

Health and Safety at Work Act 2015: What you need to know

New health and safety laws come into force on Monday, 4 April 2016. The new Act will introduce significant changes to workplace health and safety, creating new classes of duty holders, new corresponding duties, and significantly increasing penalties. We summarise below the most significant parts of the new Act, and steps you should be taking to prepare.

PCBUs

The new legislation imposes a primary duty on 'Persons Conducting a Business or Undertaking' (PCBU) to ensure the health and safety of workers and all those affected by the PCBU's business.

A PCBU is a new concept in New Zealand. Despite the word 'persons' causing some confusion, the definition is wide enough to cover companies, partnerships, sole traders, volunteer organisations and incorporated societies. The definition also extends the primary duty from an employer or person in control of a place to work to cover any entity that designs, manufactures, imports or supplies plant, substances or structures; those who manage or control fixtures, fittings or plant at workplaces and to those who install, construct or commission plant or structures.

PCBU Duties

Under the new Act a PCBU must take *all reasonably practicable steps* to eliminate, isolate or minimise risks to health and safety. On a practical level, a PCBU needs to constantly identify, assess and deal with risks arising from its business.

Under current legislation, health and safety obligations primarily fall on the employer who *controls* a workplace. Under the new Act, all PCBUs will be responsible to some degree. When PCBUs have overlapping duties (for example, on a construction site where multiple businesses are involved in the project), they must consult, cooperate and coordinate their activities with all other PCBUs that have a duty in relation to the same matter. The extent of the individual PCBU's duty will depend on the ability of the PCBU to *influence and control* the matter.

Where you are a PCBU working alongside other PCBUs, you should:

- Discuss how to collectively manage the risks arising from the work being carried out by each PCBU
- Determine the arrangements for managing risks, including what steps will be in place and who will be responsible
- Agree on how risk management will be monitored within the workplace, and
- Ensure there are mechanisms in place for constant collaboration and coordination on health and safety issues (for example, a health and safety committee made up of representatives from multiple PCBUs).

Officer's Due Diligence

From 4 April, 'Officers' of PCBUs will have personal duties to exercise due diligence to ensure their PCBU complies with its health and safety obligations.

For the purposes of the new Act, an Officer is a director, partner or other person whose position allows them to *exercise significant influence over the management of the PCBU* (for example a CEO). Depending on the nature of the business, it may include other senior management staff such as COOs or CFOs.

What will Officers need to do to fulfil their duty?

Officers will no longer be able to take a back seat role in relation to health and safety matters or to simply rely on other people in the business to manage health and safety. Those in senior leadership positions will be expected to lead health and safety culture throughout the PCBU, and must exercise reasonable care, diligence and skill when dealing with matters of health and safety.

If you are an Officer, for the purposes of the Act, you will need to take a proactive approach to:

- Have up-to-date knowledge of workplace health and safety matters
- Understand the hazards and risks arising out of your business
- Ensure your business has appropriate resources to meet its obligations (funding, safety equipment, training, etc.)
- Ensure adequate processes are in place for dealing with hazards, risks and incidents in the workplace, and
- Constantly reassess the workplace health and safety processes and protocols to ensure they are up-to-date and adequate for the needs of your business.

Workers

Under the new Act, while at work a worker will have duties to:

- Take reasonable care for his or her own health and safety
- Take reasonable care that his or her acts or omissions don't adversely affect the health and safety of other people
- Comply, as far as the worker is reasonably able, with any reasonable instruction given by the PCBU in relation to health and safety matters, and
- Cooperate with any reasonable policy or procedure of the PCBU in relation to health and safety.

Worker Engagement

In addition to their duties under the Act, workers will be entitled to be involved in all aspects of health and safety. Worker engagement is a critical focus of the new legislation. From Monday, 4 April 2016 all businesses must:

- Have practices that provide reasonable opportunities for workers to participate effectively in improving workplace health and safety
- Provide relevant information regarding health and safety matters to workers, and
- Consult with workers and consider their views on workplace health and safety matters.

Businesses with 20 or more workers, or those in specified high risk industries, will be required to establish work groups and facilitate the election of health and safety representative/s and health and safety committees if requested by workers. Failure to do so can result in significant penalties.

The specified high risk industries are:

- Aquaculture
- Building construction
- Coal mining
- Construction services
- Fishing, hunting and trapping
- Food product manufacturing
- Forestry and Logging
- Heavy and civil engineering construction
- Waste collection, treatment and disposal services
- Water supply, sewerage and drainage services

How to Prepare

All PCBUs should review their health and safety practices, policies and procedures now - before the new law comes into force. If you've not done this already, we recommend that you:

- Take steps now to identify risks and hazards arising in your workplace - consider risks arising from the workers themselves and their practices
- Consult with your workers about any risks and hazards they are aware of or concerned about and how to eliminate or minimise them. A brainstorming session can be a great way to do this
- Invest in resources to ensure you meet your health and safety obligations
- Take advice from health and safety specialists (particularly if you're in a high risk workplace)
- Review your existing policies to ensure they deal with every risk and hazard you have identified
- Ensure your policies and practices are compliant at all levels of the business. You need to know not just what your workers should be doing but also what they are actually doing. This will involve observation, training and effective communication with your workers
- Ensure all training (internal or external) is up-to-date and recorded
- Ensure health and safety is a permanent and regular agenda item for all board/management meetings
- Stop any potentially unsafe work practices *now*, before it's too late, and
- Contact your health and safety specialist and talk with us for assistance with understanding the new law and your compliance requirements. ■