

Laying down the law



What does the law say about workplace health and safety, and what does it mean for me?

In New Zealand all workplaces - and the people in them - must comply with the major piece of health and safety legislation, the Health and Safety in Employment (HSE) Act 1992 and with the amendments to it, the latest of which was introduced in 2003.

The overall aim of this law is to protect people from any form of harm arising out of work activities.

This harm includes both injuries and damage to health.

The 2003 amendment to the act extended the definition of harm to include the effects - both mental and physical - of work-related stress.

Who does the law apply to?

The obligation to provide protection from harm is not just between an employer and his or her workers. Others with a duty to prevent harm occurring include:

- those "in control" of a workplace - in practice this will usually be the owners or lessees of a building or site where work is taking place, although a vehicle, aircraft or boat can also be a workplace;
- employees;
- the self-employed;
- those selling or supplying equipment for work-related use;
- contractors;
- those who engage others to work for them under contract ("principals").

People can even be prosecuted for endangering themselves.

Who has to be protected?

It is not only those who are actually at work who are legally entitled to protection from harm. Passersby, visitors to the workplace, trainees or those on work experience, and volunteers who help out without being paid, all have a legal right to be kept safe.

How far must I go to protect others from harm?

Meeting the required standard of protection means more than just not doing dangerous things. Failing to deal with a potentially dangerous situation, or creating a hazard by doing nothing, are also offences under the act.

The law sets a high standard for the prevention of harm. All those with a duty to protect others, employees included, are required to take "all practicable steps" to prevent harm occurring.

What does "all practicable steps" mean?

A step is practicable if it would be reasonable to do it, bearing in mind:

- the severity of the injury or health damage that may result if it is not done;
- how much is known about the harm that may result;
- the likelihood of such harm occurring;

- and the cost, availability and effectiveness of the preventive measures.

In other words, a court may accept that it is not reasonable to spend large sums of money dealing with a hazard that is unlikely to cause a serious accident. If, however, the problem can be quickly and cheaply dealt with, it would be reasonable to do so. And if the hazard is reasonably likely to cause serious injury, it would be reasonable to spend money remedying it.

Those who are unaware of a dangerous situation will not be at fault for failing to deal with it however, unless it is something they ought reasonably to have known about.

In what circumstances will people be prosecuted under the act?

The vast majority of HSE Act prosecutions occur after work-related accidents, but it is also possible for OSH (Occupational Safety and Health, the Labour Department service that is responsible for enforcing the act) to bring charges when no accident has occurred. Every year a number of successful prosecutions originate following workplace inspections or complaints from the public that have identified unsafe work practices, such as insecure scaffolding or working at height without fall protection. OSH prosecutions are usually brought against companies, but it is also possible to charge individuals, including company directors, sole traders, workplace supervisors and employees. People engaging tradesmen to do jobs around their homes are exempt from the requirements of the HSE Act, however.

What responsibilities do employers have?

Although the law requires all people at work to maintain safe working conditions to the best of

LINKS

WANT TO KNOW MORE

- The best starting place if you want more information on the act is the OSH website at www.osh.dol.govt.nz. Among other things it has codes of practice, guidelines, accident alerts and a large range of PDF publications on different aspects of health and safety law. *Health and Safety in Employment Act - A Guide to* at www.osh.dol.govt.nz/order/catalogue/index.shtml#H is useful if you are looking for general information. Some of the text is a little legalistic, but it includes helpful examples, using workplace scenarios to illustrate each point.

- This website will also take you through to the new Workinfo website at www.workinfo.govt.nz. This site was set up by the Department of Labour last year to help people find their way around the new amendments, but also includes information on the original HSE Act. It has pages devoted to a variety of special topics, with links to related subjects, and includes a search function, plain English definitions of terms used in the legislation and a range of single-issue fact sheets.

- The four Auckland OSH branches - North Harbour, West Auckland, Manukau and Penrose - hold regular seminars explaining the act and its amendments. The half-day sessions are free, but must be pre-booked as numbers are limited. You'll find the branch phone numbers under Labour Department in the government pages at the front of the phone book.

- The ACC website www.acc.org.nz/acc-publications/#ip provides useful information on systematic safety and health management and injury prevention strategies.

If you want the full text of the act there are two web addresses to try, although neither offer search facilities:

- At www.workinfo.govt.nz/Document.aspx?Doc=hse-consolidated-23-01-04.pdf on the Workinfo website you will find a "consolidated" version of the act, incorporating both the original legislation and the amendments, with colour coding to indicate what has changed.

- The New Zealand statutes site, www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes, offers the act itself, as amended. Click on "H" and pick Health and Safety in Employment Act 1992 from the drop-down menu.

their ability, employers come in for special attention, and are the subject of most OSH prosecutions. To comply with the act an employer must:

- Provide and maintain a safe working environment for his or her employees;
- Provide and maintain health and safety facilities;
- Ensure that the machinery and equipment used by employees is designed, made and maintained so it can be used safely;
- Ensure that nothing occurring in or around the workplace puts an employee at risk of harm;
- Have a plan for dealing with emergencies that may arise;
- Systematically identify and manage workplace hazards;
- Provide staff with information about these hazards in a form that is both readily available and easily understood;
- Provide training and supervision so that work can be done safely;
- Ensure that nothing employees do, or fail to do, causes

harm to others;

- Provide staff with protective clothing and equipment where necessary;
- Provide health monitoring for any employees exposed to substances or situations that could have a harmful effect.

If a work-related accident does occur, an employer must keep a record of the event, even if no one has been injured. If someone has suffered serious harm, OSH must be notified as soon as reasonably possible and before any changes are made to the accident scene. This initial notification must be followed up in writing within a week.

Do other people have special responsibilities?

Principals, the self-employed and those in control of places of work have similar obligations with regard to the recording and reporting of accidents, and ensuring that others are not harmed as a result of activities for which they are responsible.

Those providing machinery and equipment to be used in a

workplace, whether they are selling, leasing, loaning or hiring it, must make sure it is safe for its intended use.

What does the act say about employees?

Employees were the main beneficiaries when the act was amended last year. Along with their responsibilities – to make appropriate use of protective clothing and equipment, work safely whenever possible or inform a supervisor if it is not possible to do so, comply with safety procedures and requirements, report accidents and hazards, and cooperate with health monitoring - they acquired some special rights. Workers can now refuse to carry out any task which they believe is likely to cause them serious harm, although they must accept any alternative work that is offered. They also have a right to participate in health and safety decision-making. All employers are now legally required to involve their workers in these matters and either implement the

health and safety recommendations made by official employee representatives, or provide a written explanation saying why they have decided not to do so.

This department is intended to provide only a broad overview of its topic.

Our thanks to Patrick Seaman, of Patrick Seaman Workplace Safety Ltd, for his comments on the text. Any errors, however, are Safeguard's.

N E X T T I M E

How do I know a hazard when I see one, and what do I do about it?

Any questions?

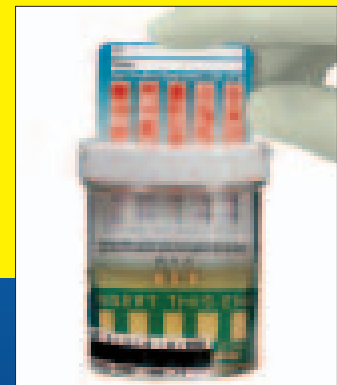
If there is a health and safety topic you'd like to know more about, send the details to jackie@safeguard.co.nz

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