

WE KNOW

HEALTH & SAFETY

HEALTH AND SAFETY IN THE WORKPLACE

QUICK GUIDE

This Quick Guide provides summarised information about the general duties of employers arising under the Health and Safety at Work Act 2015.

WHAT THE ACT SAYS

The guiding principal of the Health and Safety at Work Act 2015 is that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from work hazards and risks as is reasonably practicable.

The main purpose of the Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by:

- Protecting workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work
- Providing for fair and effective workplace representation, consultation, co-operation and resolution of issues in relation to work health and safety
- Encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices and assisting PCBUs and workers to achieve a healthier and safer working environment
- Promoting the provision of advice, information, education, and training in relation to work health and safety
- Securing compliance with the Act through effective and appropriate compliance and enforcement measures
- Ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under the Act
- Providing a framework for continuous improvement and progressively higher standards of work health and safety.

HOW DO YOU DO THIS?

By ensuring you have systems, policies and procedures and instructions in place which cover:

- Identifying, assessing, controlling, monitoring and reviewing hazards and risks
- Training, educating, instructing and supervising your workers and other people, such as volunteers or contractors
- Reporting, recording and investigating all injury, illness or incidents
- Having plans in place to deal with all likely workplace emergencies
- Providing opportunities for worker engagement, participation and representation
- Managing the engagement of contractors.

HEALTH & SAFETY AT WORK ACT – THE NEW LANGUAGE

The new Act replaces familiar phrases such as employer, employee, principal and contractor with:

- PCBU (Person conducting a business or undertaking)
- Officer
- Worker

WHAT IS A PCBU?

In general:

- A 'business' is an activity carried out with the intention of making a profit or gain; and,
- An 'undertaking' is an activity which is non-commercial in nature.

In most cases a PCBU will be a business entity, such as a company, with more than one employee. However, an individual carrying out a business as a sole trader or self-employed person will also be a PCBU e.g. 'Bob the Builder'. In this case, the individual (Bob) is the PCBU.

The PCBU has the primary duty of care to ensure the health and safety of workers who work for the PCBU and workers whose activities in carrying out work are influenced or directed by the PCBU. In addition, the PCBU must ensure 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.

WHO IS AN OFFICER?

A PCBU is governed by individuals who, through their decision making, influence the specific activities that will in turn ensure the success or failure of health and safety initiatives and whether the PCBU is complying with its own duty.

These individuals make important decisions on the finances, planning and resources that are available for health and safety and the policies that support the PCBU to comply with its health and safety duties. These individuals also strongly influence the culture of the PCBU and accountabilities within it.

An Officer, in relation to a PCBU, is:

- Owner, Director, Partner, General Partner; and
- Any person occupying a position comparable to that of Director of a company; and
- Any person who is able to exercise significant influence over the management of the PCBU (e.g. Chief Executive, Managing Director, General Manager, Practice Manager, the person at the top of the management structure).

In most cases the Officers of a PCBU will be a group of very senior leaders. Officers have the duty to exercise due diligence to ensure the PCBU complies with its duties or obligations. Officers can fulfil their duty by taking reasonable steps:

- To acquire, and keep up to date, knowledge of work health and safety matters; and
- To gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and

- To ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- To ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- To ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
- To verify the provision and use of resource and processes.

WHO IS AN WORKER?

Working relationships have changed dramatically during the course of the 1992 Act. The new Act reflects our varied working arrangements by talking about workers instead of just employees. A worker carries out paid or unpaid work in any capacity for a PCBU. A worker may be:

- An employee; or
- A contractor or subcontractor; or
- An employee of a contractor or subcontractor; or
- An employee of a labour hire company who has been assigned to work in the business or undertaking; or
- An outworker (including a homemaker); or
- An apprentice or a trainee; or
- A person gaining work experience or undertaking a work trial; or
- A volunteer worker.

Workers have duties under the Act and, while at work, all workers must:

- take reasonable care for his or her own health and safety; and
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act or regulations; and
- co-operate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

OVERLAPPING DUTIES

Frequently a PCBU will have duties covering other people who are not employees, such as:

- General public
- Contractors/sub-contractors
- Visitors, volunteers, work experience people
- A self-employed person.

The Health and Safety at Work Act 2015 sets out duties which are in turn supplemented by regulations, approved codes of practice and guidelines. The Act makes it quite clear that duties are not transferrable and more than one PCBU can have the same duty – therefore the Act requires PCBUs to consult, cooperate and coordinate when they have a duty in relation to the same matter.

The Health and Safety Regulations 2016 made under the Act describe some of the requirements that apply to specific work situations. Like the Act, regulations are enforceable and breaches may result in prosecution and fines. In particular, two regulations apply to ALL workplaces. These are:

- Health and Safety at Work (General Risk and Workplace Management) Regulations 2016
- Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

Approved Codes of Practice are statements of preferred work practices or arrangements that have been approved by the Minister for Workplace Relations and Safety under the Act. Their requirements are not mandatory or enforceable as such, but their observance is accepted in Court as evidence of good practice and taking all reasonably practicable steps.

Good Practice Guidelines developed by, or in conjunction with, WorkSafe New Zealand may not have undergone a formal approval process, but are nevertheless an important source of guidance for PCBUs and others on how to meet the Act's requirements.

For further information regarding Health and Safety or help with developing systems and procedures please contact the Canterbury Employers' Chamber of Commerce, e-mail Helen Mason: email helenm@cecc.org.nz, Steve Cooper: email stevec@cecc.org.nz or Alan Boswell email: alanb@cecc.org.nz or phone 03 366 5096.