

INTRODUCTION

Promoting sustainable and productive relationships between employers and employees based on mutual trust and confidence is a key component of employment legislation.

Working environments that are as safe and healthy as possible are a significant part of a successful employment relationship. Legislation – the Health and Safety in Employment Act 1992 and the amendments of 2002 – are designed to contribute to achieving this goal.

This guide introduces you to the elements that underpin workplace health and safety from the effective date of the Amendment Act, which is 5 May 2003.

Achieving a safe workplace requires an informed employer constructively working with their employees to identify hazards and manage them.

Every workplace is different. New Zealand's legislation recognises this by providing a framework for employers (with the help of employees) to address health and safety in the way that is most appropriate for each workplace.

The recent amendment builds on this framework and enhances it in three ways:

- It extends consistent coverage to sectors of the economy that were previously excluded.
- It focuses on relationships within the workplace, by providing for employee participation. This reflects and builds on the good faith requirements of the Employment Relations Act, which are specifically included in health and safety legislation for the first time.
- It makes the responsibilities of employers and employees clearer and easier to understand.

Some employers and employees will be affected by this legislation for the first time. Others will find that the legislation reflects the good practice they already follow in their workplace.

This guide aims to answer your questions about the health and safety framework and your responsibilities, explains the key changes that result from the Amendment Act, and sets out how to deal with questions and issues.

Further information or assistance is available through the Department of Labour's Workinfo service (www.workinfo.govt.nz or 0800 20 90 20).

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The Law and employers

What does the Act set out to do?

The purpose of the Health and Safety in Employment Act is to provide for the **systematic** management of health and safety at work. It requires employers and employees to maintain safe working environments, and implement best health and safety practice. It recognises that successful management of health and safety is best achieved through good faith co-operation in the place of work and, in particular, through the input of persons doing the work.

Many New Zealand workplaces already have effective systems in place to ensure the workplace is a safe environment.

There are real benefits to you in ensuring a safe workplace. These include improved productivity, avoiding lost time due to illness and injury, and higher rates of staff retention.

Reducing the social and economic costs of injury and illness is also a priority for society as a whole.

The Health and Safety in Employment Amendment Act 2002 updates legislation by providing clearer requirements and more effective enforcement. The amended Act ensures that all employers are tested against the same standard and are provided with a framework for improving health and safety in the workplace.

How does the Act fit into the New Zealand Injury Prevention Strategy?

The HSE Act forms a part of the overall workplace health and safety framework. Putting in place effective safety programmes will also qualify some employers for ACC levy discounts.

Who is covered by the Health and Safety in Employment Act?

The Act places duties on employers, self-employed people, contractors and principals to provide effective systems for the protection of employees and visitors to places of work.

Employees also have responsibilities and roles under the Act.

Employees are defined in the same manner as under the Employment Relations Act, and include:

- air, rail and maritime employees
- loaned employees
- people doing on-the-job training or work experience.

Visitors include customers, delivery and courier company employees and other people legally in the workplace.

Volunteers are included for some purposes and under restricted circumstances. If you require further information on the coverage of volunteers it is available through the Workinfo centre (0800 20 90 20 or www.workinfo.govt.nz).

What are my responsibilities as an employer?

You have a responsibility to make the workplace safe, and to ensure the health and safety of those working in or visiting the workplace you control. To achieve this you are expected to:

- systematically identify hazards
- systematically manage those hazards
- manage hazards by eliminating them, isolating them or minimising them, in that order of preference
- provide suitable protective clothing and equipment to staff
- provide safety information to staff
- provide training or supervision so that work is done safely
- monitor the health of employees to ensure that their work is not having a detrimental effect on them
- provide opportunities for employees to participate in all of the above.

What is a workplace?

The Act has a broad definition of a “place of work”. Essentially, it is anywhere that an employee is doing work, whether on your own premises or not. It includes your physical premises, a worksite under your control, and equipment employees operate on your behalf. It also includes places like lunchrooms, forecourts and corridors that an employee may pass through during the course of their work. Where a vehicle or commercial vessel is used by an employee doing your business it is also defined as a place of work, even if the employee provides his or her own motor vehicle. This does not include travel to and from work except in some limited circumstances.

One type of work area is treated differently. If you employ or engage someone to work in **your** home, such as a cleaner or plumber, you have no legal duties to them under this Act.

