

→ HEALTH AND SAFETY IN CONTRACTING SITUATIONS



As a principal to a contract, you are liable for the health and safety of contractors under the Health and Safety in Employment Act 1992. If you fail in your duty the Act provides for substantial penalties.

If you are in business and contract people or businesses to do work for you, then you will have duties as a principal under the Act. Putting work out to contract doesn't remove your health and safety obligations and is therefore not the "easy option". You cannot pass on a legal duty that falls on you as an employer, a person in control of a place of work, or a principal in terms of the Act.

The aim of the Health and Safety in Employment Act 1992 (the Act) is the prevention of harm

to people at work or as a result of work activities. To do this, the Act places a range of duties and responsibilities on people in the workplace to manage hazards and ensure work is done safely.

The Act creates a duty requiring principals to a contract to take "all practicable steps" to ensure contractors, subcontractors and their employees are not harmed while undertaking work under the contract.





WHAT IS A PRINCIPAL RESPONSIBLE FOR?

A principal has a duty to a contractor, a sub-contractor and their employees. The duty is to take “all practicable steps” to ensure none of these people are harmed while doing work they were engaged to do. As the legal requirement is that all practicable steps be taken, a failure to take even one practicable step is a breach of the Act.

“All practicable steps”

Taking “all practicable steps” means taking all steps that are reasonably practicable to prevent harm. It involves consideration of:

- the nature and severity of any injury or harm that may occur
- the current state of knowledge about the likelihood of such injury or harm occurring
- the current state of knowledge about harm of that nature
- how much is known about the risk of potential harm and the ways of eliminating, isolating or minimising that risk, and
- the availability and cost of safeguards.

What is reasonable depends on factors such as the:

- scale and nature of the contract
- type of work the contractor was engaged to do
- current state of knowledge and “best practice” in the industry
- nature of hazards in the place of work, and
- contractor’s and principal’s respective expertise in the work being undertaken.

For example, the steps expected of a principal to a photocopier service contract would be different to those expected of the principal to a contract for a major building alteration. The photocopier owner may only require a brief verbal exchange of relevant health and safety information. However, the “practicable steps” expected of the principal to a major building contract would be extensive.

Another example is that of a farmer who is a principal to a shearing contractor. The farmer would need to ensure that the facilities that they “own” such as the shearing shed and plant and equipment are safe, while satisfying him or herself that the shearer and their employees are competent or supervised and work safely.

A principal needs to follow a process to ensure that the contracted work will be performed in a safe and healthy way. This will often include:

- planning and preparing for the work
- ensuring the contractor is up to the job
- providing information or resources to contractors
- monitoring the performance of the contract.

Sometimes duties might be shared by the principal and a contractor. So, if you are a builder or developer who engages an electrician to do electrical wiring on a building project, you will usually have limited duties in relation to the safety of the wiring itself. However, the principal’s duty is much clearer when it comes to providing scaffolding for the electrician to gain access to the work.

The principal cannot contract out of their obligations by passing the duties on to contractors or subcontractors. Contractual clauses that attempt to do this will not be accepted by the courts.

CONTRACT PROCESS

The diagram alongside outlines the usual features of a process for principals to manage and assist with the safety performance of contractors. It summarises the “best practice” process outlined in *A principal’s guide to contracting to meet the Health and Safety in Employment Act 1992*.

All six stages of the process will apply to any contracting situation. However, the extent to which each is formalised will vary according to the size and type of contract involved.



Overview of contract process



1

Scoping the work

Health and safety issues

Determining what work needs to be contracted out, and considering the broad health and safety implications.

Tasks and documentation

Initial appraisal of significant hazards and overview of likely risks associated with different options.

Considering health and safety issues when selecting the best way to select a contractor and deciding price and other contractual terms.

Relevant tender and/or contract information developed by the principal.



2

Pre-qualifying the contractor

Health and safety issues

Assessing capability of potential contractors (i.e. for an "approved list").

Tasks and documentation

Pre-qualification questionnaire

Assessing health and safety management and, depending on the scale or significance of the hazards, a detailed appraisal of technical competence.



3

Contractor selection & negotiation of terms

Health and safety issues

Providing information to potential contractors on the health and safety, including the hazards of the particular contract.

Developing a draft health and safety plan for the project with scope for completion in discussion with the principal.

Assessing capability of tenderers (where pre-tender qualification hasn't been done).

Tasks and documentation

Tender contracts

Relevant information is given to tenderers by the principal through the information for tenderer document.

