

## **WHS Duties in the Workplace**

### **Answer 1:**

Breach of duties generally includes the following situations under the WHS Act 2011(Foster 2012):

Reckless conduct that exposes an individual to a risk of death or serious injury or illness that is engaged in without reasonable excuse- Ignoring the further treatment and ignoring the fact of patient's chances of worsening up the situation results for reckless conduct that exposes an individual to a risk of death or serious

Injury or illness that is engaged in without reasonable excuse. Also, Vi, hospital's director of communication, while overhearing the word Ebola, does not get cautious, but ignores the serious threat of disease being spread by unreasonable reason that it would hurt Hospital's reputation. By doing this, he is not only increasing the risk of other patients but also increasing the risk of workers being infected there. This would result in serious breach of health and safety duties and can result in serious offense.

Failure to comply with a health and safety duty that exposes an individual to a risk of death or serious injury or illness -Criminal offense penalties for a breach of failure to comply with a health and safety duty -Leo is initially having the symptoms which are quite similar to EVD, but Dr. Wanda is unnecessarily prolonging the treatment by avoiding the tests. Even after listening to the senior nurse Sue (who has already identified the symptoms), the doctor completely neglected to immediately take up any by action. This creates a criminal offense penalties for a breach of failure to comply with a health and safety duty that exposes an individual to a risk of death or serious injury or illness, because, EVD if not treated on time may increase the risk of further serious illness for Leo.

Failure to comply with Health and Safety duty:Herein this scenario Leo has been prohibited to go for further checkups and test related to EVD, even after the senior nurse Sue's suggestion of being suspicious about Leo's illness and Wanda despite of the suggestion did not Sue, then after reading and finding about Leo, suggests Wanda about shifting him to the other ward from the general ward in a more protection unit, but Wanda has completely ignored the suggestion and has not

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been cautious, thus, increasing the risk for other patients in the hospital to get infected with a serious disease. This creates a serious offense for not complying with Health and Safety Duty .

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Fourth important aspect is that it is the duty of the officials and hospitals to report the safety considering the criticality of the disease the patient has come up with, here, neither the doctor nor the nurse is taking any action to at least report the safety of other patients or the workers , working in the hospital. This is another breach from the duties.

Last but most important concern is that the patient, Leo, should have been shifted to the other protection care unit, so that the disease should not be spread. Duties are confined to the management of risk , which may include avoiding the risk increasing from the EVD patient who is already in the hospital.

### **Answer 2:**

It is True that a worker and PCBU must meet the same legal standard . A legal obligation requiring adherence to a standard of reasonable care whilst performing any acts that could foreseeably harm others” WHS laws define “worker” very broadly to include: employees; contractors; sub-contractors; employees of contractors or sub-contractors; apprentices; trainees; outworkers; employees of labor hirecompanies; and, volunteers(Foster 2012). The code of practice does hold legal standing and compliance as a part of mandate providing other methods forming the standards and here the both the “worker” as well as the PCBU are considered as the

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Duty Holder which means a person who owes H&S duty under section 46 of the Work, Health and Safety Act 2011 and both hold the same roles and responsibilities.

### Penalties

#### Answer 3.

The three major or main categories which results in the criminal offense and breach of work health and safety duties are under section 30 of WHSA 2011 are (NSW Legislation 2014):

Category 1 – For reckless conduct, that exposes an individual to a risk of death or serious injury or illness that is engaged in without reasonable excuse;

Category 2 – failure to comply with a health and safety duty that exposes an individual to a risk of death or serious injury or illness, and

Category 3 – failure to comply with a health and safety duty.

The penalties levied on the two of the scenarios from the situation given can be:

- For the individual worker or the other person at the work place : in case of category 1 offense is \$300000 or 5 years imprisonment and in case of breach of category 2 it would be \$1500000 here in this case ,Dr. Wanda and The senior nurse Sue can be levied with the penalty charges.
- Officer means A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act., here in this case Vi was the person who had taken a decision over the hospital's functioning and he can be levied with \$600000 fine or 5 years imprisonment in category 1 offense and \$300000 fine in case of Category 2 offense.

