

Legal Torque

Health and Safety Law Changes

- Catherine Bormans -

From September, there is likely to be in force new health and safety laws which embody the Government's new approach to workplace health and safety. The Government has proposed changes to the Health and Safety in Employment Act which will have a significant impact on employers from all different industries but in particular will have a significant impact in the transport industry.

Some recent truck accidents may have given the current Government cause to believe that their new approach to health and safety is a necessary one.

In one recent case a Christchurch company was convicted of failing to take all practicable steps to ensure the safety of an employee at work. The accident happened when a worker was helping to unload the Semi Curtainsider of a truck when a 1200kg mezzanine floor fell on to him. He died at the scene of the accident.

OSH say the accident could have been avoided had the company carried out a complete hazard assessment of the trailer on its arrival at the depot and before it was unloaded.

The Court ordered the company to pay \$23,500, \$20,000 of which was to be paid to the victim's family.

Truck accidents like this do give cause for the Government to be concerned as to whether the current health and safety laws go far enough.

So what is the substance of the changes that have been proposed?

The basis of the new approach is that workplace health and safety can be managed better by those

in the workplace. Many employees have useful knowledge about the hazards that they face in their workplace and ideas on how to remove or reduce them. The new changes will help to ensure that employees' knowledge of their workplace is used to best advantage.

The new Act seeks to do this in the following ways:

- Employers will have a duty to "provide reasonable opportunities" for effective participation by employees in health and safety matters.
- Employers will have good faith duties to cooperate with employees and unions, not only to develop but also to agree on systems for effective employee participation. Employers with fewer than 30 employees will assume these obligations if and when an employee invokes them. For other employers, initial systems are to be established within 6 months of the Bill being passed.
- In most cases employees will be represented by health and safety representatives. Functions, entitlements and powers of health and safety representatives will be set out in the Act. The Act will specifically provide that there can be no discrimination against a health and safety representative. Health and safety representatives will have a statutory entitlement to two days paid leave per annum to attend a government approved health and safety training course.

Thus the new Act gives employees a formal role in the provision of safe workplaces. Currently employers must involve employees particularly in identifying and eliminating, isolating or minimising hazards.

With the changes to the Act, employees will be entitled to a say not just in those matters but also in how employers go about providing a safe workplace for employees and others, information

The basis of the new approach is that workplace health and safety can be managed better by those in the workplace.

gathering and distribution, training and supervision for safety purposes and so on.

Other important changes proposed by the new Act are:

1. The new Act will deem "workplace" to include vehicles. This will ensure that drivers will have the protection of health and safety legislation. Crews aboard ships and air crafts and rail workers will also be covered under the Act.
2. Employers will be prohibited from insuring the risks of breaching the law. This effectively prevents persons from being indemnified and from indemnifying others against the cost of penalties for failing to comply with the Act. Insurance for the cost of defending a prosecution will remain lawful.
3. Qualified health and safety representatives will be empowered to issue "hazard notices" which formally tell the employer that the representative believes a hazard exists. Hazard notices may be issued if the representative identifies a workplace hazard, brings it to the attention of the employer and the employer either refuses to discuss the hazard or to take steps to deal with the hazard within a reasonable period of time.
4. Infringement notices or instant fines of up to \$4,000 administered by OSH inspectors will be introduced for clear cut offences but only where a person has been warned (including by a hazard notice).
5. Suppliers of plant to a workplace will have a duty to take all practicable steps to ensure it is "arranged, designed and made, and has been maintained" so that it is safe for its intended use.
6. Private prosecutions will be allowed but only where OSH and other enforcement bodies such as the police have decided not to prosecute.
7. The penalties for those offences which require an element of fault (i.e. knowingly risking death, permanent loss of bodily function, amputation, burns etc) will rise

to a maximum fine of \$500,000 and/or up to 2 years imprisonment.

8. The maximum fine for offences that do not require fault will rise to \$250,000.
9. Employees will have the ability to refuse to perform work that they (or the health and safety representative) believe, on reasonable grounds, is likely to cause the employee serious harm. An employee who refuses work must perform any other work that the employer reasonably requests and that comes within the scope of the employee's employment agreement. An exception is included for employees whose work inherently involves risk of serious harm, unless there is a material increase in the risk above what is normal.
10. The concept of a "hazard" will be clarified by defining it to include the situation where people are in danger because they are physically or mentally fatigued.
11. The concept of "harm" will be clarified by defining it to include mental harm caused by work related stress.

These new changes are intended to come into force on 2 September 2002.

Potentially the above requirements will introduce a significant increase in compliance costs for employers in addition to the difficulties inherent in implementing and managing the obligations at an operational level.

If you would like to discuss any aspect of these changes, please feel free to contact us.

For further information please contact **Catherine Bormans** on telephone **09 915 2412**, email cmb@fmlaw.co.nz or visit our website www.fmlaw.co.nz

If you would prefer to receive Legal Torque in electronic format please send your email address to legaltorque@fmlaw.co.nz