However this approach does not carry over to other people's homes. If you employ homeworkers (such as caregivers or telemarketers) you are responsible for their health and safety whether they are working in their own home or in someone else's.

Avoiding and reporting injury

What is a hazard?

The definition of the "hazards" you must manage is broad. A hazard is any potential or actual source of harm. It may be an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation or substance. A hazard includes a situation where a person's behaviour may be an actual source of harm to the person or another person.

Examples of potential workplace hazards include:

- a work process (for example, how an employee uses machinery or equipment)
- the physical environment (for example, working at height, underground, or at sea, and working at high or low temperatures)
- the equipment used (for example, is electrical equipment properly installed? are brakes effective?)
- an external factor (for example, the possibility of robbery where large amounts of money are kept)
- an input to the work process (for example, are cleaning materials toxic in some circumstances?)
- the work organisation (for example, are shifts and breaks designed to minimise fatigue and disruption of sleep?)
- access to critical information (for example, are instructions available at an appropriate literacy or language level for employees in the workplace?)
- the construction of the premises (for example, is flooring safe when wet? are people exposed to asbestos?)

- the impairment of an individual employee (for example where a diabetic employee misses meals due to work pressures).

Your hazard assessment should also take account of any previous injuries or work-related illness that may have occurred.

What do I do about hazards?

You are required to examine all aspects of the workplace to identify and then systematically assess hazards.

Recording your hazard assessment and regularly reviewing it – particularly when changes are made to the workplace and/or work processes – can form the foundation for a health and safety policy and plan in your workplace. You also need to review your plan when you receive new information about the effects or management of a hazard.

You are required to take “all practicable steps” to eliminate or manage each hazard. Your plan should consider whether it is practicable to eliminate each hazard, or whether a plan for managing each hazard should be developed. You are required to do as much as is reasonably practicable to eliminate, isolate or minimise the impact of any hazard. Engaging employees in hazard management as part of your agreed employee participation system will make this a more manageable proposition.

There will not be a simple answer for every hazard and a judgement has to be made bearing in mind:

- the nature of the harm or injury that could be caused
- the probability of that harm occurring
- the availability of information on managing the hazard
- the cost and availability of safeguards.

For many hazards there are known protections available, such as protective equipment. It is your responsibility not only to provide the protection but also to ensure it is used. Also, hazards can often be eliminated, for example using substitute substances that are not harmful but are equally effective.

In some industries regulations still set minimum standards that you must comply with, whilst in others you may look to Approved Codes

of Practice to provide solutions. These are available from Workinfo (0800 20 90 20 or www.workinfo.govt.nz).

Where these are not available, your industry association may have developed best-practice documents on the matter or be able to suggest a way of dealing with the problem. Many industries have developed or are developing best-practice guides.

The Accident Compensation Corporation (ACC) and the Occupational Safety and Health Service (OSH) have produced a guide to assist small businesses develop health and safety systems. It is titled *“Improving Workplace Safety and Health – for Small Business”* and is available from Workinfo (0800 20 90 20 or www.workinfo.govt.nz) or from ACC (on 0800 THINKSAFE (0800 844 657) or www.acc.co.nz/injury-prevention).

How do I decide what is “all practicable steps” in my circumstances?

The steps you need to take will sometimes be clear but may also sometimes involve balancing operational issues, achievability and cost. Cost alone will not be seen as an excuse for failing to take action. The cost needs to be weighed up against the nature of the hazard, the severity of the harm that would occur and the situation in your business. An employee agreeing to accept a risk is not acceptable, and does not remove your responsibility.

It is worthwhile documenting your reasons for taking any action you decide upon, and then reviewing these decisions as new products or processes come on the market. What may be accepted as “reasonable” at one level of knowledge and cost may be seen as insufficient some time later.

A key to meeting a test of “all practicable steps” is systematic management. Systematic management of health and safety includes:

- identifying hazards in a systematic manner
- eliminating or isolating those hazards that can be eliminated or isolated
- taking steps to minimise the likelihood of harm occurring from the remaining hazards (including providing warnings and other information)

- identifying whether there are specific regulations covering your industry, and complying with those regulations
- providing protective clothing and equipment – or ensuring that employee-provided equipment is suitable – and ensuring that it is used properly
- training your employees about safe working practices
- recording and managing any accidents that occur, and reviewing and correcting their causes
- monitoring the health of employees, and responding to any illness caused by workplace activity
- responding to the advice of Inspectors
- designing work practices and working hours in a manner that supports a safe working environment.

