

## Who is Responsible for Health and Safety at School

Q: Who is responsible for health and safety at a school?

The simple answer is everybody - the board of trustees, the principal, staff, parents and others. But there are specific responsibilities for specific roles.

Collectively, the board of trustees as a legal entity holds the primary duty of care to ensure the health and safety of everybody involved with the school (staff, children, parents, members of the public) 'so far as is reasonably practicable'.

Individually, the board members, including the principal, are 'officers' under the new Act. They are responsible for exercising due diligence to ensure the school is meeting its health and safety obligations. They need to assure themselves the school has the appropriate policies, procedures and resources in place and to monitor them.

Principals, as well as being officers, are workers. In this capacity, like all workers, they must make sure that what they do or don't do doesn't adversely affect the health and safety of others in the school.

Parents and other visitors also have a responsibility to take reasonable care for their own and others' health and safety.

## Service Agreements Important

We are now of the view that our former procedures where we encouraged self management of client sites and annual audits will no longer be sufficient.

Indeed, we are warning all clients that they need to have external audits at not less frequency than quarterly as there are many new items under the new laws (200 in total) that present complex compliance issues.

You are urged to make sure that you convert your present agreement over to a 4-6 visit per annum and select the most important items for your site out of the list of twenty.



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## News & views from Summit February 2016

### Key Changes for new Health & Safety at Work Act 2015

#### **Application of Law:**

The former Act mainly applied to employers, employees and contractors. The new HSAWA applies to non-profit organisations, trainees, outworkers, students on work experience plus volunteers if working for PCBU on regular basis.

<b>Max Penalty formerly \$500,000 but likely to be \$50k to \$175k.</b>	<b>For an Individual Employee or Worker</b>	<b>Individual who is PCBU or Officer</b>	<b>Other vis Body Corp or PCBU</b>
Reckless Conduct Section 47	\$300,000 – 5 years	\$600,000 – 5 years	\$3,000,000
Exposing to death serious injury / illness Section 48	\$150,000	\$300,000	\$1,500,000
Failure in H&S duty Section 49	\$50,000	\$100,000	\$500,000

#### **Additional fines**

Insurance against fines is still not lawful and in addition changes have been made to the Companies Act to levy additional fine on Director of up to \$200,000. Also the Sentencing Act was recently changed to make it possible for a Judge to levy additional fees for Reparations not covered adequately by ACC.

#### **DUE DILIGENCE By all Officers Section 44**

- Must have up to date knowledge of Health and Safety laws
- Must have in depth understanding of the nature of hazards and risks that apply to PCBU
- Must provide and prove appropriate resources and processes – not idle talk
- Must monitor incidents, hazards and risks and take appropriate timely actions
- Must ensure Health and Safety Compliance for all duties and obligations
- Must check and verify that all resources and processes are being followed.

#### **NOTIFICATIONS now very much wider (Sections 23 – 25)**

Not just serious harms. It now includes nearly all Injuries and many Illnesses. It also includes many notifiable incidents (no accident happened). Worksafe may require an 8 page "Duty Holders Review" detailing a full investigation and root cause corrective action.

**Worker definition** now includes trainees, volunteers, sub-contractors, outworkers and students on work experience. Contractors and Subbies must be involved as if workers to ensure that they have opportunity to contribute to continuing improvements of safety.

**Directors** must now be personally sure that Health and Safety is well managed even if this means getting reports, visiting the workplace and interviewing staff and managers.

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### **New HSWA Regulations being introduced progressively**

This has been received by email from Worksafe NZ – refer to their website. Regulations to help you understand what you need to do to meet your duties under the new Health and Safety at Work Act 2015 (HSWA) [are out now](#). These regulations will come into force on 4 April 2016, along with the HSWA.

These include regulations applicable to all businesses as well as others focused on a particular activity, risk, hazard, or on the operation of an industry. The regulations cover the following;

[General Risk and Workplace Management](#): These regulations apply to all workplaces in New Zealand. They prescribe what must be done in specific circumstances to meet the duties under the new law.

