

**BUSINESS**

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INTRODUCING THE

## NEW Health & Safety at Work Act



- DONT LOSE YOUR MOST VALUABLE TALENT
- HOW TO CONDUCT A GOAL-SETTING SESSION
- NEW GST PROPOSALS FOR DIGITAL PURCHASES
- TEN TACTICS AND TIPS TO SAVE TIME AND MONEY
- NEW TAX ON RESIDENTIAL PROPERTY
- NEW ZEALAND'S THIRTY YEAR INFRASTRUCTURE PLAN 2015

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**Editor's Note**

The past couple of months have been marked by global uncertainty as the Chinese economy slows down. Closer to home, the impact is felt especially in the dairy sector and our Reserve Bank Governor, Graeme Wheeler, is predicting further interest rate cuts.

This is likely to fuel the inflated housing market and new measures are expected to come into force from 1 October to reduce speculation in residential property. We discuss the proposed legislation on Pages 12 and 13. Once the legislation is passed, any key amendments will be covered in upcoming journals.

Our main theme for this issue is the new Health and Safety at Work (HSW) Act that has just been passed into law. This is the most significant workplace health & safety reform in New Zealand in over two decades. As mentioned in one of our tips scattered throughout the journal, regulations and guidelines will be published by WorkSafe NZ over the next six months or so, to clarify compliance details.

As always, this edition is filled with useful information to help you keep up to date, comply with the Law and run a successful business.

We continue to publish questions of general interest that come through our Q&A service. Please feel free to use this service at any time, as it is included as part of your subscription with no extra charge.

As FBA celebrates our 20th year of servicing the New Zealand business community, we wish to thank each and every one of you for your support over the years. Thanks also go to our staff and those who contribute to our publications and Q&A service.

If there are any topics you would like to see in upcoming publications or any other ideas you have for us to improve our service to you, please do contact our team.

Wishing you the best of business.



**Paul Wilton**  
 Editor



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*We remind our subscribers that a renewal will be automatically forwarded annually.*

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# The Health and Safety at Work Act comes into force on 4 April 2016

Here is a summary of some of the main provisions likely to impact on most workplaces

## DUTIES

PCBU: The PCBU, (Person conducting business or undertaking), has a duty to identify and then eliminate or minimise risks to ensure a safe workplace for themselves, employees and others in the workplace (e.g. visitors, customers, suppliers) as far as reasonably practicable.

A PCBU covers:

- Whether working alone or with others
- Whether for profit or not.

A PCBU does not include volunteer organisations (no employees) or occupier of a home (e.g. residential work).

## OFFICERS

An officer of a PCBU also has duties to ensure the PCBU fulfils its duties. Officers include directors, partners, people acting like a director (e.g. board of an incorporated or unincorporated society). This also includes people exercising significant influence over the business e.g. Chief Executive.

## WORKERS

Include:

- employees
- contractors/subcontractors
- employees of contractors/subcontractors
- employees of labour hire firm
- outworkers (including at home)
- apprentices/trainees
- person on work experience/trial
- voluntary worker (works for PCBU with its knowledge on ongoing and regular basis and integral to the business)

## WORKPLACE

- anywhere where work is being carried out
- or is customarily carried out.
- any place a worker goes or is likely to go (exceptions for part of farms).

## REASONABLY PRACTICABLE

Assess:

- the likelihood of the hazard/risk occurring
- the degree of harm that might result
- what you know or should know about the risk and how to eliminate/minimise
- available ways to eliminate/minimise
- cost of doing so (is it grossly disproportionate to the risk).

## NOTIFIABLE EVENT

- death
- notifiable injury or illness
- notifiable incident (serious injury from certain events).

## PCBU NOT TO LEVY OR CHARGE WORKERS

No levy on workers re H&S – including cannot require them to provide own personal safety/protective equipment as a condition of employment.

This applies only to employees as it relates to requiring them to provide safety gear as a condition of employment (not as a condition of hiring a contractor). Contractors can still be required to supply their own gear.

## NO CONTRACTING OUT OF THE ACT

Any agreement to contract out of the Act has no effect.