What if something happens that I was genuinely unable to predict?

The Act makes clear that you are only required to manage hazards that you know about, or that it is reasonable to expect you to know about. This does not reduce the necessity to regularly and systematically review hazards and processes and to put in place systems for managing them.

What types of hazards should I be looking for?

You can identify hazards by asking the questions:

- What harm can occur to persons working for me?
- How can that harm occur?

These questions need to be applied systematically to your workplace to be sure you identify those hazards not obviously apparent or where harm has not occurred in your business.

Are any new hazards covered by the Act?

The Act does not require you to identify any specific hazards that were not recognised as such before the law changed. But, because hazards were not well understood in the past, the Act now makes clear that hazards include events that cause an employee to be at greater risk of causing themselves or others in the workplace harm, whether those events occurred in the workplace or elsewhere, provided that you were aware of the employee's situation or ought reasonably to have known about it.

These fall into three categories:

1. Continuing events in the workplace identified during hazard identification, such as:
 - the design of shifts and rosters
 - jobs with inherent stress or pressure, such as policing or air traffic control
 - seasonal peak workflows, periods of staff shortage, and high requirements for overtime
 - jobs that regularly include long days because of travel before, after or during work.
2. Occasional circumstances where a one-off workplace or individual reason needs to be considered, such as:
 - periods of workplace restructuring, where employees feel vulnerable or personal relationships are strained
 - after employees are part of or witness to a robbery, fire or accident
 - after an employee has suffered a bereavement
 - when there is a long-term health problem with an employee or within the employee's family.
3. Personal issues affecting an employee, including:
 - impairment caused by alcohol
 - impairment caused by prescription or other drugs, whether legal or illegal
 - work-related stress
 - fatigue
 - depression
 - difficulty coping with a serious family problem or crisis.

Recognising and helping employees to cope with these issues well is good human resource management. Where they create a risk of harm to the employee or others, the Act requires you to take all practicable steps to provide a safe and healthy environment.

Your role is to manage the workplace situation, not the private lives of your employees. Each employee shares the responsibility to recognise and manage problems himself or herself. This includes handling non-work issues sensibly.

As with other hazards, your responsibility only extends to matters you can be reasonably expected to recognise or be aware of.

Further information or assistance is available through Workinfo (www.workinfo.govt.nz or 0800 20 90 20).

Employees

What is employee participation?

Employee participation is central to the Health and Safety in Employment Act. It provides a range of mechanisms for employee participation.

Apart from the legal requirements, research shows that it pays to have employees participate in workplace safety – through reducing both the number of injuries and their cost.

The Act promotes working co-operatively and in good faith with your employees (and, where applicable, their union) to establish an effective arrangement for your workplace. Good faith behaviour is provided for in the Employment Relations Act and includes meeting, exchanging views and being honest with each other.

Many workplaces already have effective systems and strong co-operation, and in those cases reviewing and confirming the current practice may be sufficient under the amended Act. Other workplaces will have systems that have ceased to be effective, and reviewing the system with employees can be a mechanism for identifying new ways to work together effectively.

What could participation involve?

The legislation does not impose any particular system of employee participation.

Each workplace can take a practical approach that suits it.

This might be:

- the election of a health and safety representative
- employee surveys
- hazard identification by teams
- external audits that involve employees in the process
- regular weekly meetings where work is reviewed and systems discussed
- anything else that will work in your work situation.

Sometimes a health and safety committee including both elected employee and management representatives could be the answer.

Where you employ 30 or more employees, you must have an agreed employee participation system. Where you employ fewer than 30 employees, an agreed employee participation system is mandatory if one or more employees request it. Even if they don't request a system, you must still provide opportunities for employee involvement in health and safety issues.

Where employers are required to have a system for employee participation, the Act gives employers and employees six months to come to an agreement on the best approach in their workplace. The diagram on page 29 outlines the process for agreeing on such a system.

A booklet, *"Involving Employees in Safety at Work"*, has been produced to assist in developing an employee participation system and is available through Workinfo (0800 20 90 20 or www.workinfo.govt.nz).

What if we can't reach an agreement?

If you need assistance in agreeing with your employees, or their union on their behalf, on a system for their participation in managing health and safety matters, the mediation services provided by the Employment Relations Service can help you work towards a solution.

