 2012, Mary injured her back when trying to manoeuvre the male patient. The portable hoist was not working. Mary had two weeks off work and then returned to work on light duties. Her employer rostered her on her usual nightshift, alone, and when she complained about the lack of light duties, she was told to “just be careful”.

In July 2012, Mary hurt her back again when assisting a female resident to shower. The second injury was so bad that she is unable to return to work.

Her employer says her back injury is her own fault because she was told to be careful on light duties. They also say that her bad back was caused by the car accident when she was 19. ■



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## CASE STUDY

# Reflective exercise

Completing this reflective exercise will contribute to your Continuing Professional Development (CPD) hours.

The Nursing and Midwifery Board of Australia requires all nurses and midwives to complete a minimum of 20 hours CPD per registration year for each respective profession for which the individual holds current registration.

For example an individual who is a Registered Nurse and a midwife must complete 40 hours of CPD.

Please refer to [www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx](http://www.nursingmidwiferyboard.gov.au/Registration-Standards.aspx) for full details.

Effective learning is not simply reading a journal article—it requires you to reflect on your readings and integrate new information where it is relevant to improve your practice.

It should include:

- looking for learning points/objectives within the content on which you reflect
- considering how you might apply these in other situations to enhance your performance
- changing or modifying your practice in response to the learning undertaken. ■

## REFLECTION FOR CASE STUDY: Reasonable care in the workplace

Consider how the circumstances in each scenario might assist you at work.

The following questions are offered as a guide to assist you in identifying your learning from reading and analysing the content of the article.

The theme chosen for this structured reflection is reasonable care in the workplace, but other themes may include: the value of the nursing/midwifery contribution to policy development or to root cause analysis, in the prevention of adverse outcomes.

In a semi-structured reflection these are the types of questions you may ask yourself for each scenario:

1. What were Kelly's obligations in terms of workplace health and safety and in ensuring a safe workplace?
2. Do you believe Kelly's employer met their obligations in terms of workplace health and safety and ensuring a safe workplace? Why?

3. What could James have done to ensure that there were safe workloads in his Unit?

4. If James' patient had been injured, what would be the possible consequences for James and his colleague?

5. Do you believe Mary's employer could have done more to meet their statutory obligations? If so, why?

6. What action could Mary have taken to protect herself from the risk of injury as a result of the employer's failure to address her reported concerns about the lifting equipment?

Following reflection consider how you will retain and share your new knowledge about what impact workload issues have on safety, for your future practice.

To meet the NMBA standard it is important that you can produce a record of CPD hours, if requested to do so, by the board on audit. ■

The following is an example only of a record of CDP hours (based on the ANF continuing education packages):

Date	Topic	Description	Learning Need OR Objective	Outcome	CPD hours
27-03-10	Coroner's matter – workloads	Understanding the implications of the Coroner's recommendations for the establishment of effective workload management strategies	To increase my knowledge about the consequences of workloads demands and skill mix deficits on patient safety .	I have achieved a greater awareness of. ....	2.5 hrs

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