

INFORMATION FOR EMPLOYEES

OCCUPATIONAL HEALTH AND SAFETY ACT 2004

1ST EDITION

MAY 2005

The *Occupational Health and Safety Act 2004* promotes increased participation by employers, employees and their representatives in workplace health and safety issues.

The Act states that employees should be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.

Employees are entitled to:

- work in a safe workplace;
- information, supervision and training to be allowed to work safely;
- be consulted by the employer on issues which may affect health and safety; and
- be represented on OHS issues in the workplace.

Employees are also obliged not to put themselves or others at risk at work.

Who is an employee?

Employees are employed under a verbal or written contract of employment or a contract of training. This includes direct employees, managers or supervisors, placements through group training and apprentices.

Those engaged by an employer who has, or should have, control over a workplace, are considered employees, include:

- an independent contractor engaged by the employer such as a bricklayer on a construction site;
- a sub-contractor of that contractor;
- an employee of that contractor, such as a bricklayer's labourer; or
- a person whose services are provided to an employer by a labour hire or recruitment agency, for example a process worker, order picker in a warehouse, temporary receptionist or agency nurse.

Who is not an employee?

Volunteers are not considered employees irrespective of whether they receive out of pocket expenses.

DUTIES OF EMPLOYEES

Taking reasonable care

Employees must take reasonable care for their own health and safety and that of other people who may be affected by the work being done. Employees should:

- avoid engaging in practical jokes that could harm people; and
- not take short-cuts which could reduce the level of safety.

Duty to cooperate with employer

Under the OHS Act employers have a responsibility to protect the health and safety of their employees while at work. They may implement procedures and work practices, and provide information, training sessions and supervision to meet that responsibility. Employees must cooperate with these efforts by:

- following the workplace safety policies and procedures;
- attending health and safety training and following the instruction and advice provided in them; and
- using equipment supplied by the employer, such as adjustable workstations, or protective gear such as safety boots, hearing protection, or high visibility vests as instructed.

Employees can assist the employer to prevent risks to workplace health and safety by notifying them of any hazards.

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Duty not to recklessly interfere or misuse

Employees must not intentionally or recklessly interfere with or misuse anything provided by the employer which could adversely affect health, safety or welfare at the workplace. For example:

- do not remove or bypass machine guarding or other safety devices;
- do not use a fire extinguisher for purposes other than putting out fires.

DUTIES OWED TO EMPLOYEES BY EMPLOYERS

Protection from harm in the workplace

Employers have a duty to protect the health and safety of employees while at work by providing and maintaining a working environment that is safe and without risks to health.

Consultation

Employers are required to consult with employees, as far as is reasonably practicable, on issues that may directly affect their health and safety, especially when:

- identifying or assessing hazards or risks;
- making decisions about controlling the risks;
- deciding on the adequacy of facilities for employees;
- developing procedures to resolve OHS issues;
- developing procedures regarding employee consultation, the monitoring of the health of employees and workplace conditions, and the provision of information and training to employees;
- determining the membership of health and safety committees; and
- proposing changes to how work is done or to the workplace, plant, substances or other things used at the workplace.

This consultation must involve:

- sharing information with employees about their health, safety and welfare;
- giving employees a reasonable opportunity to express their views; and
- taking into account their views and contributions.

Health and safety representatives

Employees have the right to be represented by health and safety representatives (HSRs) that are elected to represent a designated work group (DWG).

A DWG is a grouping of employees established in a way that best enables their OHS interests to be represented, and ensures access to their HSR.

Any employee may ask the employer to establish a DWG, and employers must do everything reasonable to start negotiations on the new DWG within 14 days of being asked. Once a DWG is established, its members can decide how their HSR(s) will be elected and who will run the election. If there is disagreement on how to run the election, WorkSafe may be able to assist by either running the election, or appointing someone else to do so. A member of a DWG can be nominated as an HSR and all members of that DWG can vote.

Where agreed between the employer and employees, a DWG may also elect more than one HSR and one or more deputy HSRs. A deputy HSR may exercise HSR powers when the HSR is unable to.

