



Changes to NZ Health and Safety Legislation

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NZ Health and Safety – the biggest shake up in 20 years.

Following the recommendations of the Royal Commission of Inquiry into the Pike River Coal Mine Tragedy in 2012 and the Independent Taskforce on Workplace Health and Safety in 2013, the government established a new Crown Agency for regulating Health and Safety called 'WorkSafe NZ'.

In 2013, the Government also released the 'Working Safer' reform package which is aimed at lowering the workplace injury and death toll by 25% by 2020 by making every workplace and everyone in that workplace responsible for their own safety and the safety of others.

To do this, the Health and Safety Reform Bill was created. This Reform Bill passed in Parliament and became the Health and Safety at Work (HSAW) Act as of the 4th of April 2016. This new law beefs up penalties for non-compliance; shares the responsibility across people at all levels of business and focuses on improved worker participation.

What do we need to know?

Levels of Responsibility

No longer does the responsibility for Safety in the workplace, just fall on the 'Employer'. The HSAW Act shares various duties on Persons Conducting a Business or Undertaking (**PCBU**), Officers, Workers, and Others (including Contractors and Volunteers).

In essence, this means no one can 'opt out' of Health and Safety, put their hands in the air and say "it's not my problem". Safety is everyone's responsibility.

PCBU

The primary duty to ensure Health and Safety sits with the PCBU – as the person or business in the best position to control risks in the workplace. The PCBU is responsible for the Health and Safety of anyone working for them (including Contractors, Volunteer Workers and Employees) as well as those within the vicinity of the work they are carrying out or by using the products and services they provide (including Customers, Visitors and the Public).

The PCBU's specific obligations, so far as is reasonably practicable:

- providing and maintaining a work environment, plant and systems of work that are without risks to health and safety
- ensuring the safe use, handling and storage of plant, structures and substances

- providing adequate facilities at work for the welfare of workers, including ensuring access to those facilities
- providing information, training, instruction or supervision necessary to protect workers and others from risks to their health and safety
- monitoring the health of workers and the conditions at the workplace for the purpose of preventing illness or injury.

A PCBU will usually be a company; however a PCBU can be an individual in the case of a Sole-Trader. WorkSafe NZ gives the following examples as PCBU:

- A retail business
- A wholesale business
- A manufacturing business
- An import business
- An owner-driver of their own courier business
- A fast food franchisor and the operator of the fast food outlet (the franchisee)
- A self-employed person operating their own business
- A government department
- A local council
- A school
- A partnership
- A building company, including principal contractors and sub-contractors
- A not-for-profit organisation that employs admin staff

Officers

All PCBU's will have within them individuals who hold a senior governance role in the organisation, those that exercise significant influence over the management and decision making in that business. These individuals are deemed to be 'Officers' under the HSAW Act, and because of the role they play, they have to exercise due diligence to ensure that the PCBU complies with its duties.

Examples of Officers:

- Company Directors
- Partners
- Board Members
- CEO

Essentially, it is not enough to manage a company, sit on a Board of Directors or make decisions that affect those that work for you or within the PCBU – without taking safety seriously and without making sure that you are asking the questions that allow you to fully understand what is happening from the ground floor up. Understanding the hazards and

risks within the operations of the PCBU, assessing accidents and near misses, ensuring the PCBU has the resources and acts accordingly are all examples of due diligence.

Hearing no news and thinking that is good news...that is not an option anymore.

Workers

The HSAW Act also takes into consideration Workers and the responsibilities they have to themselves and others in the workplace – this includes taking reasonable care of their own safety, ensuring their acts or omissions don't harm others, complying and cooperating with the policies and procedures of the PCBU.

In order for the PCBU to ensure Workers are on board and taking safety seriously, the HSAW Act focuses on Worker Engagement – these are practices such as electing Health and Safety Reps, introducing Health and Safety Committees, and having regular Health and Safety meetings.

While there are specific requirements for Worker Engagement for PCBUs with more than 20 Employees and those in high risk sectors – the main idea is that Health and Safety should be a frequent topic of conversation between everyone at all levels of the business.

This is the key to ensuring PCBU's and Officers are hearing what is going on at an operational level of the business, and for Workers to ensure they fully understand the policies and procedures they are working with.

Volunteers

Under the HSAW Act, there are clear definitions of what categories Volunteers fall into. Firstly let's look at the responsibilities of a Volunteer Organisation and then Volunteers themselves.

Volunteer Organisations - A Volunteer organisation that has no paid Employees (only Volunteers) is not a PCBU, they are deemed to be a 'Volunteer Association' – therefore the Association and the Volunteers that work under it are not covered by the Act.

If the Volunteer Organisation has at least one paid Employee – then the Organisation is deemed to be a PCBU and has the primary duty under the Act.