If an agreement is required and can't be reached, a system is set out in the Act (described in the diagram on page 29 of this brochure). This system becomes mandatory if you and your employees have been unable to reach agreement within six months from the latest of these dates:

- the date of enactment of the HSE Amendment (5 May 2003); or
- the date at which you employed 30 or more employees; or
- the date on which one or more employees requested a system.

Do employees have responsibilities?

Yes. Employees are required to take all practicable steps to ensure the safety of themselves and others in the workplace. This includes considering both the things they do and the things they omit to do (such as not using safety gear).

You should make clear to employees their responsibilities to use safety equipment provided and to wear protective clothing.

The expected level of an individual employee's responsibility will often be seen to increase with knowledge and seniority, but your overall responsibility to ensure a safe workplace remains.

Practicable steps the employee can take also include reporting to you any hazards or incidents, so that you are able to investigate and put safeguards in place.

What are the functions of health and safety representatives?

Where there are employee health and safety representatives in the workplace, their role is to foster good health and safety practice in the workplace. The focus is on:

- positively promoting health and safety through constructive engagement with you
- identifying hazards and employees' concerns, and working with you to solve them
- supporting fellow workers who have suffered an injury, including involvement in making arrangements for return to work and rehabilitation
- acting as a conduit for communication of health and safety concerns and where appropriate recording differences of opinion by way of a hazard notice.

As you develop your health and safety programme, additional roles may be created for the health and safety representative(s). These may include participating in employee induction programmes, employee training, and decisions on purchasing equipment. The representative(s) will normally participate in any health and safety committee, and communicate to other employees about the issues it considers. Where there is a union in the workplace, it will be able to offer support and information to the representative(s).

Any employee representative should be given reasonable time in which to carry out their role and be provided with the necessary resources.

In the end, though, you must make the necessary decisions about health and safety issues after taking employees' input into account.

Who can be health and safety representatives?

Only employees who have worked more than 180 hours in the past 12 months are eligible to be health and safety representatives.

What training can health and safety representatives receive?

Health and Safety representatives are entitled to two days' paid leave each year to attend approved courses. You should receive at least 14 days' notice of their intention to take leave. You cannot unreasonably decline leave but leave can't be taken at a time that would unreasonably disrupt your business. This entitlement is subject to a cap in each workplace, so that in those workplaces where there are a number of health and safety representatives the leave provisions are not an excessive burden to the business.

Where you and your employees (and, if applicable, their union) agree, different provisions for leave may be negotiated. This could provide for on-site and/or in-house training arrangements.

Information on leave entitlements and approved courses is available through Workinfo (0800 20 90 20 or www.workinfo.govt.nz).

What is a hazard notice?

Once a health and safety representative is trained, he or she is authorised to issue hazard notices.

When a hazard is identified in the workplace, the first response of a health and safety representative should be to inform you and seek to reach a suitable solution.

Both you and the representative should undertake these discussions in good faith and with an open mind. Where agreement cannot be reached because you do not believe that a hazard exists, or because a solution acceptable to both of you cannot be found or implemented, the representative may decide to issue a hazard notice. (See below the section on “infringement notices”: a hazard notice may be a warning that could result later in an infringement notice from an Inspector.)

The Act provides that such a notice:

- *must* describe the hazard identified; and
- *may* identify steps to deal with the hazard.

Once a hazard notice is issued, the health and safety representative can notify an Inspector, who may decide to visit the workplace to review the issue.

Receipt of a notice does not require you to take any specific action, and there is no requirement that work cease in the area or on the equipment concerned. But the notice is a strong indication of the concerns held by the representative, and you should only not respond if you reasonably believe you need to do nothing more. Your response, and reasoning, may be important if an accident occurs and it may therefore be useful to document your decision.

Can employees refuse to work in some circumstances?

An employee may initially refuse to perform work that he or she believes is likely to cause serious harm.

An employee may only continue to refuse to carry out that work if, after discussing the matter with the employer, the matter is not resolved and the employee still believes on reasonable grounds that the work is likely to cause serious harm.

In the first instance, you and your employees (and their representatives if necessary) should be working together in good faith to identify the cause of any problems and resolving these issues yourselves. If this is not successful, you can call your local regional OSH office. Telephone numbers for each regional OSH office are in the blue pages of your White Pages and an Inspector can arrange to visit your workplace.

The employee who refuses to do work because it is likely to cause him or her serious harm must do any other work reasonably requested by the employer.

