

## HEALTH & SAFETY IN EMPLOYMENT AMENDMENT ACT 2002

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### THE CHANGES

The Health and Safety in Employment Amendment Act 2002 ("The Act") came into force on 5 May 2003. The object of the Act is to promote the prevention of harm to all persons at work and other persons in, or in the vicinity of, a place of work by amongst other things:

- Promoting management of health and safety
- Defining hazards and harm
- Imposing duties on those who are responsible for work and those who do the work
- Setting requirements for health and safety
- Recognising people other than employees in the workplace
- Providing a range of enforcement methods

The Act was designed to make the Health and Safety in Employment Act 1992 ("The principal Act") more comprehensive in coverage, and includes maritime, rail, and air industries. The Act provides coverage to people who are mobile when working, and now extends to volunteers, those who are on the job training, gaining work experience and employees who are on loan.

A contentious addition to the legislation is the introduction of work related stress causing harm to people in the workplace. There is an emphasis on good faith and co-operation between employers and employees when dealing with health and safety issues in the workplace. This compliments the principles of the Employment Relations Act 2000.

Finally, the Act increases the penalties for non-compliance, and prevents employers from insuring against penalties, in an attempt to ensure more effective enforcement.

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### **COVERAGE**

The Act provides certainty and consistency to all work places, where protections did not previously exist. The Act extends coverage to crew aboard ships, aircraft, rail and those who work in their vehicles. Volunteers, loaned employees persons on work experience and on the job training are now covered.

### **MOBILE EMPLOYEES**

The Act changes the definition of place of work to include "structure or vehicle" and section 4(3) states:

"To avoid doubt, a person is in a place of work whenever and wherever the person performs work including in a place that- (a) the person moves through; or (b) itself moves"

There is a duty on the employee to observe road rules and drive safely due to their obligation to ensure their own safety.

### **EMPLOYEE PARTICIPATION**

The Act requires that employees participate in processes relating to health and safety. There should be reasonable opportunities for employees to participate effectively in improvements and health and safety issues.

Where there are:

- Less than 30 employees; or
- One or more employees requires a system for employee participation; or
- Where there are 30 or more employees;

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the parties must cooperate, agree, implement and maintain a system for dealing with health and safety. The process includes electing health and safety representatives.

The Act provides a list of functions that will assist employers and employees to develop their own system of dealing with health and safety and include:

- foster positive health and safety management practices in the place of work
- identify and bring to the employer's attention hazards in the place of work and discuss with the employer ways that the hazards may be dealt with
- consult with inspectors on health and safety issues
- promote the interests of employees in a health and safety context generally and in particular those employees who have been harmed at work, including in relation to arrangements for rehabilitation and return to work
- carry out any functions conferred on the representative by a system of employee participation or the employer with the agreement of the representative or a union representing the representative, including any functions referred to in a code of practice.

Where there is a failure to develop a system to address health and safety, the above functions are mandatory for Health and Safety Representatives ("HSR").

### **HAZARDS**

The definition of harm and hazards are extended to cover physical or mental harm caused by work related stress. There is a requirement to take all practicable steps to identify and manage this stress.

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Stress is not defined in the Act. This will create problems for employers when trying to eradicate the problem. As there is an obligation on the employee to ensure their safety, they will need to take measures to prevent stress, which could include notifying the employer of their concerns. The provision for stress in the Act confirms the Court of Appeal's decision in *Attorney General v Gilbert*.

### **PENALTIES**

The fines as they were prior to the Act did not discourage non-compliance with its provisions. The Act increases fines from \$100,000 to \$500,000 for offences likely to cause serious harm. The maximum term of imprisonment has increased from 1 year to 2 years.

Indemnifying insurance policies protecting against fines are unlawful, however an employer can insure against the costs of litigation in defending an action.

### **PROTECTIVE STEPS FOR EMPLOYERS**

- Advise people in the work place of procedures to go through and who they can approach if they have any concerns
- Advise people in the workplace of any available counselling and supports available to them
- Monitor potential work hazards and deal with any identified work hazards
- Ensure any hazards are remedied at the time they are raised
- Provide effective training and ensure people in the workplace are aware of their own responsibilities
- Providing adequate support to workers who have returned to the workplace after illness
- Check sick records where people are taking a large number of days off and address any work related concerns
- Ensure employees take annual leave each year.

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The above steps need to be proactively implemented by employers (and to some extent employees), to minimise any breaches of the Act.

For more information, contact LawWorks at the below address.