

The revised Health and Safety at Work Act comes into effect on 4 April 2016.

It's quite a change for a lot of NZ businesses.

The following document acts as a practical guide to help you to get ready.

In late 2015, WorkPro, Manage Company and Lawson Williams partnered to publish an e-book that outlined the key changes that would come about with the new laws. The free e-book has been downloaded close to 1,000 times and proven to be a valuable resource of information. If you don't have a copy, you can download it here by clicking the button:

[> Click to Download the NZ WH&S Future e-book](#)

This guide should be read in conjunction with the above e-book as you need to understand the key changes that are referenced in the e-book in order for you to introduce actions in your business.

It is worth noting that Government will be releasing more draft Regulations as well as the final Regulations which will give more clarity and guidance on what needs to be done. At such time this guide will be updated and released to you.

This guide covers 12 key areas under the Health and Safety at Work Act and the draft General Risk and Workplace Management Regulations. It also takes into account the equivalent Australian Regulations.



Reasonably Practicable

Your policy wording needs to reflect this change as well as the wording in your health and safety system. The old term is “... all practicable steps”.

Tasks:

- Review your health and safety system for all references to the old definition of all practicable steps and replace with reasonably practicable.
- Review other health and safety information such as employee handbook, subcontractor documentation, tendering documentation for references to practicable steps, etc, and change accordingly.

Cannot Contract Out

This is more of a general heads up, as you will most likely not have a reference to this in your health and safety system. While there is no need to have this referenced, you do need to be aware of this obligation. This will most likely come up with any subcontractor agreements or tender contracts.

Tasks:

- Review your subcontractor agreements and tender contracts (and any other relevant documentation) for any wording that would see your business contract out of any health and safety requirements and adjust accordingly.

No Transfer Duties

Similar to the Contracting Out clause covered above, this is more of a general heads up as you will most likely not have a reference to this in your health and safety system. While there is no need to have this referenced, you do need to be aware of this obligation. The most likely place this could come up is with any subcontractor agreements or tender contracts.

The HSAW Act clearly states the responsibilities of officers, workers, etc.

Tasks:

- Review your subcontractor agreements and tender contracts (and any other relative documentation) for any wording that would see your business contract out of any health and safety requirements.

Due Diligence for Officers

Businesses where the decision makers are involved in the day-to-day operations tend to cover the Due Diligence requirement quite easily, as they will be acutely aware of what is happening in the health and safety space of their company.

This does not necessarily mean they are involved with the Health and Safety Committee or directly in health and safety though, so it would still pay to cover the basics. This can be achieved through reading, commenting on and signing off on the Health and Safety Committee meeting minutes, or something similar. Any observations and questions you have should be noted and sent back to the Committee to action.

Please note this does require the minutes to have useful content (i.e. record of discussion) and not just the bullet points of decisions.

Tasks:

- If you are actively involved in the day-to-day operations and are part of the team (or if you are solely it) that drives health and safety, you will know exactly what is going on, thereby meeting your obligations.
- If you are a little further removed from health and safety make sure you have people designated to manage health and safety (see Work Groups and Health & Safety Representatives on the following pages).
- Review relevant documentation so you understand what is going on. As a minimum this should include the Health and Safety Committee meeting minutes. If these do not exist then minutes of the toolbox meetings or any other meetings where health and safety is discussed in detail. You should also see all incident forms and investigations, and be involved in setting the health and safety objectives for the year ahead and evaluate the previous objectives.

Workers Vs Employees

It is clear that the implications are much wider than previously. Your health and safety system needs to reflect the term “worker” rather than “employee”.

Your induction process would have been different for your employees and your subcontractors. This should now be similar given they fall under the same title i.e. all workers need to be inducted into the business or to the site the same way. This should simplify induction processes as you will only need one process.

Tasks:

- Update your system to reference “worker” rather than “employee”.
- Induct all workers (as per the list above) into your health and safety system
- Onsite this will most likely be done at the beginning of the job using the Job Safety Analyses (JSA) or the Site Specific Safety Plan (SSSP).
- Bring all workers into your toolbox meetings, site audits/inspections, hazard reporting, incident management, evacuations.
- Share toolbox minutes with all workers including your subcontractors.
- Share your pre-start documentation with your subcontractors (please see Multiple Duty Holders on page 9 of this document).

Risk Vs Hazard

Some might view this as semantics. However, it is a fundamental shift in thinking that will have a very wide reach. Focusing on risk allows for a clear “risk management” strategy to take place and removes the confusion under the old Act of what is a significant hazard.

You will need to amend your health and system as this will have direct references to hazards, how to control and manage them, how to train staff on them, etc. This will need to change to “risk” and your controls for the most part should not need to change with the exception of isolation as a standalone option. Isolation will no longer be an option under the hierarchy of controls (it will sit under minimisation) as the HSAW Act only talks about:

1. Elimination
2. Minimisation

The following table gives an example of what you can do under both controls.