If they remain unresolved, such problems may be dealt with as an employment relationship problem under the Employment Relations Act.

Advice and assistance is available from the Workinfo contact centre (0800 20 90 20). The staff can suggest the appropriate form of assistance or mediation services.

What is the role of unions under this legislation?

Like everyone else, unions are required to act in good faith to help resolve health and safety issues.

The rights of unions under the Health and Safety in Employment Act flow from the rights of registered unions to represent their members, which are granted under the Employment Relations Act. Unions expressly have a right of entry to the workplace to deal with health and safety issues, and have a right to represent members collectively on health and safety matters.

If employees wish, their union can represent them in developing a system of participation and in any employment relationship problem that emerges while seeking to agree on a system.

However, the legislation covers the entire workforce whether they are collectively represented or not. Therefore it is important for you to consider the interests of employees who are not in the union as you establish systems, processes, representatives and/or a committee.

Who enforces the Act?

The Act is primarily enforced by the Occupational Safety and Health Service (OSH) of the Department of Labour, but other organisations can be approved to undertake enforcement in specialist areas. Currently the Maritime Safety Authority (MSA) is approved to enforce the Act in its area of expertise, and in the future other agencies may be approved. In most cases an individual employer will only have to deal with one agency.

What is OSH?

The Occupational Safety and Health Service is a business unit of the Department of Labour. OSH also has responsibilities under the Hazardous Substances and New Organisms Act. OSH employs over 280 staff in 21 offices throughout New Zealand. These include specialist advisors, inspectors, educators and information officers.

OSH undertakes a range of activities to deliver the government's principal objective of preventing harm to employees at work. This includes research, working with industries to develop codes of practice and recommended best practice, and providing advice to both employers and employees. It also involves inspecting, and if necessary ensuring compliance by, companies that fail to maintain a safe working environment.

OSH can be contacted on Workinfo (0800 20 90 20), and information is available through www.workinfo.govt.nz.

What is the Maritime Safety Authority?

The principal objectives of the Maritime Safety Authority of New Zealand (MSA) are:

- to undertake activities that promote a safe maritime environment
- to provide effective prevention of maritime pollution
- to provide an effective response system to marine oil pollution.

The Authority has always looked after the occupational health and safety of seafarers, but previously did this through other legislation. From 5 May 2003, the Authority administers the provisions of the Health and Safety in Employment Act as it affects those working about commercial vessels.

Further information or assistance is available from the Maritime Safety Authority through www.msa.govt.nz or freephone on 0508 22 55 22.

What can Health and Safety Inspectors do?

Inspectors from the relevant agencies may enter a place where work is being undertaken at any reasonable time to:

- ascertain whether the Act is being or has been or is likely to be complied with
- take all reasonable steps to ensure the Act is complied with
- investigate accidents or complaints
- take samples and collect evidence if needed.

The only exception to this right is entry to a home where work is being undertaken. In this case, the agreement of the occupier or a warrant from a court is required.

A “reasonable time” is one that is necessary for an Inspector to carry out his or her functions efficiently and effectively, not on the convenience of the person in charge. Inspectors are not required to provide notice of their intention to visit a workplace, but are required to produce their certificate of appointment (identification) to the person in charge on arrival.

How Inspectors undertake their task depends on the nature of the visit. They may just visit to offer advice. During investigations and inspections they will often question both the employer and employees, and may take statements from both. This could include both general and specific questions about working conditions, material used, or the nature and performance of equipment.

In particular an employer (or person in control of a place of work) has a duty to provide statements to Inspectors about health and safety matters affecting employees. However when giving such a statement employers do not have to give information or answers tending to incriminate themselves. An Inspector must warn employers before taking such a statement that they are not required to give answers that would tend to incriminate them.

Inspectors may be supported in this activity by other OSH staff or other experts under their supervision.

Both employers and employees have a duty to assist and not to obstruct Inspectors. This means providing sufficient information and access to enable Inspectors to carry out their functions and not hinder them.

If you feel that you require assistance in dealing with these enquiries, you may have your legal or other advisor in attendance. Your employees have the right to seek union or legal advice.

What do I do if there is an injury or near miss?

Dealing with any injured person and the scene

In the case of a serious harm injury, you should notify OSH or the MSA by telephone or fax as soon as possible after you are aware of the event. You should not interfere with the scene – except to prevent further injury to persons or damage to property – until an Inspector has been contacted and determined the appropriate action. Where the police are on the scene to investigate, you should also follow their instructions.

