

WORKERS

March 2016

WHO IS A 'WORKER'

There is a new term used in the Health & Safety at Work Act 2015 – 'Worker'.

The reference of a worker is made throughout the Act and will be a key phrase used widely in upcoming discussion and enforcement of the new Act. The definition of a worker extends much wider than just employees.

A 'worker' can be defined as an individual who carries out work in any capacity for a PCBU, including work as:

- An employee
- A contractor or subcontractor
- An employee of a contractor or subcontractor
- An employee of a labour hire company who has been assigned to work in the business or undertaking
- An outworker (including homeworker)
- A volunteer worker

If we cast our minds back to the primary duty of care of a PCBU, a PCBU must ensure, so far as reasonably practicable, the health and safety of all **workers** who carry out work for the PCBU or whose work activities are influenced or directed by the PCBU. This includes providing a safe work environment, with safe equipment, and suitable procedures in place.

This means the scope of responsibility has widened to encompass all those who fall under the new definition of a 'worker'.

Although this places a wider responsibility on PCBU's to ensure the H&S of more than just their employees, it also places obligations and responsibilities on individuals as workers. Workers also have duties under the Act. These duties are specified on the following page.

These duties introduce new requirements on workers. This will allow businesses with really good H&S policies, procedures and systems to expect more from their workers in regards to compliance, communication and adherence to safe working practices and instruction. This will also help make PCBU's less vulnerable to enforcement action where a worker has not complied with procedures put in place by the PCBU, where these have been communicated clearly and regularly to workers.



Manawatu Health & Safety Ltd
Consultancy Services

Brigid Hodges

Phone: 027 298 2911

brigid@manawatuhealthandsafety.co.nz

www.manawatuhealthandsafety.co.nz

Key Facts:

- A worker may cease, or refuse to carry out, work if the worker believes that carrying out the work would expose the worker, or any other person to serious risk to health or safety. If a worker ceases work then he or she must, as soon as practicable, notify the PCBU.
- Other persons at the workplace must also take reasonable care for his or her own health and safety and ensure their acts or omissions do not adversely affect the health and safety of others. They must also comply with instructions given by the PCBU.
- PPE – workers must use and wear PPE as instructed by the PCBU, or in accordance with any training. They must not damage or misuse this PPE and must notify the PCBU if the PPE is damaged, defective or needs cleaning or decontaminating.

WORKERS DUTIES

While at work, a worker **must**:

- a) Take reasonable care for his or her own health and safety
- b) Take reasonable care that his or her acts do not adversely affect the health and safety of other persons; and
- c) Comply with any reasonable instruction that is given by the PCBU
- d) Cooperate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

WHAT DOES THIS MEAN?

This means workers have a personal responsibility and duty to follow all reasonable instructions, policy, safe operating procedures etc of the PCBU in relation to Health and Safety. This extends to the use of equipment, PPE, and carrying out work within their qualifications, experience and competency. Failure to carry out their duties as outlined above may result in enforcement action being taken against the individual.

WORKER ENGAGEMENT

The PCBU must also engage with workers – remember that that scope of a worker goes beyond that of just employees. Engagement with workers is required in hazard and risk management, when making decisions about the adequacy of facilities, procedures for worker engagements, developing worker participation practices and when making decisions about procedures for resolving H&S issues. The PCBU has to make sure that the workers have an opportunity to express their views and take these views in to account. Worker engagement and participation will be covered off in more detail in a future newsletter.



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What are the potential consequences for reckless conduct in respect to these duties of an individual?

A person who commits an offence is liable for imprisonment not exceeding 5 years or a fine not exceeding \$300,000, or both.

What are the potential consequences for reckless conduct in respect to the duties of a PCBU or Officer?

For an individual who is a PCBU or an Officer of a PCBU, a term of imprisonment not exceeding 5 years, a fine not exceeding \$600,000 or both.

*These penalties relate to offences of **reckless conduct** in respect of duty. Failing to comply with the duties outlined in the Act also bring about fines of between \$50,000 and \$500,000.*