

H&S REPRESENTATIVES

June 2016

The Health and Safety at Work Act 2015 and the Worker Engagement, Participation and Representation Regulations 2016 widely addresses the requirements for health and safety representatives within organizations.

The Act and Regulations describe in detail the specific requirements for having H&S Reps, the process for nomination and election, and the role, powers and responsibilities of the representatives which is quite extensive. This newsletter aims to touch on some of these aspects to assist organizations understand if and when they may need to have health and safety representatives and the correct process to follow. If you identify the potential need for H&S Representatives, or a worker requests representation within your organization, it is highly recommended you read 'Worker representation through Health and Safety Representatives and Health and Safety Committees – Interpretive Guidelines' issued by WorkSafeNZ.

What is a health and safety representative?

A health and safety representative is a worker who has been formally elected by the members of their work group to represent them in health and safety matters. A H&S Rep is another way for workers, through their representatives, to have their say.

WHO NEEDS HEALTH AND SAFETY REPS?

PCBU's with 20 or more workers, or those who are in a high risk industry must initiate the election of one or more reps **if requested** by a worker and consider whether their existing engagement and participation practices are sufficiently effective. A PCBU may, on their own initiative, initiate the election of H&S Reps.

DETERMINING WORKER GROUPS

When determining worker groups within an organization, the PCBU must take in to consideration the number of workers, the views in relation to those workers, the different work places or locations they may work, the nature and similarity of their work, the diversity of their work, the pattern of work (part time, casual, full time), the time at which they carry out work and the arrangements for over time or shift work.

PROCESS FOR NOMINATION & ELECTION

A person can only nominate or vote for a representative for their own worker group.

Nomination: Call for nominations from workers for candidates. Do this within a reasonable time frame and, based on the number of nominations received, determine whether an election needs to be held and notify workers of that decision. A worker can only nominate a



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WHAT IS WORKER REPRESENTATION?

It is when workers choose one of more people to speak or act about H&S matters on their behalf. Workers can share H&S questions, concerns, suggestions with their rep who can then raise these issues with the PCBU.

WHAT ARE THE HIGH RISK INDUSTRIES?

- Aquaculture
- Forestry and logging
- Fishing, hunting, and trapping
- Coal mining
- Food product manufacturing
- Water supply, sewerage, & drainage services
- Waste collection, treatment and disposal services
- Building Construction
- Heavy and civil engineering construction
- Construction services

HOW LONG IS THE TERM FOR H&S REPS?

A H&S Rep holds their position for a term not exceeding 3 years, unless they are re-elected.

H&S REP POWERS

- Issue Provisional Improvement Notices (PINS)
- Attend interviews
- Enter & inspect the workplace
- Request information
- Accompany an inspector
- Stop unsafe work

candidate for their own worker group. They can nominate themselves for election also. The H&S Rep can only represent the worker group to which they belong to.

Election: Election for H&S Reps can be undertaken using any form of voting and may be conducted by any person, except a candidate.

A worker must be willing to act as a H&S Rep, you cannot force them.

The Regulations specify offences and fines for failing to comply or interfering or influencing voting in the election with fines of up to \$30,000.

HOW MANY HEALTH AND SAFETY REPS WILL YOU NEED?

There is a minimum ratio of 1 representative to every 19 workers in each worker group. If the number of workers divided by 19 does not equal a whole number, the number is rounded up to the next whole number.

HEALTH AND SAFETY REPRESENTATIVE TRAINING

Initial health and safety representative training requirements is NZQA Unit Standard 29315 (Specified in Part 1, S3 & S21 of the Worker Engagement, Participation and Representation Regulations 2016)

Where a H&S Representative has been elected to represent a worker group the PCBU must allow, for the purpose of H&S training, 2 days paid leave each year. The PCBU must pay the worker paid leave to attend this training and also the fees of the training. The Rep, in agreement with the PCBU, may use this training to attend initial, additional or transitional training. Contravening with this section of the act is liable for a fine of up to \$50,000

HEALTH AND SAFETY COMMITTEES

Health and Safety Committees: A H&S Committee supports the ongoing improvement of health and safety with members representing the PCBU and workers. It enables PCBU representatives and workers to meet regularly and work together to ensure workers H&S. It's another way for workers, through their representatives, to have a say. Health and safety committees are optional, with consideration given to existing worker participation and engagement practices in place.

If the PCBU establishes a committee, the PCBU and workers must agree on the membership details of the committee. The Regulations do specify that one of the members must be appointed and authorized by the PCBU to make decisions on behalf of the PCBU and at least half the members on the committee must be workers and must represent the workers of the workplace, these people must not have been nominated by the PCBU. Each health and safety rep is eligible to be a member of the committee.

If you do decide to have a health and safety committee, it must meet at least every 3 months.

WHAT IF I HAVE WORKERS WHO HAVE DONE PREVIOUS HEALTH AND SAFETY REP TRAINING UNDER THE OLD ACT?

Safety N Action are running a free online 'H&S Representative Transition Training' (4 hours) which transitions existing reps who have had previous training to their role in line with the new Act.

CAN A REP BE REMOVED OR RESIGN FROM THEIR POSITION?

Yes, they can resign from their position. Their position may also cease if they no longer work for that 'worker group' or the majority of the members of the work group no longer wish for the person to represent them.

WHO DOES NOT NEED TO INITIATE H&S REPS?

If a business has fewer than 20 workers and is not within the scope of any high risk sector, they do not need to initiate H&S Reps if they deem their current engagement and participation practices satisfactory. The PCBU must however, give written notice to that effect within reasonable time to the worker you requested representation.

DO I NEED TO KEEP A LIST OF H&S REPS?

A PCBU has a duty to keep a list of the names and contact details of the H&S Rep for each worker group. This list must be readily accessible to workers, WorkSafeNZ and kept updated. A PCBU who contravenes with this clause of the Act is liable for a fine up to \$10,000.

ARE HEALTH AND SAFETY REPS MORE EXPOSED TO RISK OF PROSECUTION?

No, reps are protected from civil & criminal liability for any action they take (or do not take) in good faith when acting in their role as a H&S Rep.