

Key Legal Duties & Governance Activities - 12/2/2019

Health and Safety at Work (General Risk and Workplace Management) Regulations 2016

1. Duty:
 - a. to identify hazards
 - b. to maintain effective control measures
 - c. to review control measures
 - d. to provide information, supervision, training and instruction
 - e. in relation to general workplace facilities – allows movement without risk, sufficient space, flooring, lighting, ventilation and temperature
 - f. to provide certain workplace facilities – toilets, drinking water, hand washing, eating and resting place
 - g. to provide workplace facilities in sufficient number and to maintain facilities
 - h. to provide first aid
 - i. to prepare, maintain and implement emergency plan
 - j. of PCBU and other persons to provide personal protective equipment
 - k. of worker and other persons to wear personal protective equipment
2. Management of:
 - a. remote or isolated work
 - b. atmosphere with potential of fire or explosion
 - c. raised or falling objects
 - d. containers of liquids
 - e. loose but enclosed materials
 - f. substances hazardous to health
3. Monitoring of
 - a. exposure
 - b. health
4. Young people
 - a. Ensure they do not carry out certain work, not perform certain tasks, not work at or with machinery, drive or ride on certain vehicles or carry out night work
 - b. Relating to being at the workplace
5. Limited-attendance child-care centres
 - a. Duty to ensure workers are suitable and police vetted

This document is an outline of health and safety duties and due diligence. Full legislation can be found here www.legislation.govt.nz. Good Governance Guideline can be found here <https://www.iod.org.nz/healthandsafety>

*Wording in blue indicates worker engagement requirements

Health and Safety at Work Act 2015

1. PCBU must not levy workers, not contract out, transfer risk to another person or insure themselves against fines
2. Eliminate or Minimise Risk (substitute, isolate, engineer, administrate (method of work, process or procedure) or provide personal protection equipment - in that hierarchy or order of preference)
3. PCBU's must consult with other PCBU's with the same duty
4. Duties of PCBU's who:
 - a. manage or control the workplace
 - b. manage or control fixtures , fittings or plant at a workplace
 - c. designs, manufactures, imports or supplies plant, substances or structures
 - d. installs, constructs or commissions plant or structures
5. Duties of Officers, workers and others in the workplace
6. Duties to preserve sites, notify notifiable events and keep records
7. Right of workers to cease or of trained worker to direct unsafe work
8. Prohibit adverse, coercive or misleading conduct
9. Health and Safety Representative (HSR) Functions and powers are a health and safety purpose only and generally limited to their workgroup must only use information for a health and safety purpose. HSR have no legal duty and are immune from civil or criminal liability for any act done or not done when performing as a HSR and acting in good faith
 - a. represent workers or a single worker of work group
 - b. investigate complaints
 - c. monitor measures taken by the PCBU
 - d. inquire into anything that presents a risk to workers
 - e. recommend action to PCBU
 - f. give feedback to PCBU about whether health and safety legal requirements are being met
 - g. promote interests of harmed individual in relation to rehabilitation
10. Health and Safety Representative may
 - a. attend interview with the workers consent
 - b. enter and inspect workplace to carry out their functions
 - c. request information
 - d. be assisted by another person
 - e. assist or act in the capacity of a HSR of another work group
 - f. accompany an inspector
 - g. consult the regulator or an inspector
11. Obligations of PCBU to Health and Safety Representative and the Health and Safety Committee
 - a. consult with, provide information and allow them time to carry out their functions including time for HSR training but they must now allow access to personal information without that persons consent unless it does not identify the worker.

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12. Health and Safety Committee Functions

- a. facilitate co-operation between PCBU and workers to make, improve and do actions to protect workers
- b. help make, standards, rules, policies and procedures to be used in the workplace
- c. recommend action to PCBU
- d. perform other functions agreed between the PCBU and the committee or prescribed in regulations

Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

1. High Risk Sector?
2. Work Group ratios of health and safety representatives to workers and determining work groups.
3. Timing of elections requested by a worker and duties in relation to an election
4. Duty to maintain lists of health and safety representatives
5. Access to training for health and safety representatives and maximum number of days paid leave for training
6. Notice required for decision about health and safety committee, membership and meeting requirements

Other legislation to consult and review systems against include but are not limited to:

Accident Compensation Act 2001

Fire and Emergency New Zealand Act 2017

Fire and Emergency New Zealand (Fire Safety, Evacuation Procedures, and Evacuation Schemes) Regulations 2018

Hazardous Substances and New Organisms Act 1996

Health and Safety at Work (Hazardous Substances) Regulations 2017

Civil Aviation Act 1990

Maritime Transport Act 1994

Other Health and Safety at Work Regulations:

