



fact sheet



06 Mar 2003

Key Changes to the Health & Safety in Employment Act

Health and safety in the workplace

The Health and Safety in Employment Act aims to promote the health and safety of everyone at work and of other people in or around places of work. To achieve this, it requires people who are responsible for work and those who do the work to take steps to ensure their own health and safety and that of others.

The Act also recognises that employees have a valuable contribution in making workplaces safe.

Changes in three key areas

The amendment Act introduces changes in 3 key areas:

- **Coverage**
 - **Employee Participation**
 - **Enforcement**
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Changes to come into effect from 5 May 2003

The changes described below are a summary of the key changes to the Health and Safety in Employment Act 1992 (the Act) introduced by the Health and Safety in Employment Amendment Act 2002. The amendment Act comes into effect on 5 May 2003 and copies can be purchased from Bennett's Government Bookshops.

Continued on next page

Key Changes to the HSE Act, continued

FAQs

Below are the answers to some frequently asked questions, which illustrate the changes to the Act:

Q: What are the changes to coverage under the HSE Act?

A: The following changes have been made:

- The coverage provided by the Act is extended to comprehensively cover crew aboard ships, crew aboard aircraft and rail workers.
- The Act contains a “designated agency” clause that will enable the Prime Minister to designate other government agencies to administer the Act for a particular industry, sector, or type of work. In doing so, the Prime Minister must have regard to the specialist knowledge of relevant agencies.
- The Act confirms that it covers people who are mobile while they work.
- The Act covers volunteers carrying out work activities, ‘loaned employees’ and persons receiving on the job training or gaining work experience.
- The Act confirms that employers must provide and ensure the use of protective clothing and equipment for employees. The Act is amended to provide that in certain circumstances employees may choose to provide their own protective clothing.
- The Act places duties on persons who sell, hire or supply plant or equipment for use in a place of work to ensure that it is safe for its intended use.
- The Act requires self-employed persons and principals to record incidents and notify the Occupational Health and Safety Service (OSH) of serious harm accidents.
- The Act highlights and makes explicit that it covers stress and fatigue as potential work hazards and sources of harm and that certain behaviours may create a hazard.

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Key Changes to the HSE Act, continued

Q: What are the changes to employee participation under the HSE Act?

- A: The Act places a new enforceable duty on all employers to ensure that employees have reasonable opportunities to participate effectively in ongoing processes for improvement of health and safety in the employees' places of work.
- "Reasonable opportunities" is determined having regard to the particular circumstances of each workplace, including things such as:
 - the number of employees employed;
 - the number of workplaces and the distance between them;
 - the potential sources of harm in the place or places of work;
 - the nature of the employment arrangements (e.g. the extent and regularity of seasonal employees); and
 - the overriding duty to act in good faith.
- If an employer has fewer than 30 employees, and one or more of those employees requires the development of an employee participation system, then a system must be developed.
- If an employer has 30 or more employees, an employee participation system must be developed.
- Employers, employees and any union acting on an employee's behalf must then co-operate in good faith to develop, agree and maintain a system that sets out the ways in which employee participation will operate in the workplace.
- A 'system' will comprise any matters the employer, employees and their representatives agree on. For example, it may involve electing health and safety representatives, focus groups, toolbox meetings or it may involve establishing a health and safety committee or something else. A system must contain a process for review.
- If a system is required and there is a failure to develop a system within 6 months, the Act contains default mechanisms that allows employees or their union to hold an election for employee health and safety representatives [either acting separately or as part of a health and safety committee].

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Key Changes to the HSE Act, continued

Training for health and safety representatives

- The Act sets out a statutory entitlement of 2 days paid leave each year for health and safety representatives to attend an approved health and safety training course. This leave obligation for a single employer is capped by a formula similar to that used in the Employment Relations Act to calculate employment relations education leave and is based on the number of employees employed by the employer. If there is an agreed system of employee participation, the relevant parties may agree to increase or decrease this leave entitlement.

Hazard Notices

- The Act provides that health and safety representatives who have undertaken appropriate training will be able to issue hazard notices. A hazard notice is a communication tool, which informs an employer that the trained health and safety representative believes there is a hazard in the workplace that requires systematic management.
- Hazard notices may be issued if a trained health and safety representative identifies a workplace hazard, brings it to the attention of the employer and the employer either refuses to discuss the hazard or to take steps to deal with the hazard within a reasonable time.

Right to refuse work likely to cause serious harm

The Act sets out the right to refuse work likely to cause serious harm and a process by which an employee may continue to refuse to do work likely to cause serious harm. Such an employee may be required to perform any other work reasonably requested by the employer that is within the scope of the employee's employment agreement.

Q: What are the changes to enforcement arrangements under the HSE Act?

- The limitation period for bringing a prosecution under the Act will increase to six months from the time when the breach became known or should have become known to an inspector. Under the current law, the six-month time limit runs from the time that the breach of the Act occurs.
 - The current Crown monopoly on prosecutions will be removed. Private prosecutions will now be possible but only once OSH has decided not to prosecute and has not issued an infringement notice or sought a compliance order for the same matter. Persons interested in knowing whether a particular matter is to be the subject of prosecution action will be required to notify the Secretary of Labour within a specific time frame.
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Key Changes to the HSE Act, continued

Infringement Notices

- The Act now contains an infringement offence regime. Infringement notices may be issued by an inspector for any breach of the Act or Regulations.
- The fee levels for infringement notices will be applied in \$100 increments as follows:
- For any infringement offence except for a breach of section 7(1) of the Act fine levels range from \$100 to \$3000.
- For a breach of section 7(1) of the Act, fine levels range from \$800 to \$4000 (section 7(1) of the Act sets out the requirement to have a system in place to identify and manage workplace hazards to prevent harm occurring to employees).
- An infringement notice may be issued only if a warning has previously been issued for the infringement offence for the same or similar matter.
- Like any instant fine an infringement notice will not create a criminal record. It will be possible to appeal an infringement notice to the District Court.

Insurance

- The Act creates an offence to insure or offer to insure against fines issued under the Act. Allowing insurance against fines would result in lower or inconsistent health and safety standards being applied in different workplaces. This is because such insurance policies protect insurance holders from the consequences of breaching the law. It will remain possible to insure against the costs of defending a prosecution under the Act or, a sentence of reparation under the Sentencing Act.

Further information

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

For further information, call Workinfo on 0800 20 90 20, or visit their website at: www.workinfo.govt.nz
