



DYHRBERG DRAYTON
EMPLOYMENT LAW

New Health and Safety Laws are around the corner Will you be ready?

On 4 April 2016 the new Health and Safety at Work Act 2015 (the **Act**) will take effect, replacing the current health and safety regime. The Act works to focus effort on what matters, based on business risk, control and size:

- It shifts from hazard spotting to managing critical risks.
- It reinforces proportionality.
- It changes the focus from the physical workplace to the way the work is done.
- It supports effective worker participation and engagement.

We have summarised below the key things you need to know.

Duties of care apply to 'PCBU'

Our health and safety law no longer only applies to 'employers'. The new health and safety law imposes duties on 'persons conducting a business or undertaking' (**PCBU**). So if you are conducting a 'business' or 'undertaking' you must comply with these new laws. It does not matter if the 'business' or 'undertaking' is for profit or not, or you run it on your own or with others.

If you are a PCBU, these duties apply to you

- *Primary duty of care* – A PCBU must ensure (so far as is reasonably practicable) the health and safety of workers who work for the PCBU, workers whom it influences or directs, and 'other persons' as part of its business or undertaking. Additional duties are imposed on PCBUs who manage or control workplaces.
- *Secondary duties* – Secondary duties apply to PCBUs who manufacture, design, manage, import, install and supply machinery, plant, substances and structures.

A PCBU may have more than 1 duty imposed on it in relation to the same health and safety matter to which the risk relates. More than one PCBU may owe duties in relation to the same

matter, or to the same people. PCBUs must consult with other PCBUs who have a duty in relation to the same workplace or situation. Duties are not transferable.

Worker engagement, participation and representation

Under the new law the duties of ensuring worker engagement and participation apply to all PCBUs regardless of size, level of risk or the type of work carried out. This means having practices that provide workers reasonable opportunities to participate in improving workplace health and safety.

Worker participation may involve representation, i.e. electing representatives to workplace health and safety committees or working groups. Effective representation will help a PCBU meet its duty to engage with workers. If a worker requests a health and safety representative be elected, a PCBU must initiate the election, unless an exception applies.

The main exception is that PCBUs with fewer than 20 workers in sectors or industries not defined as 'high risk' are not required to initiate the election of a health and safety representative. Industries identified as high risk include forestry, logging, road freight transport, coal mining, fishing, electricity transmission and oil and gas extraction.

A PCBU can initiate the election of a representative on its own initiative as a form of worker participation. A PCBU may request WorkSafe New Zealand to exercise its discretion and remove a representative. Or WorkSafe New Zealand may do so of their own accord.

A health and safety committee may be established by the PCBU, or if requested by five or more workers. However, PCBUs with fewer than 20 workers, not defined as 'high risk' are not legally required to consider a request for a committee. A PCBU may decline a request to establish a committee if it considers existing worker participation practices are effective.

Worker Regulations and Guidelines

The Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016, and the Worker Engagement, Participation and Representation Good Practice Guidelines were released for public consultation which has now closed. You can go to: www.business.govt.nz/worksafe or to www.mbie.govt.nz for more information.



If you are an officer, this duty applies to you

An officer of a PCBU must exercise 'due diligence' to ensure the PCBU complies with its obligations. In exercising 'due diligence', an officer must exercise the care, diligence, and skill a reasonable officer would exercise, taking into account the nature of the business or undertaking, and the position of the officer and their responsibilities.

Who is an 'officer'?

An officer includes a director of the company, and any other person in a position that allows them to exercise significant influence over the management of the PCBU, for example, a Chief Executive or Chief Operating Officer. 'Officer' does not include a person who merely advises or makes recommendations to a director or partner.

Limitation period for prosecution

Prosecutions must occur within 12 months after the date on which the incident, situation or set of circumstances first became known to the regulator.

- Do you have active worker engagement and participation? Do you use a health and safety representative, or committee to improve your health and safety practices?
- If another company is managing and controlling a workplace where your workers perform work, how do you know your workers are safe?
- When interacting with other PCBUs who have a duty in relation to the same matter, how can you consult? What safety information should you request, or provide?
- Look at the guidance materials issued by WorkSafe New Zealand.

We can help with advice, reviewing or providing policies and other templates and training to key staff.

Thinking about the future

The primary purpose of the new law is to protect workers and other people against harm. Workers and other people at work should be given the highest level of protection against harm to their health, safety and welfare. Are your existing health and safety systems and your workplace culture up to the new standards?

What should you be thinking about?

- Reviewing and updating your current policies, commercial contracts and independent contractor agreements. Do they adequately address the new health and safety obligations of all parties?
- Is health and safety a high priority in your workplace?
- Do you discuss health and safety from the Board room to the work floor?
- Identify members of your leadership team and people with significant influence over the business. These people are likely to be 'officers'. How can they meet their due diligence obligations?
- Do you regularly schedule training and discussions with staff on health and safety topics? What are your current training requirements and how will they be met?