Asbestos

Adventure Activities

Major Hazard Facilities

Mining Operations and Quarrying Operations

Petroleum Exploration and Extraction

Fire Permits

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Health and Safety Guide: Good Governance for Directors **written by the Institute of Directors in New Zealand**

Directors Responsibilities

- 1) Policy and Planning
 - a. Develop Safety and Health Charter and board structure to direct H&S activity
 - b. Provide strategy, policy, vision and beliefs
 - c. hold management accountable
 - d. provide lead and lag targets to measure achievement
 - e. manage health and safety performance of CEO set specific expectations and provide feedback
- 2) Delivery
 - a. set the expectation that the health and safety system be fit for the organisation
 - b. ensure it is fit for purpose, efficiently achieved, reviewed and improved
 - c. be informed about general best practice health and safety, organisational processes, critical industry and organisational risks so an assessment of the health and safety system is sound
 - d. provide enough funds to create, run and maintain the health and safety system
- 3) Monitoring
 - a. monitor performance
 - b. decide what needs to be reported and when
 - c. review reports and decide if more needs to be done
 - d. be able to assess information in reports by being familiar with audits, risk assessments and incident investigations
 - e. to gain assurance seek independent specialist advice
- 4) Review
 - a. conduct a formal review at least bi annually of system effectiveness
 - b. decide if an external review is required

Managers Responsibilities

- 1) Policy and Planning
 - a. set specific actions to meet strategic goals and carry out actions
 - b. set specific targets to tract performance
 - c. manage worker performance, set specific expectations and provide feedback
- 2) Delivery
 - a. implement the health and safety system,
 - b. identify resources required to develop, implement and maintain the system and gain approval for the resource
 - c. allocate responsibility and accountability to operational and other workers for health and safety system
 - d. monitor the effectiveness of the system and continually improve it
- 3) Monitoring

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- a. plan, do, check, act
 - b. report what is asked for and when it is asked for
 - c. implement any further action from the board
 - d. ensure root cause investigations are carried out for serious incidents
- 4)
- a. organise and complete internal and external audits
 - b. take remedial action from audit results
 - c. report on audit outcomes to the board
 - d. Assist board with the biannual formal review

Board Activities

1. Policy and Planning

- a. develop a statement of commitment to health and safety and involve staff in its development
- b. Provide lead and lag indicators to measure effectiveness
- c. Board structure to focus on health and safety and provide expertise
- d. role description of the board and its members, structure and processes to plan, deliver, monitor and review health and safety
- e. Health and safety in the CEO's job description
- f. Management to recognise health and safety responsibilities of all management and staff
- g. Performant review of CEO and management that encourages transparency and discourages cover-ups

2. Delivery

- a. train and develop knowledge of how to create, do, review and check health and safety
- b. review reports on resource allocation and involve staff in audit reviews of the systems effectiveness
- c. engage with management and conduct site visits to be aware of risks to the organisations workers and business
- d. biannually at least review risk controls using independent advise
- e. ensure selection of contractors have the same high health and safety standards as the organisation and reporting is transparent and not hidden
- f. consult and coordinate with other PCBU's and check they meet their responsibilities
- g. recruit, train and direct managers to be skilled and motivated to reinforce a positive culture that bring in specialists when required
- f. encourage a just culture of reporting that respects learning from honest mistakes while still providing discipline for wilful negligence and gross negligence
- g. ensure all reports are responded to in a timely way to encourage a positive report
- f. ensure all reports are responded to in a timely fashion

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- g. ensure equipment owned or hired of others is fit for purpose, maintained and workers trained in their use and includes a process that they are fit for purpose before purchase or hire
- h. Allow a budget to meet health and safety system, training for managers and workers, improvement needs not the other way around

3. Monitoring

- a. Ensure the health and safety charter addresses adverse event reporting and timeframes
- b. for serious events seek independent investigation to avoid vested interests
- c. receive training in basic incident investigation to be personally satisfied with the efficacy of serious incidents and non-compliance remedial actions
- d. at least annual improvement goals received by the board either by sites visits or management attending board meetings
- e. specify clear reporting of performance and review them for trends, system breakdowns and improvement need

4. Review

- a. Ensure the board involves workers with relevant skills and knowledge in the selection of external auditors and the charter includes when, who, how and resources required for a formal review
- b. include audits, system reviews, performance results, significant incidents, organisational changes and benchmark data in formal reviews
- c. create an action plan from the formal review and track progress

Utilise the questions found in the document by Institute of Directors “Good Governance for Directors” to review your current situation of health and safety management.

Utilise the lead indicators from Worksafe NZ “Safe+ Examples Accross Industry Sectors” to inform the lead indicator target choice.

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