

Don't be an ignorant PCBU!

NEW HEALTH & SAFETY RULES

Effective 4 April 2016

Something every sole trader, partner, company, officer in a company or similar Conducting a Business or Undertaking ("PCBU") must educate themselves about (unless of course large fines and the possibility of jail holds an appeal for them).

David Houston (Partner)
Racheal Allison (Solicitor)
Weston Ward & Lascelles House
1st Floor, 10 Leslie Hills Drive, Christchurch
PO Box 13339, Christchurch 8141
Ph: 03 379 1740 / Fax: 03 379 1789
Email: djh@wwl.co.nz



INDEX	Page
1. <u>A New Focus</u>	3
2. <u>Forget About Insurance</u>	3
3. <u>What is a PCBU</u>	3
4. <u>PCBU Health and Safety Duties – A duty of care to workers</u>	3
5. <u>PCBU Health and Safety Duties – A duty of care to third parties</u>	4
6. <u>What is Reasonably Practicable</u>	4
7. <u>PCBU Duty to Engage & Participate</u>	5
8. <u>PCBU Duty to Notify</u>	5
9. <u>What is an Officer</u>	5
10. <u>Duty of Officers</u>	5
11. <u>Duty of Workers</u>	6
12. <u>Duty of Other Persons</u>	6
13. <u>Examples</u>	7
14. <u>Qualifications</u>	7



Warning – The author has been practicing law now for some twenty five plus years and some would say has become a little cynical and blunt with the passage of time. The content hereof is as such written in a “lively” manner and may cause offence to those of a delicate disposition. Further the author does not pretend to be politically correct and although never wishing to cause offence prefers an unambiguous clear communication style whereby the message is conveyed in as few words as possible. At the same time he enjoys the English language and although he eschews verbosity he is comfortable utilising words of more than one syllable. If any of the foregoing rings discord with you, I would ask that you cease and desist proceeding further, that you place this booklet down carefully and allow somebody with a more robust character to pick it up and hopefully gain a little knowledge that may help them tread the path of life a little more forearmed, than they may otherwise have been.

1. **A New Focus**

- (a) The Health & Safety Work Act will replace the Health and Safety in Employment Act 1992 effective 4 April 2016. It's focus is:
 - (i) It reinforces proportionality – what a business needs to do depends on its level of risk and what it can control.
 - (ii) It shifts from hazard spotting to managing critical risks – actions that reduce workplace harm rather than trivial hazards.
 - (iii) It introduces the “reasonably practicable” concept – focusing attention on what’s reasonable for a business to do.
 - (iv) It changes the focus from the physical workplace to the conduct of work – what the business actually does and so what it can control.

2. **Forget About Insurance**

- (a) Insurance against fines is unlawful and not only will such policies be unenforceable, but the mere fact you have one in place will render you liable to fines of between \$50,000 - \$250,000.

3. **What is a PCBU**

- (a) PCBU is the person/entity that is in the best position to control risks to work health and safety in the carrying on of a business or undertaking (“business”). It includes Company’s, Boards and the Self Employed.
- (b) The definition of a PCBU is far reaching and not always obvious. For example a commercial property owner/landlord falls within the definition of a PCBU. This means they have a duty of care so far as reasonably practicable to ensure the health and safety of everyone involved with or affected by work on or at their property.
- (c) It does not include a person to the extent that he/she is employed or engaged solely as a worker or officer (“worker”) of the business, nor does it include volunteer associations (albeit this is a very murky area), nor finally an occupier of a home who engages another person to do residential work.

4. **PCBU Health and Safety Duties – A duty of care to workers**

- (a) A PCBU must ensure, so far as reasonably practicable, the health and safety of:
 - (i) Workers who work for the PCBU; and
 - (ii) Other peoples workers, whose activities in carrying out work are influenced or directed by the PCBU.
- (b) By way of example, so far as reasonably practicable, a PCBU must ensure:
 - (i) The provision and maintenance of a work environment that is without risks
 - (ii) Safe plant and structures

- (iii) Safe systems of work
 - (iv) Adequate facilities
 - (v) Adequate information, training, instruction and supervision
 - (vi) Adequate monitoring of the health of the workers and the conditions at the workplace.
- (c) Note that:
- (i) A PCBU who is self employed, is not exempt from these obligations and must ensure these with regard to his or her own health and safety while at work.
 - (ii) If more than one PCBU has a duty in relation to the same people, each PCBU with the duty must, so far as is reasonably practicable consult, co-operate with and co-ordinate activities with all other such PCBU's.
 - (iii) A workplace includes a vehicle, vessel, aircraft, ship or other mobile structure.

5. PCBU Health and Safety Duties – A duty of care to third parties

- (a) A PCBU who manages or controls a work place must ensure, so far as reasonably practicable, that:
- (i) The means of entering and exiting the workplace and anything thereat is without risks to health and safety of any person.
 - (ii) Other persons are not put at risk from work carried out as part of the conduct of the PCBU's business.
- (b) Note:
- (i) This throws the onus onto Landlords (even though not usually in direct control of what tenants are doing)
 - (ii) There is no obligation with respect to persons that are unlawfully upon your premises.
 - (iii) It doesn't include the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business.