Recording

All workplaces must maintain a register of accidents that caused harm, or that could have led to harm (“near misses”) to either employees or others visiting the workplace. This includes long-term or past activities that may have led to an industrial illness.

Any health or safety problem, regardless of how serious or minor, should be recorded. This information provides the basis for developing plans or actions to avoid future harm.

Your register should record:

- the worksite
- the name, address, occupation or job title of the person involved in the incident
- if an employee, his or her service details
- details of any medical treatment provided
- the time and date of the incident
- details of the site of the incident, what happened and the cause
- details of the injury
- the remedial action taken in response to the hazard that led to the problem.

The employer or the employer's representative should sign each entry.

In workplaces where there is access by non-employees, whether customers or suppliers, all employees should be aware of the need to monitor and report accidents involving these people.

You can download a copy of an accident register from www.workinfo.govt.nz.

Notifying and reporting of serious harm

Cases of serious harm should be reported to OSH or the MSA as soon as you are aware of them. "Serious harm" refers to either an accident or an illness that arises from work-related activity that causes permanent or temporary severe loss of bodily functions.

Examples include:

- amputations
- burns requiring specialist attention
- loss of consciousness for any reason
- damage to hearing or eyesight
- poisoning
- respiratory disease or cancer arising from the work environment.

Any accident or illness that causes a person to be hospitalised for a period of 48 hours over the following week is also considered serious harm and should be reported.

The exact range of harm that is considered "serious harm" is listed in the Act, and you can access this through www.workinfo.govt.nz or through MSA – msa.govt.nz. You can also access the approved reporting form through these sites.

Follow-up would consist of ensuring that any remedial action is taken as soon as possible and that additional steps are included in your hazard management process.

Investigating

The reports and investigations are used to assess the cause of the harm, identify whether inadequate systems or systems failures contributed, and consider what remedial action is appropriate. It is therefore important you provide clear and accurate information. It is best to set out the key details of the event in writing as soon as possible afterwards.

Involving those employees affected in a review of what occurred, and working with the health and safety representative in your workplace, can be a good way to identify and deal with the problem in a way that all of the parties understand and accept.

Any incident should be seen as an opportunity to improve the work environment and work practices.

Compliance and penalties

You have the primary responsibility to comply with the Act in the way that best suits the particular situation so that employees and others are safe.

How are investigations conducted?

OSH or the MSA has the initial responsibility to investigate breaches under the Health and Safety in Employment Act.

The compliance regime has a number of levels that are designed to provide ongoing opportunities to respond to issues and ensure safe workplaces. This compliance regime is intended to focus employers and employees on prevention of harm.

Inspectors will discuss your safety management system during visits, check if they are working in practice and may enter into correspondence to assist and encourage you to improve processes or equipment in your workplace. Where deficiencies in the safety management system are identified, you must have solutions put in place as soon as is practicable for the particular workplace.

Improvement Notices

Only an Inspector can issue an Improvement Notice. This will happen where they believe that the person receiving the notice is failing to comply with a provision of the Act or has failed and is likely to fail again. The notice outlines:

- the provision breached
- the Inspector's reason for believing the person is in breach
- the specific nature of the failure
- a date by which compliance should be achieved.

At the Inspector's discretion, the notice may also outline steps that can be taken to correct the fault.

The Improvement Notice must either be handed to the person to whom it relates, be given to the person in charge of the workplace or activity at the time of the Inspector's visit, or be sent by registered mail to either of those people or to the principal of the company.

There is no specific penalty applied by an Improvement Notice, but failure to comply is itself a breach of the Act, and could lead to an Infringement Notice or prosecution. An appeal over the notice may be taken to the District Court, which can vary, rescind or confirm the notice.

Prohibition Notices

Only Inspectors can issue a Prohibition Notice. This stops particular processes or machinery. This will happen where the Inspector believes there is a likelihood of serious harm because of non-compliance. It has immediate effect and remains in force until the problem is rectified to the Inspector's satisfaction. It is intended as an immediate solution to an imminent threat. Sometimes, therefore, a Prohibition Notice can be issued without warning if a sudden significant risk is reported to, or noted by, an Inspector.

The Prohibition Notice must specify:

- the hazard to which it relates
- the Inspector's reason for believing it will cause harm
- the activity or area that is prohibited.