Draft health and safety plan

Tenderers complete a draft plan. Principal provides information and answers questions specific to the job, assists with completion of hazard assessment and method statements where appropriate.

Non-tendered contracts

Contract specific health and safety information is provided to pre-qualified contractor.

Contractor responds to information provided and depending on the size and nature of the contract provides either:

- *A draft health and safety plan; or*
- *Acknowledgement of receipt and acceptance of health and safety information, terms and conditions; or*
- *Other documentation as required*



4

Awarding the contract

Health and safety issues

For larger projects, developing a job-specific health and safety plan.

For smaller jobs, or ongoing work, maintaining agreed standards, systems and processes established by pre-qualification, and modifying them to suit the circumstances of the individual contract.

Tasks and documentation

The contract itself will often draw on the tender documents or other information provided to or by the contractor.

Job registration or permit-to-work systems may be used to inform risk assessments.

Completed health and safety plan

Principal provides information and answers questions specific to the job, assists with completion of hazard assessment and method statements where appropriate.

Incorporation of health and safety plan into contract.

Includes agreed detail of lines of communication, responsibilities, accountability, safe systems of work, method statements, use of client services, etc.



5

Monitoring the contract

Health and safety issues

Monitoring/checking throughout duration of contract.

Responding to information as received.

Keeping the contractor informed of the results of monitoring.

Checking and ensuring contractor performance meets the agreed standards.

Tasks and documentation

Ensuring permit to work or job registration systems, competency requirements, and other controls are in place and maintained.

Meeting as appropriate to plan for and resolve health and safety issues.

Principal's reporting, notification and hazard management documentation as required by the contract.



6

Post-contract review

Health and safety issues

Concluding review to determine success or otherwise of the contract.

Tasks and documentation

Helping principal and contractor learn from health and safety performance during the contract.

Post-contract evaluation form



WHO IS A PRINCIPAL?

A “principal” is any person, or corporate entity, who engages another to do any work for gain or reward, other than as an employee. The exception is engaging someone to do work on your own home (residential work).

If you engage a self-employed person, the duties of a principal under the Act apply — as long as the person meets the accepted tests for that person being an independent contractor and not an employee.

A contractor is considered a “principal” with respect to subcontractors. This is an important point for businesses to consider.

WHO IS A CONTRACTOR?

A “contractor” is any person who is engaged, other than as an employee, by another to do work for gain or reward. They may be a self-employed person, corporate entity, or a person engaged on some other basis than as an employee.

WHO IS AN EMPLOYEE?

An “employee” is defined for the purposes of the HSE Act as any person of any age who is employed by an employer to do any work (other than residential work) for hire or reward under a contract of service, i.e. an employment agreement.

In some situations volunteers, loaned employees or people receiving training or work experience may be deemed “employees” for the purpose of the HSE Act.

AGENTS AND ADVISERS

Often a principal will act through an agent or adviser. This includes situations where a company uses expertise that it does not retain in-house to purchase specialist goods or services.

By using an agent or a management facility a principal does not necessarily avoid their duty under section 18. For example, where a building owner asks a property management company to organise a contractor to repair a roof, and the account is forwarded by the agent to the building owner, the owner still has the duties of a principal. Alternatively, if the property management company commissions the work and pays the bill, it is a principal in relation to the contractor.



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RELATED DUTIES

Three further provisions in the Health and Safety in Employment Act 1992 may apply to principals during the lifetime of a contract. They may overlap with duties under section 18, and are in addition to the duties the principal may have as an employer. The duties apply to:

1. Person who controls a place of work, including plant and vehicles
2. Selling or supplying plant for use in a place of work
3. Recording and notifying accidents and incidents

FURTHER INFORMATION

A *principal's guide to contracting to meet the Health and Safety in Employment Act 1992* and a best practice case study of Manukau City Council's procurement arrangements are available from the Department of Labour's website www.dol.govt.nz.

WHAT THE HEALTH AND SAFETY IN EMPLOYMENT ACT 1992 SAYS:

SECTION 18: DUTIES OF PRINCIPALS

- (1) Every principal shall take all practicable steps to ensure that –
 - (a) no employee of a contractor or subcontractor; and
 - (b) if an individual, no contractor or subcontractor, – is harmed while doing any work (other than residential work) that the contractor was engaged to do.
- (2) Subsection (1) of this section shall be read subject to section 2(2) of this Act.

