

Health and Safety requirements: The Health and Safety at Work Act

Following multiple delays in the passage of the Health and Safety Reform Bill (the Bill) through parliament, the Bill has now been released and is laid down for enactment in April 2016. There has been much media coverage of this legislation and whilst there have been amendments made, the underpinning principles remain unchanged. These include: the requirement for health and safety leadership, engagement with employees and a partnership approach in order to create safer work places.

A series of regulations are being developed to support the new law, which will be called the Health and Safety at Work Act (the Act), as well as the transition to the new regime for businesses. The regulations include: general risk and workplace management; major hazard facilities and engagement; worker participation and representation. Once the regulations are finalised formal guidance will be issued. This will become available in 2016.

Key elements of the legislation

The Act works to focus effort on what matters, based on business risk, control and size:

- Proportionality – what a business needs to do depends on its level of risk and what it can control;
- A shift from hazard spotting to managing critical risks – actions that reduce workplace harm;
- Introduction of the “reasonably practicable” concept – focusing attention on what’s reasonable for a business to do;
- A change of focus from the physical workplace to the conduct of work – what the business actually does and so what it can control;
- Increased support for more effective worker engagement and participation – promoting flexibility to suit business size and need;
- Changes to the definition of ‘duty holder’ by moving to a more inclusive definition of ‘person conducting a business or undertaking’ (PCBU).

Until the new Act comes into effect in April 2016, the current Health and Safety in Employment Act 1992 remains in force.

Failure to comply with this legislation may result in fines that are considerable. For reckless conduct the maximum penalty is 5 years imprisonment and a fine up to \$500,000. Where serious injury results because

of failure to comply, a fine of up to \$300,000 can be applied. Fines for non-compliance, regardless of an injury or death occurring can be up to \$100,000.

Person Conducting a Business or Undertaking (PCBU) obligations

The Health and Safety in Employment Act 1992 primarily focuses on the employer and employee roles. The PCBU concept is to replace all 'duty holders' and better reflect the complex nature of the modern workplace where there can be multiple working arrangements for workers in the same location or for the same business.

The PCBU concept recognises that a business or undertaking has an influence over the health and safety of workers, even where those workers may not be its direct employees. Duties will be allocated to those people in the best position to control risks to health and safety, as are appropriate to their role in the workplace.

PCBU definition:

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:

- (i) workers engaged, or caused to be engaged by the person; and*
- (ii) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking¹.*

People not allocated PCBU duties would be those employed or engaged solely as a 'worker' or an 'officer' of the business or undertaking².

The Due Diligence Duty of Officers

A new duty proposed by the Bill is that an officer of a PCBU (such as a director, business owner or partner) must exercise due diligence to ensure that the PCBU complies with its duties.

Previously an 'officer' included a person who makes decisions affecting the whole or a substantial part of a PCBU's business. This has been narrowed to a person in a position to exercise significant influence over the management of the business or undertaking. The definition expressly excludes those who 'merely advise' or 'make recommendations' to officers.

The Government intends to clarify by Supplementary Order Paper (SOP) that the extent of the officer's duty will:

- Depend on the nature of the business or undertaking;
- Take into account the position of the officer and the nature of their responsibilities; and
- Be limited to what is within the ability of the officer to influence and control when managing the risk.

¹<http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/safety-first-blueprint.pdf>

² <http://www.business.govt.nz/worksafe/about/reform/1-pcbu>

The narrowing of the definition of ‘officer’ is consistent with the intention only to hold those at the very top of organisations criminally responsible for breaches of duty³.

Duties of Workers and Others

The inclusion of health and safety duties of workers and others persons (such as visitors, patients or clients) at a workplace is to ensure that every participant has a statutory duty for health and safety and must take reasonable care to fulfil that duty. This underlines the underpinning principles that health and safety at work is the responsibility of everyone who is there⁴.

Workplace health and safety considerations

There will be time for ‘duty holders’ to prepare and WorkSafe New Zealand will provide information of the changes to the Bill before the law comes into force, however to support this process it is recommended to:

- Be familiar with the key concepts of the legislation;
- Review current workplace health and safety practices;
- Identify health and safety risks and take action to prevent these from causing critical risk and harm;
- Attend to key matters.

This information is not a substitute for legal advice, and organisations are encouraged to seek independent advice if an issue arises implementing the new requirements.

³ <https://www.chapmantripp.com/publications/Pages/Changes-to-the-Health-and-Safety-Reform-Bill.aspx>

⁴ <http://www.business.govt.nz/worksafe/about/reform/4-upstream-duties>