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INTRODUCTION

This guide outlines the main features of the Health and Safety in Employment Act 1992 ("the Act") which imposes obligations that deal with all safety and health issues in all work places and during all work activity.

We cannot cover all aspects of health and safety law in this guide however we encourage you to contact us at Govett Quilliam with any questions which may arise. The website www.osh.dol.govt.nz provides further information which may be of use.

PRINCIPLES OF THE ACT

Good faith is now the central provision of all employment related law in New Zealand and the Act reflects that everyone has a role in health and safety. Law makers consider that health and safety issues will be best addressed by good faith, co-operation in the work place, and by consultation between employers and employees. Thus all aspects of the employment relationship, preventing and resolving issues arising from workplace health and safety are a joint employer/employee responsibility.

COVERAGE OF THE ACT

The Act imposes duties on a wide range of working relationships in nearly all places of work. The Act applies to:

- Employers
- Persons who control places of work
- Persons who sell or supply plant for use in places of work
- Self-employed people

- Principals to contacts
- Employees
- Volunteers
- People receiving on the job training or gaining work experience.

WHO IS RESPONSIBLE FOR HEATH AND SAFETY?

The primary duty is on the person in control of a place of work including:

- Employers or Owners
- Managers
- Self-Employed
- Contractors
- Sub-Contractors

There is a general duty to take all practicable steps to ensure the safety of employees while at work.

NOTE: Householders who hire people solely to do work on or in their home do not have responsibilities under the Act. For example if you employ a cleaner for your home or hire a plumber to fix a drain you will not be liable under the Act.

WHAT IS THE MEANING OF “PRACTICABLE STEPS”?

All practicable steps is a key concept in the Act and describes the standard a person must meet when carrying out duties under the Act.

A step is practicable if it is reasonably capable of being done. ‘Reasonably’ means that you do not have to do everything humanly possible; you only have to do what a reasonable person would do in the situation.

To determine if a step is reasonable, account is taken of:

- Comparisons between similar situations in a similar industry;
- What was known or ought to be known;
- The nature and severity of any injury or harm that may occur;
- The probability of injury or harm occurring;
- What is known about the hazard and ways or eliminating, isolating or minimising it;
- The availability and costs to safeguard the hazard.

This list is not exhaustive.

WHAT MUST BE DONE TO COMPLY WITH THE ACT?

All persons in control of a place of work should have a documented Health and Safety Policy. This should include hazard management procedures concerning the reporting and recording of hazards and accidents, and for the management and minimisation of potential harm and hazards. Such policies must be consistently followed.

Your Health and Safety Policy should show that you have taken all practicable steps to guard against hazards in the workplace.

In order to help you to find out what practicable steps are required under the Act in your line of work the following sources of health and safety information may help you:

- Regulations made under the Health and Safety Employment Act;
- Approved Codes of Practice;
- OSH Guidelines;
- New Zealand or International Standards documentation;
- Industry publications and best practice documentation;
- Manufacturers' information, material safety data sheets (MSDS), and user manuals.

STRESS AND FATIGUE

What is stress? OSH defines stress as the result of the interaction between a person and their working environment. It is the awareness of not being able to cope with the demands of work with an associated negative emotional stress.

An employer is required to take all practicable steps to identify and manage work related stress. Stress can be caused, for example, by tough budgets or deadlines, long work hours, onerous working conditions, or poor interpersonal relationships at work. No two individuals are effected in the same way.

Employers can only combat stress if the employer is reasonably aware of it. Employees need to have the opportunity to report stresses, and an employer should respond if they find that an

employee is suffering from stress. There are a wide range of steps which can be taken by an employer in this instance.

ADVICE TO EMPLOYERS

We advise all employers to have a stress policy or a documented method for the reporting and addressing of stress in the workplace.

EMPLOYEES RESPONSIBILITIES

Employees can expect their employer to provide a healthy and safe workplace but they also have to play a part in making sure they stay healthy and safe.

Employees have a duty to:

- Not endanger themselves or others;
- Not to interfere with an accident scene;
- To comply with notices;
- To report stress.

The Act also recognises that the persons carrying out the work of the employer are well-placed to provide useful information about the hazards that arise. There is an obligation to provide reasonable opportunity for employees to participate in health and safety decisions and policies.

In some cases the employer must have a formal Employee Participation Scheme. This is required if:

- There are 30 or more staff, or

- There are fewer than 30 staff but an Employee Participation Scheme is requested.

If the employees and employer cannot agree on an Employment Participation Scheme, or no Scheme is developed, the Scheme set out in the Act will automatically apply.

**ADVICE TO EMPLOYERS:
EMPLOYEE PARTICIPATION SCHEME**

Make sure that you have a method for employees to participate in Health and Safety. If you have over 30 staff, contact us to find out what kind of Scheme you need to have. Govett Quilliam can advise employers on how to develop their own Employee Participation Scheme.

ENFORCEMENT AGAINST YOU

Enforcement of the Act is usually OSH. Generally speaking, OSH will not prosecute unless an injury or damage has resulted from a breach of the Act, or you have ignored warnings and/or notices issued by OSH.

It has recently become possible for a person to privately prosecute for a breach of the Act. It is expected claims by employees may arise under this heading, where there is a breakdown in the employment relationship.

You are prohibited from obtaining insurance or any other kind of indemnification for fines or fees incurred for Health and Safety reasons.

The Employment Team at Govett Quilliam can assist to clarify all employment issues including health and safety issues. We are often called upon to assist in these circumstances:

- Drafting or reviewing Health and Safety Policies and Employment Agreements. Reviews should take place every two or three years.
- Advising on employment issues in the context of the Sale and Purchase of a business or a merger.
- Restructuring or downsizing.
- Structuring a disciplinary process to minimize risks of a subsequent personal grievance.

The team at Govett Quilliam is happy to help you with any question which may arise in your workplace. Please telephone:

- Andrew Laurenson
- Lucin Fraser
- Margaret McDougall

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

- *Asset Protection and Residential Care Subsidies*
- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
- *Charities*
- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
- *Employment Law*
- *Enduring Powers of Attorney*
- *Fair Trading Act 1993*
- *Family Trust*
- *Flexible Working Arrangements*
- *Franchising*
- *Health & Safety in Employment*
- *House Buyers and Sellers Guide*
- *Immigration*
- *Insolvency and Bankruptcy*
- *Intellectual Property and Copyright*
- *Securing Money Lent*
- *Subdivisions*
- *Traffic Offences and Breath Testing Procedures*
- *Wills & Estate Administration*

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