

Focus on health and safety at work

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Legal matters

A new Health and Safety at Work Act comes into effect next April.

It introduces new duties and makes a wider range of people and organisations liable. Fines and other penalties are significantly increased.

The new law focuses on health and safety at work rather than in employment. It includes people who are at work but not in employment.

That includes contractors, visitors, employees, owners, employees of sub-contractors – almost anyone who is lawfully in your workplace.

Anyone unlawfully in your workplace is not covered and no duties are owed to them under this law (however, other laws might still apply, such as the Crimes Act).

A new description of the primary duty holder has been created. That is the person conducting the business or undertaking (PCBU).

Those people or organisations

have a duty to identify and then eliminate or minimise risks to ensure a safe workplace for themselves, employees and others in the workplace, as far as reasonably practicable.

The "isolate" duty under the current law has been dropped as a separate measure and is now part of the duty to "minimise".

A PCBU covers:

■ Whether working alone or with others.

■ Whether for profit or not.

A PCBU does not include volunteer organisations (if they have no employees) or an occupier of a home (for example, contracting in work on a residential building).

A significant change has been to include officers of a PCBU. An officer of a PCBU has duties to ensure the PCBU fulfils its duties. Officers include directors, partners, people acting like a director (such as the board of an incorporated or unincorporated society).

They also include people exercising significant influence over the business, such as the chief executive.

Who is a worker now includes:

■ Employees.

■ Contractors/subcontractors.

■ Employees of contractors/subcontractors.

■ Employees of a labour hire firm.

■ Outworkers (including at home).



There is increasing emphasis on health and safety in the workplaces.

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■ Apprentices/trainees.

■ A person on work experience/trial.

■ Voluntary workers (working for PCBU with its knowledge on an ongoing and regular basis and integral to the business).

A workplace is now:

■ 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).

When taking action to identify, eliminate or minimise risks, a PCBU is only expected to do what is reasonably practicable.

It is necessary to 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?).

So if you are in an office, the risks and seriousness of the harm will be very different to a building site, farm or forest, but risks must still be identified, eliminated or minimised.

The danger and outcome from a trip on stairs, a child being poisoned by staff room chemicals or an electrical shock from unsafe equipment could be just as real and deadly as any other workplace.

In future articles I will cover more on the new law, including the fines and penalties, notification to Worksafe, overlapping duties, duties of others in the workplace, record-keeping and engagement with workers (health and safety reps and committees).

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733464 or raineycollins.co.nz.

If you have a legal inquiry you would like discussed in this column, email aknowsley@raineycollins.co.nz