

Business unprepared for new WHS (OHS) laws: how to cover your back

Even though businesses and individuals who do not comply with this year's harmonisation of Work Health Safety (WHS) laws (NSW January 2012) face harsh penalties, many businesses are ill-prepared and have not properly addressed the legislative changes.

OHS Safety First Director Graham Stewart highlighted the following key points to ensure workplaces are abiding by the new regulations:

- Employers are expected to do all that is 'reasonably practicable' to ensure safety – defined as "That which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety"
- Employers must weigh up (without limitation):
 - the likelihood of a hazard/risk occurring;
 - degree of potential harm;
 - what the person concerned knows, or ought reasonably to know, about the hazard/risk and ways of eliminating/minimising it;
 - the availability and suitability of elimination/minimisation methods; and
 - after all of the above, the costs.
- The laws affect any person **conducting a business or undertaking (PCBU)** and include all employers, principal contractors, self-employed persons, franchisors, partners and others. A PCBU must ensure, so far as is reasonably practicable, the health and safety of workers (engaged, influenced or directed) while at work AND other persons who may be impacted by work carried out as part of the business or undertaking - contractors, volunteers and the like...

There is a four-step ongoing process that employers can follow to guide their WHS adherence, namely:

- 1. Identify all hazards and risk (Risk Analysis)**
- 2. Assess (Energy exposure and likelihood)**
- 3. Control (Hierarchy of control)**
- 4. Review (Audits)**



How to control? Use a three-step scale:

1. Eliminate risks and hazards wherever possible – it is only if you can't eliminate the risk that you should proceed down the scale eg Instead of employees lifting boxes, can you provide a trolley?
2. Substitution/ Isolation/Engineering controls. For example, can you provide safer equipment? Can you separate employees from the hazard or risk - for example, erect a barrier?
3. Administrative controls (induction briefings, signs) and personal protective equipment (PPE) (last resort measure, only when no other control method is possible).



Graham advises that there is a real mix in terms of the levels of preparedness of Australian businesses, and that ignoring the laws would be a costly mistake – penalties include fines of up to \$600,000 and/or five years' imprisonment for some breaches.

The necessary action is to discuss OHS WHS and plan to comply. This does not need to be costly – a simple Risk Analysis costs around \$450.

While so far only the Commonwealth, NSW, Queensland, the ACT and the Northern Territory have enacted the new WHS laws, they have implications for national businesses operating across state and territory borders. Most importantly, under the new laws, each person falling under the 'officer' definition in the act has the same duties, making it impossible to delegate those duties – all employees must be trained to ensure WHS compliance.

More Information:

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