#### Answer 4:

Following are the exceptions where there are chances of reduction in the penalty :

(1) A volunteer does not commit an offence under this Division for a failure to comply with a health and safety duty, except a duty under section 28 or 29.

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(2) An unincorporated association does not commit an offence under this Act, and is not liable for a civil penalty under this Act, for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

### **Risk and Control Measures :**

#### **Answer 5:**

#### **Answer 5 (a):**

According to the New South Wales Work Health and Safety Regulations 2011 duty to implement risk control measures to minimize risks to health and safety arises when there is an uncertainty about the hazard which may result in serious injury or illness and changes in the work place which may not be able to impact the efficacy of the control measures.

#### **Answer 5 (b)**

Five measures, which can be, used control risks are based on the hierarchy of the risk control levels(NSW Legislation 2014), which are :

Level 1 control measures :It includes the elimination of the hazard and associated risk. The best way to do this is to not allow the hazard at the workplace or by removing the trip hazards on the floor or by disposing unwanted chemicals.

Level 2 control measures : it includes avoiding the hazards by following the below mentioned approaches :

- Get the hazard substituted with a safer option
- Isolating the hazard from people
- Use engineering controls

Level 3 control measures:

These measures are not dependable on the hazard source but the other factors like human behavior and supervision by following the below mentioned approaches

- Use of administrative controls
- Use of Personal Protective Equipment (PPE) like face masks, muffs , gloves etc.

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### **Answer 5(c)**

In the given case study of Ebola, Since the patient infected with Ebola has already entered the premises, there are no chances that the hazard can be isolated or kept away, so level one control measures are automatically omitted. Hence the other two specific risk controlling measures, which can be implemented, are :

- 1) Isolating the hazard from people: this can be done by shifting the patient Leo from the general ward to the isolated ward, with the special protection unit so that the infection does not get spread among the other patients who are more prone to get infected, specifically the patients as their immune system would be slower when they are ill or are hospitalized.
- 2) The other way to control the risk of EVD getting spread is the use of Personal Protective Equipment (PPE) like face masks, muffs, gloves etc. so that the workers working in that specific premises does not get affected by the EVD.

### **Reasonably Practicable:**

#### **Answer 6 (a)**

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**Answer 6 (b):**

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The terms and conditions to screen the patients with Ebola Risk Assessment Tool are very easy and simple. It is a step wise bifurcation of the actions to be taken for identifying the symptoms and then go ahead with the further steps . If the patient has not got the initial or the primary situations like coming from a place, which is EVD, infected, then there is no need to further screening of the patient. Also , one needs to check that whether the patient has arrived to the hospital with the primary symptoms like vomiting, marked diarrhea, bruising, OR bleeding. If the same symptoms prevail, then only further screening needs to be done. So, initial and primary screening is very easy and less time taking, so I feel that it is reasonable practicable to screen every new patient with Ebola Risk Assessment Tool. And this option does not involve he cost factor as well (i.e. no tests are immediately recommended), so the screening for every single patient is feasible .

### **Work Cover Inspector:**

#### **Answer 7(a) :**

General functions and powers of an inspector are :

- (a) to provide advice and information about compliance with this Act,
- (b) to assist in the resolution of work health and safety issues at workplaces, those specifically related to access to a workplace by an assistant to a HSR, and issues related to the exercise or purported exercise entry rights under Part 7
- (c) to require compliance with this Act through the issuing of notices,
- (d) to review disputed provisional improvement notices,

However, general power of inspectors at a work places under section 162 A (NSW Legislation 2014) are :

- (1) This section applies if an inspector, in good faith, exercises functions under any relevant legislation in relation to a workplace that is not a workplace in relation to which the inspector has authority.
- (2) An inspector must, as soon as practicable after becoming aware of exercising functions in relation to such a workplace.