Hierarchy of Control

**MOST
EFFECTIVE**



**LEAST
EFFECTIVE**

Elimination:

Remove the hazard completely from the workplace or activity

Minimisation:

Substitution: Replace a hazard with a less dangerous one

Isolation: Separate people from the hazard

Prevention: Any person coming into contact with the hazard

Engineering Controls: Making a machine / work process safer

Administration: Put in place rules, signage, training, etc

PPE: Protective clothing and equipment

It is interesting to point out that the HSAW Act does not require a hazard register as such, however you do need to have your risks identified.

Please Note: The two ACC discount schemes, the Workplace Safety Management Practices (WSMP) and the Workplace Safety Discounts (WSD), do require a hazard register.

Tasks:

- Review and update your system for the term “risk” instead of “hazard”.
- Review and update your induction documentation.
- Review your risk matrix – what you use to calculate how risky something is.
- Review your onsite documentation (JSA, SSSP, Site Inspections, etc).

Duty to Provide Information, Supervision, Training and Instruction

The employer needs to have a record of all their workers covering their skills and qualifications, their induction and whether this person is competent. If they are not competent the employer needs to provide supervision for this person.

Doing the same for contractors will be more of a challenge and you will need to work with your subcontracting agency or principal to get this in place.

Tasks:

- Create a register of all workers and what qualifications, tickets, and skills they have related to the jobs they do. (Make sure your register has a mechanism for managing expiry of tickets). For any gaps you need to put the right training in place. This can be done internally (unless specific tickets, NZQA units or licences are required) as long as the trainer is competent and appropriately qualified.
- Communicate with your subcontractors about this requirement and validate their processes.
- Communicate with your main contractors about what they require. Technically they should be asking this information from you as well.

Worker Representation

Firstly, Health and Safety Representatives are not the same as health and safety committee members, although most employers will most likely make them the same people.

Health and Safety Representatives will have greater powers than what we are used to including being able to issue notices and stop work. Employers cannot be indifferent to their requests or ignore them and need to formally reply in writing. Failing to do so will most likely result in fines.

The training requirements for a Health and Safety Representative are still to be determined. We do know that they require two days per year in recognised training. This training will most likely be NZQA based modules.

This section needs to be read in conjunction with the Work Groups section as that sets out the framework for when a business needs to have a Health and Safety Representative.

Tasks:

- Nil tasks – please read in conjunction with Work Groups.

Work Groups

The focus is on having worker input in to your health and safety system and processes. The HSAW Act gives more power to workers to require the employer to act according to the legislation. The employer will have to have very sound reasoning to decline worker input. Please be aware that doing nothing will most likely result in fines.

The HSAW Act talks about workers not employees (covered above). You will need to factor that into your planning.

You will need to consider what is needed on site, especially if you are the main contractor. Any five workers including subcontracting workers working on site can request that a health and safety committee be formed. How will you manage this?

The selecting of a Health and Safety Representative is covered elsewhere in this document.

Tasks:

- Does your business fit the description of a high risk industry or do you employ 20 or more workers?
If Yes, you can be asked by any worker to put in place a Health and Safety representative and/or a health and safety committee.
- We recommend proactively putting a Health and Safety Representative in place, as a business has to have worker participation and engagement anyway. This is regardless of whether your business falls under the high risk category.
- How are you planning on dealing with this on site regardless of whether you are the main contractor or a subcontractor?



Multiple Duty Holders

Onsite this can be done through proactively sharing your initial site assessment (JSA, SSSP) with all others who will be on that site including main contractor, other subcontractors who sit under the main contractor, any subcontractors you may use, etc.

In addition, by having joint toolbox meetings on site, common inductions and by continually sharing information (especially by email which also provides an evidence trail), you will have the necessary evidence to support that you are communicating and what you are communicating.

It is useful having a space on your JSA/SSSP where you can list all parties who have received a copy of the document. It is also useful to share your toolbox minutes and asking for the minutes from the main contractor for their toolbox meetings.

For labour supply the responsibility sits with both the labour supply company and the business hiring the workers. If you are using labour supply staff you need to know who you are hiring. Are they skilled, trained and inducted? Can you prove it? Can they prove it?

Tasks - Onsite

- Discuss with your main contractor, if applicable, what their expectations are (if they have none that does not mean you do not have to do anything – quite the opposite!).
- Share your pre-start documentation with all those who are under your control, your main contractor, project management company, other subcontractors on the site, etc.
- Share your pre-start documentation upstream to the main contractor or whoever is in charge of the job.
- Record who you have provided with this information (audit trail).
- Share ongoing minutes from toolbox meetings, incident investigations (relating to that site), Site Inspections/Audits, etc., both upstream (main contractor) as well as the subcontractors.

