

NUPE Delegate training

Health and Safety



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Post the Pike River Tragedy and the independent H&S Taskforce

1. Government committed to reducing workplace injury and death by 25 per cent by 2020.
2. Stand alone regulatory agency- WorkSafe and High Hazards Unit (focus on catastrophic events) (increased budget 53 million- 80 million)
3. More resources going on Occupational health
4. New Health and Safety Legislation to replace the current HSE Act
5. Regulations developed in tandem (first tranche expected by April 2015)
 - General risk and workplace management
 - Worker participation and management
 - Work involving hazardous substances
 - Major hazard facilities
 - Work involving Asbestos

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Health and Safety at Work Act 2015

- The Health and Safety at Work Act 2015 is based on the Australian model Law
- It contains stronger penalties and enforcement actions, tools and court powers than the Health and Safety in Employment Act
- It will create a due diligence duty on those in governance roles, e.g. boards of directors
- More emphasis on the duties of Persons in Control of business units (PCBU's)
- Stronger powers for elected H&S reps and antidiscrimination protections

Health and Safety at Work Act Duties

- Those best placed to manage risk are allocated the corresponding duty to do so.
- Duties are risk based rather than hazard based and primarily relate to the work or undertaking rather than its location.
- All people associated with the business or undertaking have responsibilities or are owed duties under the Act.

Health and Safety at Work Duties

- To eliminate risks to health and safety so far as is reasonably practical;
and
- If elimination is not reasonably practical, to minimise those risks so far as practical.
- Isolation of risk has been removed – only two requirements to eliminate or minimise

Person Conducting a Business or Undertaking (PCBU)

A PCBU must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

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Worker Participation 1

- PCBU has a duty to engage with workers as far as it is reasonably practical and in accordance with any agreed procedures
- PCBU needs to have worker participation practices that provide 'reasonable opportunities for workers to participate in improving health and safety at their workplace
- Section 59 of the Act requires PCBUs to provide
 - Provide relevant information to be shared in a timely manner
 - Workers be given reasonable opportunities to raise issues, express views and contribute to the decision making process
 - A requirement to worker's views into account
 - A requirement the workers be advised of an outcome in a timely manner

Worker Participation 2

The HSW provides elected Health and Safety Reps with the ability to:

- Direct (rather than advise) to stop unsafe work
- Issue Provisional Improvement Notices (PINs)
- Supported by the Worker Participation Regulations

The HSW Act requires that elected health and safety Reps be provided with training before undertaking these tasks

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Health and Safety Committees

HSW requires a PCBU to decide whether to establish a Health and Safety Committee:

- within two months of being requested to do so by a health safety representative
- Or by 5 or more workers
- PCBU does not need to establish a H&S Committee if they have less than 20 employees or is not a 'high risk' sector or industry

Functions of a health and Safety Committee are to:

- Facilitate cooperation between the PCBU and workers relating to instigating, developing and carrying out measures designed to ensure worker's health and safety
- Assist in developing rules, standards, policies or procedures
- Perform any other function agreed between the PCBU and committee or prescribed by regulation

Mental Health

- One of the biggest changes is the description and proscription of mental harm under the new Act
- Hazard has been defined as including a person's behaviour where it has the potential to cause death, injury or illness to a person
- This is regardless of whether this behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock or another temporary condition
- The definition of Health has been expanded to include both physical and mental health

Mental Health

Employment lawyer Mai Chen states that;

“Employers are facing a perfect storm as the new Act, which comes into force today, now expressly provides for mental health issues in an increasingly stressed-out and competitive workplace of deadlines and performance targets....

....I predict Worksafe will become more interested in non-physical harms, as the evidence mounts about the damage they cause for a growing portion of the workforce who are now sedentary. Employers who ignore the potential for non-physical harms will find themselves facing penalties for not providing a safe workplace, including imprisonment (of up to 5 years) and fines (of potentially up to \$3 million)..

Mental health" has been broadly interpreted by WorkSafe to cover both physical and non-physical harms - this is a challenge for employers as non-physical harms are hard to spot. Organisations are dependent on employees telling their managers that they are struggling. This is hard - making admissions is very difficult, especially when it might impact your job”

NZ Herald “Mai Chen: Mental health in workplace is new frontier for health and safety.” 4 April 2016

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