



DUTY OF CARE

DEFINITION OF DUTY OF CARE

Duty of care is a difficult term to define as there isn't a legal definition of the concept [except in occupational health and safety legislation]. Duty of care comes under the legal concept of negligence, and negligence belongs to the domain of common law. Common law is also known as judge-made law as the decision about guilt is decided using legal precedence and community attitudes and expectations. That is, there hasn't been an Act of Parliament passed defining what is legal or illegal but rather the decision is based on what is considered appropriate or not appropriate at a particular time in history.

PRINCIPLES OF NEGLIGENCE.

There are four key factors that are essential in deciding whether or not someone is negligent.

They are;

1. duty of care
2. standard of care
3. breach of duty of care
4. harm or loss

DUTY OF CARE.

This refers to the obligation to take responsible care to avoid injury to a person whom, it can be reasonably foreseen, might be injured by an act or omission. A duty of care exists when someone's actions could reasonably be expected to affect other people. If someone is relying on you to be careful, and that reliance is, in the circumstances, reasonable, then it will generally be the case that you owe them a duty of care. All Axess Ability staff will exercise a duty of care to all staff/clients

under their care/support that you are providing, and on which the person is relying.

Failure to exercise care in that situation may lead to foreseeable injury [in other words it could have been avoided with due care taken].

STANDARD TO CARE

Standard to care refers to what is expected of any other reasonable person/worker who performs the same duties. This is not about having to be the perfect worker but about being good enough and doing your job as well as any other worker. Judges when making their decisions regarding whether or not a worker has failed to provide a reasonable standard of care looks at many different such as;

- training that the worker has received
- laws and regulations
- practicalities relating to the situation
- needs of others in the situation
- current trends in the industry
- community values and attitudes

BREACH OF DUTY OF CARE

A breach of duty of care exists when it is proven that the person who is negligent has not provided the appropriate standard of care. That is, the worker [or agency] has done something that they shouldn't have done or failed to do something they should have done.

HARM OR LOSS

Harm or loss has to happen if someone is going to sue a worker for negligence. A worker is only deemed legally liable if a client is injured whilst in their care, if it can be proven that the worker has been negligent. This depends on a number of factors, such as whether;

- the worker owed the client a duty of care
- the injury suffered by the client was reasonably foreseeable
- the worker failed to take reasonable care to prevent the injury from occurring
- the harm was a direct result of the breach of duty

DIGNITY OF RISK

Associated with duty of care is the concept of dignity of risk. Dignity of risk refers to a person's right to experience all that life has to offer, such as learning a new skill or taking part in an activity that may entail some element of risk, but has benefits that might include gaining greater self-esteem and independence.

Most people with disabilities wish to lead lives which are as close as possible to that of people who do not have a disability and this inevitably involves taking some risks. Courts and the law of negligence do not, therefore, expect disability workers to shield their clients from all possible risks. They do, however, expect workers to take reasonable care [to be sensible and cautious] in their work.

This concept arises out of the key principles of the Disability Services Act. For example;

'People with disabilities have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development' [parsons, 1977] It can, however, pose concerns and dilemmas for staff. Value clashes between clients and workers also can play a role here as well.

FULFILLING DUTY OF CARE RESPONSIBILITIES

Fulfilling duty of care responsibilities involves ensuring that adequate care is taken to avoid injury. To do this Axess Ability staff will keep the following in mind.

Foreseeable injury;

Regarding assessing a certain activity or situation for foreseeable injury to a client or others, keep in mind;

- prior knowledge of the person and their capacities
- the dangers of the situation
- the person's awareness of risks/ risk analysis within programs
- assessments/reports regarding the person's needs and vulnerabilities

We may have a client that wants to do something that, on quick reflection, seems dangerous [such as a person with a disability rock climbing], however, when you look more closely at their capabilities and their awareness of the risk involved, with certain precautions it may be quite possible to minimise the risks with appropriate care.

SERIOUSNESS OF THE INJURY

Regarding assessing the likelihood of a potentially serious injury to a client, Axess Ability will keep in mind the potential seriousness of the injury, even where the likelihood of it occurring might seem quite remote.

VALUES OF WORKERS

In making an assessment of foreseeable risks and benefits of an activity for a client; Axess Ability partners will;

- be aware of how staff values can influence a service's definition of risk, at all times.
- operate from the value base of the client
- make sure the client has access to information and support that will enable them to make decisions and to form their own values.

DOING WHAT IS REASONABLE TO AVOID INJURY

In looking for ways to adjust activities or situations when necessary to minimise foreseeable harm, consider;

- placing the least restrictive on client's rights
- compromising the rights of as few people as possible.

SUPPORTING PEOPLE TO CONFRONT RISKS SAFELY

To help balance foreseeable harm with benefits of an activity or situation, Axess Ability will aim to empower clients to take control over and responsibility for the situations, including the risks, with which they are confronted.

SAFEGUARDING OTHERS FROM INJURY

Remember that in your assessment of potential harm occurring duty of care does extend to other consumers and members of the public, who access Axxess Ability.

Axxess Ability Policy and Procedure includes the following;

- will ensure that there is a clearly written policy and procedure, which enables staff to understand and perform their duty of care.
- will encourage consumers, staff and significant others [such as parents and carers] to work together to cooperatively develop strategies and identify solutions for challenging duty of care issues.
- will ensure that staff receive appropriate, relevant training and support to perform their duty of care
- will make the ‘Duty Of Care’ policy available to all employees ie; orientation training and induction that includes information about duty of care, the policy is also available upon request to clients, staff, parents, volunteers and significant others
- employees will need to seek advice and support from internal or external professionals to deal with issues that challenge duty of care and dignity of risk
- appropriate documentation relating to daily duty of care responsibilities will be maintained at all times [e.g. case notes]
- will ensure that clients participate in decisions regarding their program choices
 - issues relating to duty of care must be discussed with partners.

As you can see, the thrust of duty of care policy is to collaborate with the relevant people involved and to be mindful of accountability and client rights while working at Axxess Ability.

APPROVAL AND REVISION HISTORY

| FORM No | Approved/Amended/Rescinded | Date | Name | Position |
|----------------|-----------------------------------|-------------|-------------|-----------------|
| HR0003 | Approved | 8/4/14 | Nigel Head | Partner |
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