

Focus on workplace health and safety

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Legal matters

The Health and Safety at Work Act will come into effect in April.

I previously covered who has duties under the act, who must be protected, identifying, eliminating and minimising risks, what is a workplace, the new duties, notification to Worksafe, overlapping duties, duties of others in the workplace, no contracting out and no insurance.

Now I will look at what the new act covers.

The new maximum penalties for failing to comply with a duty are a fine of \$60,000 for an individual, \$100,000 if that individual is a Person Conducting a Business or Undertaking (PCBU) or officer of the PCBU and \$500,000 for a PCBU that is not an individual, such as a company, society or trust.

If there has been a serious risk of death or injury, the maximum fines jump up to \$150,000 for an individual, \$300,000 if the individual is a PCBU or officer

and \$1.5 million for a PCBU.

If the court finds there was reckless exposure to death or serious injury or illness, the maximum fines become \$300,000 plus five years' imprisonment, \$800,000 plus five years' imprisonment and \$5 million for the PCBU (non-individuals).

Records of a notifiable event must be kept for five years by the PCBU.

These must include all details of the incident, and notifications from Worksafe.

PCBUs are required to engage with workers.

That means sharing relevant information in a timely manner and giving opportunities to express views and contribute when identifying hazards, when eliminating or minimising hazards, when making decisions on engagement, monitoring, information and training, resolving of issues and worker participation practices.

The PCBU must take the workers' views into account and advise them of the outcomes.

Any worker can request the holding of elections for a health and safety representative.

The PCBU must hold an election unless it has fewer than 20 employees and is not involved in high-risk activities.

The Government has stipulated many industries that are regarded as high risk.



The forthcoming Health and Safety Work Act will have major implications for many businesses.

Work farms were put on the high-risk list, but farms on the non-high risk.

Elections for representatives can be in work groups, so there can be more than one rep.

As well as health and safety representatives, workers can request a health and safety committee.

This request must come from the health and safety rep or any five workers.

The PCBU must establish a

committee unless there are fewer than 20 employees and they are not at high risk.

A worker exposed to a serious risk to health and safety from an immediate or imminent exposure to a hazard can cease work, but can be directed to alternative work by the employer.

This does not apply to inherently dangerous work unless there is an increased risk. A health and safety rep can also order a cease work (if they have

completed the training requirements). It is unlawful to engage in any adverse conduct, such as firing or disadvantaging a health and safety rep or people on the health and safety committee.

This is so workers are not picked on because of those roles.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484 or raineycollins.co.nz. If you have a legal inquiry, email alanowlesy@raineycollins.co.nz.