

Health & Safety in Employment Act 1992

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The Health & Safety in Employment Act 1992 aims to promote excellence in health and safety management and to prevent harm from occurring to people (whether they are employees or members of the public) in the workplace. The Act focuses on health and safety management within a particular workplace and relates to all New Zealand workplaces.

Employers' duties

Employers must identify existing or potential *hazards* in the workplace and then eliminate, isolate or minimise the danger caused by those hazards.

Due to amendments in 2003, "hazards" now include sources of mental harm caused by work-related stress and "mental fatigue".

There are other important general and specific duties on employers which include obligations to:

- Take all practicable steps to ensure the safety of employees;
- Train and educate employees about workplace hazards;
- Involve employees in initiating and implementing health and safety procedures;
- Inform employees about their workplace health and safety records;
- Ensure that employees cause no harm to any other person in the workplace;
- Use experienced personnel, or arrange supervision by experienced personnel, for hazardous jobs;
- Keep accident registers to record harm that has occurred, or might have occurred, to people in that workplace;
- Report accidents causing serious harm to the Occupational Safety & Health Service or Department of Labour.

Employees' duties

Employees have a duty to protect themselves and others from harm in the workplace. However this is a general duty. The specific duties relate to the employer.

Penalties

There are potentially stiff penalties for breaching the Health & Safety in Employment Act (HSE Act).

- For offences likely to cause serious harm: two years' imprisonment and/or a fine of up to \$500,000;

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- For other offences a fine of up to \$250,000.
- There are also infringement offences whereby a health and safety inspector may issue an infringement fee of up to \$4,000.

It is unlawful to insure against or be indemnified in respect of fines.

The HSE Act imposes “strict liability” on employers for breaching the Act. In other words, employers will be held liable for breaching the Act without the need to show that they intended to, or were negligent in, causing the harm that resulted. However employers who have done everything in their power to set up, monitor and insist that employees comply with good health and safety management programmes, may have a defence against prosecution. A Court may increase any penalties imposed if an employer has not involved employees in developing health and safety programmes.

The HSE Act encourages employers to set up, monitor and require compliance with good health and safety programmes. In this sense it is a further example of the trend towards legislation that puts the emphasis on encouraging compliance, as opposed to merely punishing offenders.

The ‘carrot and stick’ approach

The Insurance Prevention, Rehabilitation and Compensation Act 2001 may be seen as the *carrot* and the HSE Act as the *stick*. Employers who comply with the HSE Act will have good health and safety records and can expect discounts or rebates on their Accident Compensation premiums. Those with poor records can expect loadings on their premiums.

Health & safety in employment compliance programme

Shieff Angland has designed a health & safety in employment compliance programme, which it implements on behalf of organisations. The aim of the programme is to ensure all employees are aware of and minimise the risk of, breaching the HSE Act

A health & safety in employment compliance programme assists your business by ensuring you and your employees have sufficient understanding of this legislation and by setting up internal procedures to avoid the danger areas.

Shieff Angland’s health & safety in employment compliance programme consists of:

- Drafting employment agreements, which clarify employer/ employee obligations for health and safety in the workplace;
- An audit/review of your organisation’s operating procedures in terms of the legislative requirements;

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- Identification of potential risk areas;
- Preparation of compliance measures customised for your organisation;
- Employee training to educate your staff on complying with the HSE Act;
- Preparation of a tailored compliance manual for your staff;
- Periodic monitoring to ensure your compliance procedures remain up-to-date.

Shieff Angland's health & safety in employment compliance programme has been researched and designed by commercial law partner Miles Agmen-Smith.

The Department of Labour posts information on the Health and Safety in Employment Act on its website www.workinfo.govt.nz.

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