It can also specify the steps to be taken to eliminate or minimise the likelihood that harm will result.

The notice will be attached or displayed by the Inspector close to the area of risk, and a copy will be given to the person apparently in charge of the process, area or activity.

It is an offence not to comply with a Prohibition Notice or to remove a Prohibition Notice before the problem has been rectified to the Inspector's satisfaction or before an appeal against the notice has been taken and heard by the District Court. The Court may vary, rescind or confirm the notice.

Infringement Notices

Only Inspectors can issue an Infringement Notice. An Infringement Notice is a mechanism for imposing a penalty ranging from \$100 to \$4000 on a person or company that has, despite prior correspondence or notices (including hazard notices issued by health and safety representatives), failed to ensure that all practicable steps have been taken to remove a hazard.

The Infringement Notice is commonly known as an "instant fine", but you have up to 56 days to pay or challenge it. The notice is issued by an Inspector and must be issued within 14 days of the Inspector becoming aware of the hazard.

Inspectors are to take into account a number of issues in establishing the level of the penalty, including the level and extent of actual or possible harm, the employer's previous safety record and the employer's ability to pay.

On receipt of an Infringement Notice the offender has the choice of paying the fee or seeking a hearing in the District Court. It is unlawful to insure against the fine imposed by the Infringement Notice, or any other fine that may be imposed under the Act.

If an offence is continued or occurs again, the same process of warning and Infringement Notice can apply, or OSH or the MSA can lay a more serious charge.

Prosecution

Where there has been a breach of the Act, prosecution is considered as an option.

Prosecution action seeks to both penalise and deter where persons have failed to meet their responsibilities under the Act.

Persons with responsibilities include employers, employees, self-employed, principals, contractors and persons in control of a place of work.

Officers, directors and, in some circumstances, agents may be charged in relation to failures by a company or other body corporate if they actively participated in the failures.

The legislation gives a period of six months from the time when an Inspector could reasonably have known of an offence to investigate and lay charges if appropriate.

When considering prosecuting, OSH or the MSA act in accordance with the Solicitor General's Prosecution Guidelines and internal policy guidelines in order to ensure consistent and appropriate action is taken.

Prosecution by third parties

In the event that an Inspector decides not to prosecute, and:

- where an Infringement Notice has not been issued; and
- when a compliance order has not been issued

then other parties, such as an injured employee or customer, may seek to commence a prosecution.

Fines

Fines under the Act range up to \$500,000, but most offences carry a maximum fine of \$250,000. When the courts consider the penalty to impose they take into account a range of considerations under both the Health and Safety in Employment Act as amended in 2002 and the Sentencing Act 2002. These include:

- the level and nature of risk or harm
- the prior history of health and safety practice in the workplace
- the culpability of the organisation or employee
- the ability to pay.

Help and information

Dealing with health and safety in the workplace is a key part of establishing both effective employment relations policies and work design. Looking at the issues that confront you in a way that considers both, and drawing on the knowledge of your employees, is the best way forward. Employer and industry associations can also provide advice.

You can obtain assistance through your local Employers Association. Their contact details are as follows:

- Employers and Manufacturers Association (Northern) Inc – adviceline@ema.co.nz
- Employers and Manufacturers Association (Central) Inc – ema@emacentral.org.nz
- Canterbury Employers' Chamber of Commerce – info@cecc.org.nz
- Canterbury Manufacturers' Association – cma@cma.org.nz
- Otago-Southland Employers' Association – maree@osea.org.nz

Two Services of the Department of Labour, both of which can be contacted through the Workinfo contact centre (0800 20 90 20), can also assist:

- The Occupational Safety and Health Service (OSH) has primary responsibility in this area, and can answer both general and technical questions on your health and safety practices.
- The Employment Relations Service (ERS) can provide information and assistance in other areas, such as the management of employees' health and safety performance.

These Services work closely together to ensure that problems are resolved at the earliest possible opportunity.

Those in the maritime area can obtain assistance and advice from the Maritime Safety Authority on (04) 473 03111 or toll free on 0508 22 55 22 or the website at msa.govt.nz.

Regulations, Codes of Practice and Best Practice Guides

A range of material is available to assist you in creating a safe workplace and complying with the legislation. These include Regulations, Approved Codes of Practice and Best Practice Guides.

