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Care For Your Employees and Care For Their Children

The High Court of Australia recently handed down a significant decision extending the duty of care owed by employers to include a duty to protect the psychiatric wellbeing of the employee's children by not exposing their parent to risk of harm.

In *Gifford v Strang Patrick Stevedoring Pty Ltd* [2003] HCA 33 the employee/father was killed when a forklift reversed over him at the workplace situated in Darling Harbour, Sydney. The employee's children (aged 19, 17 and 14 at the time of the accident) learned of their father's death on the day of the accident.

The children claimed that they had suffered psychiatric injury as a consequence of learning about what had happened to their father. None of the children witnessed the accident or saw their father's body after the accident. Previously these circumstances would have defeated their claim.

However, the High Court found that in exposing the employee to risk, it was foreseeable that the employee's children would suffer nervous shock if death or serious injury resulted.

The Court noted that it is common for those who are close to a person who is killed or injured to suffer psychiatric injury on learning of that injury or death. The Court unanimously agreed that at common law an employer:

"owes a duty to take care to protect from psychiatric harm all those persons that it knows or ought to know are in a close and loving relationship with its employee."

The High Court's decision was one of principle only – as to the existence of the duty of care. The matter was remitted to the District Court for investigation as to whether in fact, the children had suffered a psychiatric injury and, if so, what damages were to be awarded.

The District Court had already dismissed a claim made by the wife of the deceased, finding that she had suffered no psychiatric injury; rather she had been affected by normal grief of a kind that did not give rise to an entitlement to damages.

If you would like any further information regarding the issues set out in this newsletter, please contact **Maria Saraceni**, at Jackson McDonald.

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