

New law makes workplace health and safety your responsibility



TruckSure
By Trevor Toohill

Over 50 people die at work each year (about one a week) in New Zealand, hundreds of people are injured and 600-900 employees die from work-related diseases. These staggeringly sad statistics have prompted the enactment of new legislation the Health and Safety at Work Act 2015 (HSWA), which will come into force on 4 April 2016.

The HSWA is based on the notion that a 'person conducting a business or undertaking' (or PCBU) is best placed to know what health and safety risks the activity creates and what should be done to eliminate or minimise them. A PCBU is a new legal term, which includes businesses, government departments, schools and local authorities as well as sole traders and partners in a partnership.

The new law has been designed to make workplace health and safety everyone's responsibility within the PCBU – its directors, executives, staff and contractors, for example:

- The PCBU has the 'primary duty of care' to ensure the safety of workers;
- Company directors must carry out 'due diligence' to ensure their business is managing its key health and safety risks effectively; and
- Workers and contractors must take reasonable care for their own and their fellow workers' health and safety.

However, it is important to remember that safety leadership, or a focus from the top, is critical under the new legislation. This should be understood within the business as both the right thing to do for your workers and the business as a whole.

What you need to do

If you, or your business, fall within the definition of a PCBU you must identify the health and safety risks that could seriously harm your workers and others, and then put in place the behaviours, practises, systems, processes and training to eliminate or minimise those risks. This must be done collaboratively with people in your business and other businesses you work with.

The HSWA allows a certain amount of flexibility and ensures you can adapt your health and safety practises according to the size of your business and level of risk.

For more information on the HSWA see WorkSafe New Zealand's excellent and easy-to-read guide:

<http://www.business.govt.nz/worksafe/hswa/>

Legal and insurance implications

The HSWA:

- Requires consultation and co-ordination between all PCBUs working together on a project.
- Imposes new duties on designers, manufacturers, importers and installers of plant, substances or structures.
- Imposes new duties to notify WorkSafe of injury or illness.
- Imposes a duty on directors and CEOs to ensure their business complies.

Has higher penalties. The new maximum fine is \$1.5 million for an organisation and \$300,000 for individuals. Penalties for reckless conduct are higher still.

From an insurance perspective:

Statutory Liability Insurance covers legal defence costs to deal with WorkSafe investigations and prosecutions, and upon conviction, sentences of reparation to those who are injured.

Cover for legal defence costs will become more important as more people are now vulnerable to prosecution and the penalties are higher.

Insurance of fines remains illegal.



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