Volunteers working for a PCBU - The Act covers Volunteers that work for a PCBU regularly, on an ongoing basis and who are integral to the PCBU's operations. In summary, if you are a Volunteer Worker – your duties are the same as a Worker. If you are a PCBU that has a Volunteer Worker working for you – your duties are the same as if they were a Worker.

The act doesn't cover Volunteers that work on a casual basis or the following activities (Casual Volunteers):

- Participation in a fundraising activity
- Assistance with sports or recreation for an educational institute, sports or recreation club
- Assistance with activities for an educational institution outside the premises of the educational institution.
- Providing care for another person in the volunteer's home.

However, if you are a PCBU with a Casual Volunteer working for you, your duties are the same as those towards the likes of Customers or Visitors.

Levels of Fines & Penalties

One of the changes to the Legislation that has had quite a bit of time in the press is the increase in fines and penalties for non-compliance. Because these fines have increased significantly, and because there is now personal liability on Officers, these scary newsworthy headlines are making people sit up and take notice.

Here is what you need to know...

WorkSafe NZ Inspectors can call on your place of business at any time. They aren't there to 'catch you out', in most cases they are hoping to give you the big tick and move on.

But, if they do find an inspection pulls up a few areas of concern, Inspectors have the power to issue:

- Improvement Notices – this is for minor issues, you can carry on working and WorkSafe gives you a period of time to fix the problem and report back.
- Prohibition Notices – if it's serious, you need to down-tools, stop work and you won't be able to start again until you have fixed the problem and been given the go-ahead.
- Non-Disturbance Notices – often in the case of an accident, WorkSafe can 'freeze' a worksite for a specified time while an investigation is carried out.
- Infringement Notices – these are instant fines for breaching obligations
- Enforceable Undertakings – where you commit to addressing an issue and then fail to do so – which will then result in an instant fine.

The Act now also provides for three levels of offences in relation to breaching the duties of the Act.

It is important to note that no insurance policy will cover the fine.

			Max. Prison Term	Max. Fine
Offence of reckless conduct in respect of a health and safety duty (clause 42)	A person who has a health and safety duty, without reasonable excuse, engages in conduct that exposes a person to a risk of death or serious injury or illness, and the person is reckless as to the risk	Individual (e.g. a worker or a self-employed PCBU)	5 years and/or	\$300,000
		Officer of a PCBU	5 years and/or	\$600,000
		Body Corporate (e.g. a company)	–	\$3 million
Offence of failing to comply with a health and safety duty that exposes individual to risk of death or serious injury or illness (clause 43)	A person who has a health and safety duty fails to comply with the duty and that failure exposes a person to risk of death or serious injury or illness	Individual (e.g. a worker or a self-employed PCBU)	–	\$150,000
		Officer of a PCBU	–	\$300,000
		Body Corporate (e.g. a company)	–	\$1.5 million
Offence of failing to comply with a health and safety duty (clause 44)	A person that has a health and safety duty fails to comply with that duty	Individual (e.g. a worker or a self-employed PCBU)	–	\$50,000
		Officer of a PCBU	–	\$100,000
		Body Corporate (e.g. a company)	–	\$500,000

What do we need to do?

Safety can be simple, your Health and Safety system doesn't need to be time consuming and complicated. The most important thing is that it works for you and that it assists in keeping you, your customers and everyone you work with and around safe.

We suggest reviewing your system by starting to look at what we call the 'High Five' – five areas you can start working on now, to make sure you are on the right track.

1. Check you as the PCBU have policies and procedures up to date and documented (such as Drug and Alcohol Policies, Incident Reporting Procedures and Hazard/Risk Identification Procedures). Ensure these are reviewed regularly by Officers and communicated clearly to everyone in your workplace.
2. Check that you are documenting down the hazards/risks that you have noticed in your workplace and then ensure those hazards/risks are either eliminated or minimised and record those controls you have put in place. It is also important to assess the risk while reviewing your hazards – so base how extensive your controls are off an assessment of the likelihood of an injury occurring from the hazard, and how bad that injury could be. Remember hazards can include the work you do, the tools you use or the environments you work in. This should also be reviewed on a regular basis and significant hazards/risks should be reported to Officers.
3. Ensure you are documenting and reporting any work related incidents, injuries and illnesses that occur, investigating them and putting preventative measures in place where possible – and that you have a process for reporting notifiable injuries and incidents to WorkSafe NZ.
4. Look at how you document the training and induction that you do with your Workers (including Contractors and Volunteer Workers) to make sure they know how to work safely. What Worker Engagement practices do you have in place? Are you discussing Health and Safety on a regular basis? Are your Workers actively participating? If not, then why?
5. Write up emergency procedures for all situations you work in.

These five areas are the basis of a simple and easy to manage safety system. Of course some businesses will require more or less than this, but these are great areas of your business to start looking at first.

Putting time and resources into your Health and Safety system is not only complying with legislation, it is the right thing to do – and if you can't do it alone, ask a specialist consultant to help. Implementing a Health and Safety system that works could be the best investment you make.