Regulations provide mandatory minimum standards in some industries and for some specific hazards. The website www.workinfo.govt.nz has a list of these industry regulations.

Approved Codes of Practice are developed in conjunction with specific industries and lay down acceptable ways of managing particular processes, equipment or substances. They do not cover all situations, however.

These Codes are not mandatory, but are designed as a guide for managing hazards. Alternative protocols or practices you might develop in your workplace must be at least as effective as the Code. In the event of a hazard being identified by an Inspector or health and safety representative, your practice may well be tested for effectiveness against any relevant Code of Practice.

Best Practice Guides are developed voluntarily by OSH, ERS and specific industries and encourage sharing of the best solutions to health and safety problems and employment relationship issues.

ACC also has a range of injury prevention material and expertise available. To access the information, go to www.acc.co.nz/injury-prevention or call 0800 THINKSAFE (0800 844 657). ACC Injury Prevention Consultants can be contacted at ACC Branch Offices.

MSA

The Maritime Transport Act (1994), through Maritime Rules Part 21 and 80, requires owners/operators of all commercial New Zealand ships to operate under a Safety Management System which includes the hazard identification and management systems described in this publication.

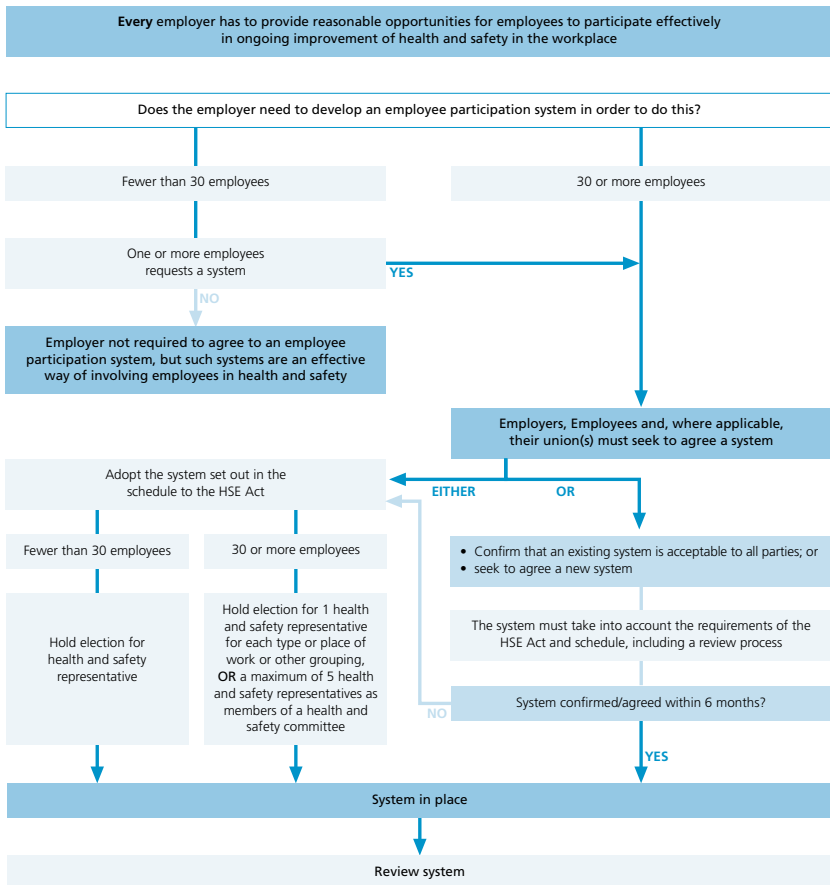
Maritime Safety Inspectors at 10 MSA District Offices will be carrying out some of the functions of Health and Safety Inspectors under the Health and Safety in Employment Act.

Further information on health and safety about commercial vessels in New Zealand, and reporting requirements for accidents, incidents and serious harm (mishaps) are available on the MSA website at www.msa.govt.nz.

Appendix A

How does employee participation work?

The diagram below sets out the requirements for employee participation in workplace health and safety matters. For more detail you can contact the Workinfo service (0800 20 90 20 or www.workinfo.govt.nz).



For further information refer to www.workinfo.govt.nz

This booklet is a guide only and may not be accurate for all situations. It should not be used as a substitute for legislation or for legal or other expert advice.

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www.workinfo.govt.nz
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DEPARTMENT OF
LABOUR
TE TARI MAHI


occupational safety
& health service
te raonga oranga