

Health and Safety at Work Act 2015

February 2016

Health and Safety Update

The Health and Safety Reform Bill has been passed by Parliament and will come into effect on 4 April 2016. The new Act, called the Health and Safety at Work Act 2015, provides for a significant overhaul of New Zealand's health and safety legislation. As discussed in our previous health and safety updates, the Act requires more extensive participation, leadership, and accountability than the previous regime.

Duties

While the Health and Safety in Employment Act 1992 centred on the relationship between employer and employee, the Health and Safety at Work Act imposes duties on a number of categories of people such as:

PCBU's (a person conducting a business or undertaking) – This includes individuals, companies, partnerships, body corporates and unincorporated bodies. So far as reasonably practicable (see definition below), a PCBU must ensure that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking. In doing so, a PCBU must ensure, so far as reasonably practical, for the provision and maintenance of a safe work environment, safe plant and structures, and safe systems of work. They must also provide

adequate facilities for the welfare of workers, and provide any information, training, instruction and supervision necessary to protect all persons from risks to their health and safety;

Officers of a PCBU – This includes any other person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking i.e. company directors and chief executives. This does not include those who merely advise or make recommendations. Officers of a PCBU must exercise due diligence to ensure that the PCBU complies with any duties or obligations.

Workers – These are individuals who carry out work in any capacity for a PCBU. This includes employees, contractors and subcontractors, apprentices and trainees, as well as volunteer workers. Workers must take reasonable care for their own health and safety as well as that of those around them. Workers must also comply with, and cooperate with any instruction given by a PCBU as well as any health and safety policies put in place. Worker engagement, participation and representation are central concepts of the Act.

Other persons at a workplace – This includes any other person at a workplace (whether they have

another duty or not). Such other persons have the same duties as workers in that they must take reasonable care for their own health and safety as well as those around them, and comply with any instruction given by a PCBU. As well as having a duty themselves, “*other persons at a workplace*” will also be covered under a PCBU’s duty to ensure the health and safety of “*other persons*”.

A duty holder may not transfer their duty to another person. It is possible for multiple people to hold the same duty and for one person to hold more than one duty.

Definitions

“**Reasonably practicable**” – Means that which is, or was, at a particular time, reasonably able to be done in relation to ensuring health and safety, taking account and weighing up all relevant matters including:

- The likelihood of the hazard;
- The degree of harm that might result;
- What the person concerned knows or ought reasonably to know;
- The availability and suitability of ways to eliminate or minimise the risk; and
- The cost associated.

“**Workplace**” – Means a place where work is being carried out, or is customarily carried out, including any place a worker goes, or is likely to be while at work. These changes make it clear that a place does not remain a workplace indefinitely once the work has finished.

“**Volunteer workers**” – A distinction is made between casual volunteers and “*volunteer workers*”. Volunteer workers

are defined as those who work for a PCBU with its knowledge or consent on an ongoing or regular basis, and whose work is integral to the business or undertaking. The definition excludes volunteers who are participating in fund-raising activities, assisting educational institutes or sports clubs and caring for another person in the volunteer’s home. It is important to note that the health and safety of casual volunteers will still be covered under a PCBU’s duty to ensure the health and safety of “*other persons*”.

Other points to note

Workplace stress – Although not specifically stated, workplace stress is included under the definitions of “*hazard*” and “*health*”. “*Hazard*” includes a person’s behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person’s behaviour). “*Health*” is defined as physical and mental health.

Health and safety representatives – PCBU’s who run a small business in low-risk sectors and who employ fewer than 20 employees may choose not to elect health and safety representatives.

Enforcement

The Act has increased the actions a WorkSafe inspector may take in situations where there hasn’t been a breach:

- Improvement notice – Where they reasonably believe a person is contravening or is likely to contravene the Act or regulations, a WorkSafe inspector may issue an improvement notice requiring a

PCBU to take steps to prevent or remedy the contravention. Non-compliance with this notice may result in a fine of up to \$250,000 for a company or \$50,000 for an individual;

- Prohibition notice – Where they reasonably believe an activity is occurring the workplace that involves or will involve a serious risk or imminent exposure to a hazard, a WorkSafe inspector may issue a prohibition notice. This notice may prohibit that activity from being carried out. Non-compliance may result in a fine of up to \$500,000 for a company or \$100,000 for an individual; and
- Non-disturbance notice – Where they reasonably believe it is necessary to facilitate the exercise of their compliance powers, a WorkSafe inspector may issue a non-disturbance notice to a PCBU. This notice may require a site to be preserved, both where a notifiable event has occurred and in other circumstances. Non-compliance may result in a fine of up to \$50,000 for an individual or \$250,000 for any other person (such as the Crown, or a corporation).

In situations where there has been a breach, WorkSafe may prosecute duty holders. If prosecution is successful, the Court may impose penalties which

may include:

- Fines, which vary depending on the breach, but may be up to a maximum of \$300,000 for an individual, \$600,000 for an officer, and \$3,000,000 for a PCBU;
- Reparation payable to a person injured by a breach;
- Costs payable to WorkSafe;
- Adverse publicity orders;
- Restoration orders, requiring an offender to take specified steps to fix a problem;
- Project orders, requiring the offender to undertake a specified project to improve health and safety;
- Injunctions, to either stop or require specific conduct of the offender; and
- Training orders.

Next steps?

Regulations to support the Act are currently being drafted and WorkSafe is in the process of preparing formal guidance and general information on the new legislation to help people prepare for the new requirements. Before the Act comes into effect, it is important for duty holders under the Act to review and update their health and safety policies to ensure they comply with the new legislation.

If you would like more information regarding the above, or have any questions, please contact us.

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