

## Case Study 2:

- Hospitality industry
- Company name: 'Sally's Café'
- New company: Commenced operations in October 2021
- Owner/Director: Sally Roberts
- Injured worker: Ruby White
- Injury: Worker sliced finger with knife in kitchen when preparing food

### Background:

Sally's Café was recently opened by Sally Roberts. Sally Roberts has over 20 years' experience working in the hospitality industry at a range of cafes and restaurants, and has just opened her own café. Sally's Café serves food and drinks, has dine in and take away options, and employs 2 full time staff members, and 10 casual staff members.

### Sally's Cafe and the WorkCover and Workers Compensation process:

#### 1. Starting a business, and taking out WorkCover insurance:

- During the process of setting up the business, Sally took out an Accident Insurance Policy with WorkCover Queensland ("**WCQ**").
- As Sally's Café is a new business, Sally had to estimate the café's estimated wages for that financial year and declare these to WCQ. Sally had to base this on the wages / salaries of the employees she expected to employ for that year. As Sally had prior experience in the industry she had a good idea of the number of full time and casual staff she would need to employ.
- As Sally is the director of Sally's Café, she is not covered under the Accident Insurance Policy (as a director of a company). She wasn't sure whether it was worth taking out Workplace Personal Injury Insurance to cover herself, she thought she would look after this in a couple of years when the business had grown.

#### 2. Understanding who needs to be covered under the WorkCover insurance:

- When taking out the Accident Insurance Policy, it was important for Sally to work out who was covered under the policy.
- Sally was aware that she was not covered in the policy, but assumed all her employed staff members would be covered. Sally enquired with her insurance contact at WCQ who confirmed Sally that all the Sally's Cafe employees would be covered.
- Sally was not planning to engage any subcontractors or labour hire workers to work at Sally's Café, so she did not have to look into whether they would be covered under the policy.

#### 3. Appointing a rehabilitation and return to work coordinator:

- Sally's Café did not meet the criteria for needing to appoint a rehabilitation and return to work coordinator ("**RRTWC**"), so Sally decided she would take on these duties if and when required.
- Sally didn't have any skills or experience working as a RRTWC, so she did some research and watched some videos online so that she understood the role and requirements.
- Sally decided that when the Sally's Café business grew she would reconsider hiring another staff member to fill the role of RRTWC.

#### 4. Steps to prevent workplace injury and illnesses:

- Sally knew that work health and safety ("**WHS**") was important, as some of the previous restaurants she had worked at had WHS committees and meetings.
- She accessed the WorkSafe Queensland website and downloaded some WHS documentation templates to use at Sally's Café. This included a WHS Policy, Evacuation Plan, and a Hazardous Chemicals Register.
- Sally didn't think she needed to prepare any procedures, instructions or guides for the kitchen work at this stage as the business was still quite small, and all the work in the kitchen was pretty straight forward.
- Sally also decided that she would take on any WHS duties for the café, and again would reconsider hiring another staff member to take on some of the WHS duties when the business grew.

**5. What to do when an injury occurs:**

- In December 2021, a Sally's Café employee Ruby White was working the morning shift, and was slicing up tomatoes in preparation for the upcoming lunch period. The knife that Ruby was using at the time was very blunt, and she had not sharpened it before use. As a result, Ruby was required to use extra force when cutting. When cutting up the last tomato for the day, the knife slipped from the tomato and cut deep into Ruby's left index finger.
- Luckily, Sally had obtained her first aid qualifications with a previous employer, so she attended to Ruby immediately following the incident. Sally they shut the café for the day and drove Ruby straight to the hospital.
- In the rush of getting Ruby to the hospital, Sally didn't think about recording the details in any kind of incident / injury form. She also hadn't set up a proper form for this yet.
- Sally notified WCQ of the injury the following week. She hadn't done this before so wasn't 100% sure on the requirements. She only just met the deadline of notifying them within 8 days of becoming aware of the injury.
- The injury was considered a serious injury, so Sally also had to report it to Workplace Health and Safety Queensland ("**WHSQ**").
- Sally maintained regular communication with Ruby following the injury.

**6. Dismissing an injured worker:**

- Sally considered terminating Ruby's employment following the incident. Sally was annoyed that Ruby hadn't bothered to sharpen the knife before slicing the tomatoes, which left the knife overly blunt, and ultimately led to Ruby's injury.
- Sally discussed this with a friend of hers who also ran their own business. Sally's friend advised her that legally she could not fire Ruby within 12 months of the work-related injury or illness occurring.

**7. The claims process:**

- A month after the incident, Ruby had still not returned to work. She submitted a claim for compensation, and emailed a copy of her work capacity certificate to Sally.
- WCQ accepted Ruby's claim, so Sally's Café had to pay the first week of Ruby's compensation to her. After that payment, WCQ managed the payments and compensation for Ruby and her recovery (this included medical and rehabilitation expenses).

**8. Types of claims:**

- Ruby then decided to progress from her statutory claim (for statutory benefits such as weekly compensation, and medical / rehabilitation costs) through to a common law claim.
- The common law claim meant that Ruby was suing Sally's Café, as she believed her injury was caused as a result of negligence on the café's part.

**9. Reviews:**

- Sally did not request a reasons for decision document, and did not submit an application for review with the Office of Industrial Relations ("**OIR**"). She was too busy running the café to consider these options, and she did acknowledge that Ruby was genuinely injured.

**10. Appeals:**

- As Sally did not submit an application for review, she did not need to go through the Appeals process.

**11. Legal representation (common law claims only):**

- As Ruby had progressed to a common law claim, and Sally's Café was being sued, Sally's Café required legal representation.
- WCQ appointed a law firm from their approved legal panel to represent Sally's Cafe. The law firm then contacted Sally, and worked with her to defend the claim.
- The law firm was aiming to prove that Sally's Café had taken reasonable steps to ensure they had adequate WHS policies and procedures in place.
- The fact that Sally had not yet prioritised putting in place procedures, instructions or guides for the kitchen work meant that proving she had taken reasonable steps to address WHS was not likely.

**12. Paying excess on your insurance premium:**

- As Ruby had taken a significant period of time off work at Sally's Café as a result of her work-related injury, Sally's Café had to pay excess on their insurance premium.

- This excess was paid to Ruby by the café as her first weekly payment of compensation (see section 7 above).

**13. The return to work process:**

- Initially Sally attempted to work with Ruby to assist her in returning to work at the café, however Ruby eventually resigned from her employment at Sally's Café.

**14. Steps to prevent a reoccurrence:**

- Following Ruby's work-related injury, Sally engaged an external WHS expert to come to Sally's Café and assist her in improving her WHS documentation and practices.
- The WHS expert conducted a risk assessment of the café and operations, and then worked with Sally to prepare safe working procedures and guides for the kitchen, as well as updating training and induction materials for staff.
- The WHS expert engaged with Sally and her other staff through this process, as they wanted to ensure the staff were on board with the changes to the café.