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(3) An appropriate authority may, by notice in writing, direct an inspector not to exercise functions in relation to an activity, work, plant, or place if it becomes aware that the inspector is exercising, or has exercised, such functions in relation to that activity, work, plant, or place and is not authorized to do so.

### **Answer 7 (b)**

Following are the responsibilities of a work cover Inspector at the work place( sections 160-162,171,172) :

Health and safety inspectors work to protect people's health and safety by making sure risks in the workplace are properly under control or not. They ensure employers comply with all aspects of health and safety laws and that workplaces without causing ill health, injury, or even death.

Health and safety inspectors work mainly for the Health and Safety Executive (HSE) . They either work for a general team or specialize in a particular area, like forestry, construction, or hazardous goods.

### **Answer 7(c) :**

An inspector can claim documents to be produced, to examine the documents, to require a person to answer questions(NSW Legislation 2014). A person cannot without rational excuse, refuse to comply. However, the inspector must also 'inform the person that he or she may refuse or decline to answer any question if answering the topic would tend to criminate him or her.

Immediately upon entering a workplace, an inspector must take all reasonable walk to notify, and show the likeness card to, the occupier of the workplace and, if members of any DWG are affected in any way by the entry, the health and safeness. However, the inspector is not required to notify if doing so would frustrate the intend of the entry or object unreasonable tarry.

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Under the Act, the superintendent is exact to give a written report when or as feasible after liberty the workplace, to the occupier and to the HSRs (if any). The report must cover a enumerate of items, intercept time and date, view, summary and so on

### **Answer 8:**

No, the officer does not have full authority to issue on the spot fine. The Officer is not liable and has the full rights to penalize the PCBU or the person responsible for the institution or undertaking at the work place under Section 120 of the WHSA 2011(Foster 2012). Under this section, a WHS permit holder is supposed to enter the work place and ask for the relevant inspection or make copies of the records on the basis of inquiry into the suspected contravention check :

employee records that are directly relevant to a suspected contravention, or

(b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting a business or undertaking. Prior to their visit.

Officers are supposed to ask for the specific documents or data of the hospital for the purpose of search warrants (sections 167-169)

If the documents and data are refused to be showed by the PCBU, the inspector is liable to tell the PCBU about the legal actions that can be taken. Also, in case of the noncompliance of not keeping the data or informing the officers about the absence of data, may result into the legal actions and not the monetary penalty for the hospital.

### **Answer 9:**

The hospital can very well take a legal action against the inspectors as they had come for the inspection without the prior notice before the 72 hours(section 155) as mentioned prior for the inspection and claim for the legal proceedings against the inspectors for the noncompliance of the formalities by the inspector. Worker's compensation claim:

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### **Answer 10:**

Under section 184 of WHSA 2011, A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under Division 3 of this Part 9 or he may claim Compensation and ordered in a proceeding:

- (a) brought in a court of competent jurisdiction, or
- (b) for an offence against this Act brought against the person claiming compensation.

### **WHS and Discrimination:**

#### **Answer 11:**

About the Nurses Belinda and Ivana, they are pregnant and as they are part of work place , there are chances that their babies may get infected as the Ebola is very hazardous, so under WHSA 2011, a PCBU's responsibility is to provide the prohibition towards the discrimination of the nurses as they are pregnant .Under Prohibition of discriminatory conduct(section 105)

A person commits an offence under subsection (1) only if the reason referred to in section

(1) For the purposes of this Part, a person engages in **discriminatory conduct** (section 105 )if:

- puts a worker to his or her detriment in the engagement of the worker, or
- alters the position of a worker to the worker's detriment, or

(2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organizes to take any action referred to in subsection (1) or threatens to organize or take that action.

Conduct referred to in section 105 is engaged in for a **prohibited reason** (section 106)if it is engaged in because the worker or prospective worker or the person referred to in section 105 (1) (c) or (d) (as the case requires):

#### **107 Prohibition of requesting, instructing, inducing, encouraging, authorizing or assisting discriminatory conduct**

A person must not request, instruct, induce, encourage, authorize, or assist another person to engage in discriminatory conduct in contravention of section 104.

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