

Fact Sheet No.6

Workplace Health and Safety Legislation

- An Introduction -

“A Safe Workplace Environment for All”

“Prevention is the Best Medicine”



The goal of USQSafe and Current Legislation is:

- to ensure everyone is free from the risk of disease or injury created or caused by their workplace or workplace activities, and
- to prevent any risk which could cause a person sickness or injury because of their contact with a workplace or workplace activities.



What are the Symptoms?

- Each year 650,000 workers (one in every 12 Australian workers) suffer a work-related injury or illness.
- At least 120,000 require more than five days off work.
- Approximately 2900 work-related deaths occur in Australia each year.



What is the Diagnosis?

- Much needless suffering (including loss of lives) occurs.
- Economic losses (an estimated \$27 billion each year) place a heavy burden on the Australian economy and on each employer's ability to compete.

Is There a Doctor in the House?

OR - Who is responsible?



Among those responsible according to the Health and Safety Act (1995) are:

Employers by ensuring the workplace health and safety of -

- each of their workers
- themselves and others who may be affected by the way they conduct their business and work activities (eg, visitors, salespersons)

Employers also have responsibilities for consultation at the workplace. They must -

- negotiate with workers (or their union at the workers' request) about workplace health and safety representatives for the workplace
- not appoint workplace health and safety representatives
- help conduct elections for representatives if asked by their workers
- allow representatives to inspect the workplace and exercise their entitlements during ordinary working hours
- provide certain information about workplace health and safety
- display notices about the identity of representatives for the workplace

(Having a representative does not lessen an employer's obligations)

Employees and other persons must -

- follow instructions given by the employer for the workplace health and safety of themselves and others
- use personal protective equipment if provided by the employer and if trained in its use

and must not -

- wilfully or recklessly interfere with or misuse anything provided for workplace health or safety
- wilfully put at risk the workplace health and safety of any person
- wilfully injure themselves

Prescription for Cure



An apple a day...

- Apply Workplace Health and Safety Act (1995), Daily
- Follow compliance and advisory standards
- Consult (develop partnerships and promote cooperation) at both industry and workplace levels to influence the future of workplace and health and safety.
- Establish worker-elected workplace health and safety representatives to convey health and safety issues to the employer.
- Establish a committee(s) to promote cooperation between employers, principal contractors and workers and to develop and carry out measures to ensure workplace health and safety.

- Appoint a health and safety officer to provide advice about workplace health and safety to employers and principal contractors
- Provide training for everyone in the workplace covering
 - legal responsibilities
 - workplace health and safety policy and procedures

And

specific training relating to safe operating procedures and hazard training
 specific training for managers, supervisors, health and safety committee members and representatives



Legalities/Malpractice

Prosecution can be incurred for non-compliance and breaches of the Workplace Health & Safety Act (1995). These include penalties of up to \$120,000 for a corporation and \$24,000 or 6 months' imprisonment for an individual for a breach of an obligation.

Executive officers of a corporation must ensure that the corporation complies with the Act. If a corporation commits an offence, each executive officer also commits an offence and may be charged.

Compliance Standards are *mandatory* while advisory standards *should* be followed. In certain circumstances, advisory standards may be used as evidence in proceedings against a person about a breach of an obligation under the Act. A breach of a regulation has a different penalty to a breach of an obligation under the Act.

The requirements and obligations of the Workplace Health and Safety Act (1995) are taken into account by the Civil Courts in Common Law cases. Plaintiffs can plead breaches of the Act, regulation or an approved "code of practice" as part of their claim for negligence.

Under Statute Law the onus of proof is "beyond reasonable doubt", under Common Law the proof is "on the balance of probability". A breach of managers' duties under the Act or Regulation could result in a Common Law action, which is easier to prove {should the Court be so inclined} and damages can be awarded for millions of dollars.

Codes of Practice

Codes of practice are approved under a government's principal occupational health and safety Act. They describe the preferred methods for achieving the required standard of health and safety while allowing flexibility for workplaces to demonstrate an equivalent or better standard of health safety by alternative action. Ideally, codes should be considered a minimum standard.

Their purpose is to provide additional advice on how to meet the requirements of regulations and how to implement regulations. An approved code can be used as evidence in legal proceedings - eg failure to comply with it may be used as evidence of breaching duty of care.

Some existing codes of practice in Queensland relate to the Management of Hazardous Substances, First Aid in the Workplace and Personal Protective Equipment.

Glossary of Terms

- **Advisory Standard -**
Standards which *should* be followed, giving practical advice on ways to identify and manage exposure to risk (for example, giving advice on identifying sources and levels of noise, assessing exposure to noise etc)
- **Code of Practice -**
A systematic collection of rules, regulations, standards etc relating to practices and procedures followed in a particular area.
- **Compliance Standard -**
Standards which must be followed, either prohibiting exposure to a risk or prescribing a way to prevent or minimise exposure to a risk (for example, stating a level of noise exposure that must not be exceeded).
- **Employee -**
Person who engages someone else to do work (other than under a contract for service) for or at his or her direction as part of conducting his or her business.
- **Regulation -**
deals with administrative workplace health and safety matters.
- **Worker -**
Person who does work for or at the direction of an employer (may apply even if no pay is involved) and does not do this work as a sub-contractor
- **Workplace -**
Any place where work is performed or likely to be performed by a worker, self-employed person or employer.

Reference

A Guide to Workplace Health & Safety Legislation 1995, (1996) Department of Training and Industrial Relations

Fact Sheet, Workplace Health and Safety Responsibilities, (1997), Worksafe Australia

Hazard Alert - Managing Workplace Hazardous Substances, (1997) CCH



USQSafe Contact: Safety Coordinator, ext 2520.

Disclaimer

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