## NO INSURANCE AGAINST FINES

It is illegal to take out insurance against a fine. If you do take out insurance against a fine or get paid insurance or offer to give insurance then you are also liable to a fine (\$50K for an individual, \$250K for a PCBU) for doing that as well as the fines for any H&S breaches.

- Duties not transferable to another person/body
- May have more than one duty e.g. PCBU/worker/officer
- More than one person may have the same duty – both liable
- PCBUs must consult others with duties and cooperate and coordinate.

## PCBU MUST ENSURE

- Health & Safety of workers
- Health & Safety of all others
- safe work environment
- safe plant & structures
- safe handling
- adequate facilities for people's welfare
- information, training and supervision
- monitoring of conditions to prevent illness or injury

No duty is owed to people unlawfully there.

Self employed must ensure own H&S as well as others.



## HEALTH AND SAFETY IN THE MEANTIME

Until the provisions of the new legislation take effect on 4 April 2016, the existing Health and Safety in Employment Act 1992 will continue to remain in force.

**DUTIES OF MANAGERS OF PLANT, SUBSTANCES AND FIXTURES**

Also of Designers, Manufacturers, Importers, Suppliers and Installers

**DUTIES OF OFFICERS**

- exercise due diligence to ensure that the PCBU complies with its duties
- acquire up-to-date knowledge of health & safety
- understand the nature of its operations and hazards
- provide appropriate resources to eliminate or minimise risks
- provide appropriate resources to receive and consider information
- ensure PCBU has processes to comply with duties
- verify provision and use of resources

**DUTIES OF WORKERS**

- take care of self
- take care not to harm others
- comply with instructions of PCBU
- cooperate with policies re H&S

**DUTIES OF OTHERS**

- take care of self
- take care not to harm others
- comply with instructions of PCBU

**PENALTIES**

Range of penalties for breaches of specific sections plus Reckless exposure to death, serious injury or serious illness

- Individual \$300K + 5 years prison
- Individual PCBU/Officer \$600K + 5 years prison
- PCBU if a company or other corporate entity \$3million

Failure to comply with duty resulting in serious risk of death, injury

- Individual \$150K
- Individual PCBU/Officer \$300K
- PCBU \$1.5million

Failure to comply with duties

- Individual \$50K
- Individual PCBU/Officer \$100K
- PCBU \$500K

- Officers are liable even if PCBU not convicted.

- Volunteers are only liable as workers or visitors.

Duty to preserve site of accident (notifiable event)

- can assist an injured person
- can remove a dead body
- can do essential safety work
- as directed by constable or inspector

**FINES:**

- Individual \$10K
- PCBU \$50K

**NOTIFICATION OF NOTIFIABLE EVENT**

- as soon as possible
- can be by phone unless required in writing (48 hours)
- provide full details

**RECORDS BY PCBU OF NOTIFIABLE EVENT**

- must be kept for 5 years

**ENGAGEMENT WITH WORKERS**

- share relevant information in a timely manner
- give 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 (give reasonable opportunities)
- take views into account
- advise of outcomes

**H&S REPS AND COMMITTEES**

- One worker can request H&S elections. PCBU must hold an election unless has fewer than 20 employees and not high risk. Is your work type one of the high risk categories (including worm farming and mini putt)?
- Elections can be in work groups
- An H&S committee can be requested by H&S rep or five workers. Must establish a committee unless have fewer than 20 employees and not high risk

- Improvement Notice & Prohibition Notices

- Inspector can issue notices

**RIGHT TO CEASE WORK**

- A worker exposed to a serious risk to H&S from an immediate or imminent exposure to a hazard can cease work (can be directed to alternative work)
- This does not apply to inherently dangerous work unless there is an increased risk
- An H&S rep can order a cease work

Unlawful to engage in adverse conduct e.g. to fire or disadvantage an H&S rep or people on H&S Committee.

**ISSUE RESOLUTION**

A PCBU must make reasonable efforts to achieve a timely, final and effective resolution.

**INSPECTORS**

Can enter a workplace (not home) at any reasonable time. A home means occupied as a dwelling so will include a renovation site if people still living in it. To enter a home an inspector needs a warrant.

**CONCLUSION**

As this is only a short summary of very detailed legislation it is important to seek expert guidance on any issues and for planning how you will handle Health and Safety in your workplace.



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