Tasks - Labour Supply

- What process does the labour hire firm have in place to provide you with the necessary worker information covering skills, qualifications, tickets and induction? Request evidence of these from them.
- You will still need to induct the workers into your business (and site) regardless if they have been inducted by the labour hire firm. If the labour hire firm have completed the job task specific induction (which they should) then that will make your life a lot easier.
- Open dialogue with the labour supply company is critical as it is a challenging area. Be forthright in sharing information on workplace claims because technically both of you need to report notifiable events to WorkSafe (see Notifiable Events topic on page 11 of this document).
- **You might find the following on-hire checklist useful:**

[➤ Download On-Hire Checklist](#)

Record Keeping

To keep records you must have records in the first place. So, the first thing to do is to make sure you are capturing all the incidents including near misses. For the incidents that need to be sent to WorkSafe, you will need to have a suitable and safe filing system.

Tasks:

- Review how you are currently storing other information e.g. IRD records. We recommend you include health and safety as part of that.

Regulatory Agencies (ACC)

This has an impact on the incident management processes as the business will need to be aware of what information will be shared with WorkSafe by other agencies and what information the business needs to share with WorkSafe.

The HSAW Act does not give any guidance how the Regulatory Agencies will share this information. This will be covered in the Regulations when they are released, ideally before 4 April 2016.

There are a number of considerations that need to be taken into account especially with respect to ACC. For example, employers have 90 days to challenge a claim or longer if the challenge is lodged formally. Our view is that any claim in dispute cannot/should not be escalated to WorkSafe.

There are also a number of nuances with respect to Motor Vehicle Claims which do not (should not) impact Experience Rating.

Tasks:

- For the most part we have to wait for the Regulations to give us more guidance.
- You can communicate with your Health and Safety Representative/health and safety committee so that they understand this change and that it will have an impact on the business including fines for non-compliance.

Notifiable Events

We know that employers can struggle to capture all the incidents especially “near misses”. A common argument we hear is that “there’s no way our guys are going to do all that paperwork or make themselves look stupid”.

WorkSafe will not care about this given the level of serious harm and fatalities in New Zealand. The fines for non-compliance are significant and will drive change.

Consideration could be given to how you can get your workers to be part of the solution rather than having everything driven by the “boss” or the current “health and safety manager”. Our experience is that in getting the workers to be part of the solution you will greatly increase the buy-in.

Tasks:

- Your incident management process will need to include a reference to what a notifiable event is and how you will capture and manage them.
- Your incident form could be changed to include a tick box to state whether the incident needs to be escalated to WorkSafe.
- Your incident form definitely should have a tick box asking the simple question whether the incident actually did happen at work. Note 3 out of 10 workplace claims should not be allocated to your business because it either did not happen at work or it was a pre-existing condition.
- Induction and internal training should include references about what needs to be notified as all workers and subcontractors need to be aware of this.
- A designated person(s) needs to be elected who will do all the WorkSafe communications. This ideally should be a director or senior management.
- You can think about creating a social media policy where workers are not allowed to take photos of any incident and post these on social media.

Levies on Workers for Personnel Protective Equipment (PPE)

Some employment contracts require employees to provide either in part or in full their own PPE. This will no longer be acceptable and the employer has to provide all PPE now.

Please note that the HSAW Act mentions “employee” not “worker”. This is important because it removes the direct requirement to provide PPE to all those who would otherwise be covered by the term workers.

Common PPE that employers have traditionally asked employees to provide have included welding masks, steel cap boots and wet weather clothing.

Tasks:

- Check your employment contracts for wording (if any) covering PPE.
- If you have previously required employees to provide their own PPE look to amend this accordingly.

Fines Vs Prosecution

Practically this is a key area for WorkSafe to start enforcing the HSW Act. The HSW Act and supporting documentation has a finite list of what fines can be applied which is several pages in length. The majority of these are under \$10,000 for a PCBU and \$6,000 for an individual.

It is worth checking whether your liability insurances such as statutory liability are adequate and that you have appropriate legal cover.

Tasks:

- Check your statutory insurances to make sure they are appropriate.
- Familiarise yourself with what you and or the PCBU can be fined for.

How we can help...

A collaboration between WorkPro, Manage Company and Lawson Williams, this guide aims to provide practical steps that you can implement right now in the lead up to the introduction of the new laws.

We hope you enjoyed this publication. We encourage you to share this guide with your colleagues, clients, associates and friends.

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WorkPro is a web-based workforce compliance management solution, which delivers and manages staff inductions, background screening & licence/ticket management for a range of organisations across New Zealand and Australia.

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Saving NZ employers \$millions on their ACC levies.

Manage Company are trusted ACC and Health & Safety Advisors. Visit our website to download all the forms and templates you need to bring your health & safety in line with the HSAW Act.

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"Getting ready" for the changes in legislation is essential for all New Zealand businesses.

Lawson Williams is pleased to be a New Zealand Affiliate of WorkPro, as part of our suite of HR and health and safety services.

For further information on Lawson Williams Health and Safety Recruitment and Services please refer to our website or contact us on any of the details above.