[Worker Engagement, Participation and Representation](#): These will help businesses meet their duties of worker participation under HSWA. All workplaces need to have effective worker engagement, participation and representations practices under HSWA.

[Asbestos](#): These regulations aim to help tackle the serious health risks posed by poorly managed asbestos. The asbestos regulations outline requirements for the safe management and work with asbestos and asbestos-containing materials, including demolition and removal.

[Adventure Activities](#) : These regulations aim to improve safety, reduce harm and ensure consistent good practice across the adventure activity sector. From 4 April these regulations will revoke and replace the Health and Safety in Employment (Adventure Activities) Regulations 2011.

[Major Hazard Facilities](#): These regulations place safety management obligations on operators or particular facilities. Facilities subject to these regulations are those with the potential to cause a catastrophic event, and focus on matters for process safety.

[Mining Operations and Quarrying Operations](#): These regulations detail the requirements that must be followed including competency requirements in relation to safety-critical roles in mining operations, quarrying operations, and alluvial mining operations.

[Petroleum Exploration and Extraction](#): These regulations provide a framework that aim to ensure the safety of petroleum operations such as the extraction, transportation, treatment or processing of petroleum or gas; any well drilling installation; the construction, maintenance, and operation of any structures, or land improvements connected with petroleum operations.

[Rates of Levy Funding](#): Regulations prescribing the levy required to be paid by employers and self-employed people under section 201 or the HSWA.

### **More regulations in the pipeline**

Regulations specifying infringement offences and fees will be finalised shortly.

The regulations for work involving hazardous substances are [currently being consulted on](#) and will be finalised later this year.

Regulations to support the power in the new Act for the regulator to grant exemptions from regulatory requirements (clause 228A) will be developed this year. Phase two regulations will be developed over the next two years. Make sure you sign up to our HSWA updates [through our subscription page](#) and visit the [dedicated HSWA information](#) on WORKSAFE website to up-date.

3.

## **Automotive Industries Alert**

We are pleased to advise that assistance is being offered to all automotive and this includes panel shops, auto electric, mechanical and glass repair or replacement plus the full range of transport and delivery.

The help will include assistance with IAG forms or those for the preferred Insurance Company operated at the site.

In addition, we will assist the client with ACC discounts and experience rating. Most will be able to get up to 50% reductions over a period of 2-3 years.

Part of the offer will be training for Safety Officers and Managers so that requirements for the new laws are taken into account.



## **Forkhoist death brings serious fine for Tokyo Food Company Ltd**

Food and beverage wholesaler ordered to pay over \$128K after employee fatally injured in forklift incident 22 December 2015

The tragic consequences of a worker not receiving adequate training in operating a forklift have been highlighted in a District Court sentencing against a food stuffs and beverage wholesaler.

Daisuke Yokoyama was killed on March 9 this year after sustaining serious injuries to his torso when he became trapped between a cross beam on a racking unit and the console of the forklift he was operating at a Lower Hutt warehouse.

Tokyo Food Company Limited (TFL) was sentenced at the Lower Hutt District Court after pleading guilty to one charge under the Health and Safety in Employment Act for failing to take all practicable steps to ensure the safety of its employee, Mr Yokoyama.

A WorkSafe New Zealand investigation found that multiple failures by the company contributed to the incident.

These included TFL's failure to ensure that all staff expected to operate forklifts were trained. Mr Yokoyama, along with several other employees, operated forklifts despite the fact that they had not received adequate training to drive forklifts.

The company also had no safety management system in place for identifying and assessing hazards, and had no established safety rules or hazard controls in relation to using forklifts and other tasks carried out in a warehouse.

Mr Yokoyama's family will receive \$76,994 in court ordered reparation and Tokyo Food Company Limited has been fined \$52,000.