6. What is Reasonably Practicable

- (a) This means that which is or was at a particular time reasonably able to be done, taking into account and weighing up all relevant matters including:
- (i) The likelihood of the hazard or the risk concerned occurring; and
 - (ii) The degree of harm that might result from the hazard or risk; and
 - (iii) What the person concerned knows, or ought reasonably to know, about:
 - The hazard or risk; and

- Ways of eliminating or minimising the risk; and
- (iv) The availability and suitability of ways to eliminate or minimise the risk; and
- (v) After assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

7. PCBU Duty to Engage & Participate

- (a) All PCBU's must have work engagement and participation practices, regardless of their size, level of risk, or the type of work they carry out.
- (b) Overarching PCBU duties involve:
 - (i) Engaging with workers; and
 - (ii) Ensuring there are effective practices to allow workers the opportunity to participate on improving health and safety on an ongoing basis; and
 - (iii) If the business has 20 or more workers and is within certain high risk categories, then it must arrange for the election of a health and safety representative or the setting up of health and safety committee.

8. PCBU Duty to Notify

- (a) You already have existing duties to notify certain acts or omissions that have occurred at your workplace, but now a PCBU must report notifiable injuries or illnesses, incidents or events as soon as possible. If you don't, then you will be liable to fines.

9. What is an Officer

- (a) Officers are those in PCBU's able to influence the PCBU's act and omissions.
- (b) Examples of officers as follows:
 - (i) Directors of Companies
 - (ii) Partners of partnerships
 - (iii) Sole traders

10. Duty of Officers

- (a) The duty of an officer is not the same as that of a PCBU. Specifically officers do not have to ensure the health and safety of PCBU workers etc. Rather, they must exercise due diligence to ensure that the PCBU is meeting its health and safety obligations. This duty is designed to compliment and support the primary duty of care of the PCBU. It does not replace it.
- (b) Officers must exercise the care, diligence and skill that a reasonable officer would

exercise in the same circumstances, taking into account the nature of the business or undertaking and the position that the officer holds in nature of his or her responsibilities.

- (c) Due diligence extends to taking reasonable steps:
 - (i) To acquire, and keep up to date, knowledge of work health and safety matters; and
 - (ii) To gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and
 - (iii) To ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
 - (iv) To ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
 - (v) To ensure that the PCBU has, and implements, processes for complying with any duty or obligation of the PCBU under this Act; and
 - (vi) To verify the provision and use of the resources and processes referred to above.

11. Duty of Workers

- (a) While at work, a worker must:
 - (i) Take reasonable care for his or her own health and safety; and
 - (ii) Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other person; and
 - (iii) Comply as far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act or regulations; and
 - (iv) Co-operate with any reasonable policy or procedure of the PCBU relating to health or safety at the workplace that has been notified to workers.

12. Duty of Other Persons

- (a) While at a workplace a person (whether or not the person has another duty under this part) must:
 - (ii) Take reasonable care for his or her own health and safety; and
 - (iii) Take reasonable care that his or her own acts or omissions do not adversely affect the health and safety of other persons; and

- (iv) Comply, as far as he or she is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with this Act or regulations.

13. **EXAMPLES**

- (a) Examples:

One:

Kitchen Construction Limited (“KCL”) operates a small business which specialises in building and renovating kitchens. Simon is KCL’s sole director. KCL employs several full-time staff and regularly contracts Jill, a self-employed electrician, to do electrical work.

- KCL is a PCBU as it conducts the business of building and renovating kitchens and therefore is deemed to control risk.
- KCL’s Employees are workers of KCL and thus liable to themselves, work mates and the PCBU’s visitors etc.
- Simon is not a PCBU but is an officer of KCL and thus liable to “police” the PCBU.
- Jill is also a PCBU because she conducts her own electrical business albeit as a contractor to KCL.
- Jill is also a worker of KCL because she is engaged by KCL to complete electrical work for them and so is owed a duty by both herself and KCL!

Two:

WWL owns the building we are in so it is a PBCU and must ensure the health and safety so far as reasonably practicable of all occupants. Thus even though its commercial tenants are also PCBU’s both have a duty to those tenants workers etc.

14. **QUALIFICATIONS**

14.1. The content hereof;

- (a) Comprises generalisations. There are invariably exceptions and/or circumstances that alter most situations and often the advice we give.
- (b) Does NOT constitute the giving of legal advice. It is intended to do nothing more than raise awareness and to alert people to possible situations whereby they should seek legal advice. It should not and cannot be relied upon in whole or part as representing guidance on any issue.
- (c) Is to the best of the author’s knowledge correct at the time of publication and no warranty is given as to the accuracy or even approximation to fact thereafter.
- (d) By providing this booklet the provider does not make any representation about Weston Ward & Lascelles nor give any warranty concerning the services that may or may not be provided by that firm and the recipient acknowledges that this booklet is

provided purely in an effort to assist the recipient with some of the issues that it is believed that he/she/it should consider and it is for the recipient to make their own enquiries concerning Weston Ward & Lascelles and to satisfy themselves as to the nature, extent and adequacy of the services provided thereby.

Weston Ward & Lascelles
Practicing Law Since 1883
Ph: 0800 LAWYER / 03 379 1740 and ask for David Houston or Racheal Allison
djh@wwl.co.nz