HSRs have a range of powers that may be exercised in undertaking their role, including:

- having paid time off, along with any deputy HSR, to attend training approved or conducted by WorkSafe. The costs associated with attendance at initial and refresher training for HSRs are to be paid by the employer;
- having access to information about actual or potential hazards and the health and safety of members of the DWG;
- inspecting the workplace or workplaces where members of the DWG work;
- accompanying a WorkSafe inspector during an inspection of a workplace where a DWG member works;
- requiring the establishment of a health and safety committee;
- with the permission of a member of their DWG, accompany or represent them at an interview about OHS; and
- wherever necessary, seek the assistance of any person with OHS knowledge.

Employers must provide the facilities and assistance necessary, or prescribed, to enable HSRs at the workplace to exercise their powers.

HSRs may act on matters that affect members of their own DWG. However, they may act for another DWG when there is an immediate risk to a member of another DWG, or when a person in another DWG asks for help and the matter cannot be referred to their own HSR.

HSRs may issue a provisional improvement notice (PIN) to a person if they reasonably believe that the person has contravened, or is contravening the Act or regulations and they have tried to remedy the contravention through consultation. A person must comply with a PIN issued to them, unless WorkSafe has been requested to send out an inspector to enquire into the PIN.

If an OHS issue arises which involves an immediate threat to health or safety and the agreed process for resolving issues is inappropriate, either an employer or a relevant HSR can, after consulting each other, direct employees to cease work. During a 'cease work' the employer may assign affected employees to suitable alternative work.

If the issue for which there is a cease work direction, has not been resolved within a reasonable time, either party can ask WorkSafe to provide an inspector to enquire into the issue.

Health and safety committees

Health and safety committees facilitate cooperation between employers and employees to bring about safer workplaces by initiating, developing, circulating in appropriate languages, carrying out and reviewing OHS measures, standards, rules and procedures for the workplace.

An employer must establish an OHS committee within three months of a request to do so by a HSR.

At least half the members of such a committee must be employee representatives, which so far as practicable should be HSRs and deputy HSRs. They can provide the input of their DWG members to the meetings and report back on the meeting results.

Resolving issues

Employers and employees – through their HSR – must try to resolve issues by using agreed internal procedures. If there are no established procedures, the process specified in the Act's regulations may be used. If the parties cannot resolve the issue in a reasonable time, either party can ask WorkSafe to arrange for an inspector to attend to enquire into the issue.

The person representing the employer in the attempts to resolve OHS issues must be at an appropriate level of seniority be sufficiently competent and must not be a HSR.

Prohibition of discrimination

Employers must not threaten, dismiss or refuse to hire a person, or otherwise adversely affect their employment because of actions that they have taken in accordance with the Act. This includes being a member of a safety committee, acting as an HSR or deputy HSR, assisting an inspector, or raising OHS issues.

Authorised Representatives of Registered Employee Organisations (ARREOs)

An ARREO may enter a workplace during working hours to enquire into a suspected contravention of the OHS Act or regulations. The suspected contravention must relate to or affect the work being carried out by people who are:

- members of the registered employee organisation;
- subject to a certified agreement which binds the registered employee organisation; or
- eligible to be members of the registered employee organisation and are not subject to a certified agreement.

A person cannot refuse an ARREO entry to a workplace. A person must not intentionally hinder, obstruct, intimidate, threaten or induce or attempt to induce any other person to do so, while an ARREO is exercising powers.

In order to enquire into the suspected contravention, an ARREO may:

- inspect any plant, substance or thing at the place;
- observe work;
- with their consent, consult with one or more employees who are members or are eligible to be members of the registered employee organisation; and
- consult with the employer about anything relevant to the matter under enquiry.

An ARREO can:

- warn an employee or employees if they believe there is an immediate threat of serious injury or death; and
- consult with an employee during his or her meal or other breaks.

An ARREO cannot exercise a power which would cause any work to cease except with the consent of the employer or their representative.

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FURTHER INFORMATION

This information is based on the *Occupational Health and Safety Act 2004* and should not be considered a legal document, or a substitute for the Act.

For further information please contact WorkSafe Victoria on 1800 136 089 or online at www.workcover.vic.gov.au

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