

## A-Z Guide

# Health and Safety at Work



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## Use this guide to understand

- Key changes to health and safety at work under the Health and Safety at Work Act 2015
- Your duty to ensure a safe working environment
- Your obligations to eliminate or minimise risks to health and safety
- What the concept of Due Diligence means
- Your obligations in involving your workers in health and safety matters in your work place

## Introduction

The Health and Safety at Work Act 2015 (“the Act”) seeks to ensure that workers and other persons be given the highest level of protection against harm to their health, safety, and welfare from hazards and risks arising from work as is reasonably practicable.

The Act aims to provide for a balanced health and safety framework which protects individuals from harm, provides for workplace representation, encourages unions and employer organisations to take a constructive role in promoting improvements to workplace health and safety practices, promotes compliance and the provision of health and safety advice and education, ensures that the actions of persons exercising health and safety functions are subject to scrutiny and provides a framework for continuous improvement and progressively higher standards of work health and safety.

The Act identifies duty holders and prescribes their duties. Assuming your business is a person conducting a business or undertaking (“PCBU”), you will need to consider how these duties apply to your individual business circumstances, industry standards and/or any approved codes of practice.

Health and safety risks must be eliminated or minimised so far as is reasonably practicable in the circumstances. PCBUs will need to develop robust policies, procedures and practices that adequately identify any health and safety risks in their business or undertaking through elimination or minimisation processes to manage those risks, with the view of ensuring that all persons potentially affected by the conduct of a business or undertaking are given the highest level of protection in the circumstances.

The Act requires a PCBU to consider who creates the risk and then for them to control that risk. It also encourages PCBUs to concentrate on the greatest risks that could cause death or serious injury first and comprehensively. The Act also introduces the concept of due diligence. This places a positive duty on those very senior individuals of a PCBU to be actively involved in health and safety matters relevant to the business or undertaking in order to ensure that the PCBU complies with any duty or obligation.

Additionally, a PCBU must, as far as reasonably practicable, engage with workers likely to be directly affected by a health and safety matter in accordance with agreed procedures. The Act also requires a PCBU to have practices that provide reasonable opportunities for workers to participate in improving health and safety on an on-going basis. Workplaces with less than 20 workers that are considered to be low risk are not required to (but still could) have participation systems. The Act does not require the establishment of any kind of prescriptive systems or processes in regards to worker engagement and participation, although it does mean that PCBUs must be confident that there are effective practices in place which promote worker engagement and participation on health andSet out below is a generalised approach to your obligations. Where more specific information is provided elsewhere in an A-Z Guide, it will be referred to.



## Definitions

### Person Conducting a Business or Undertaking (PCBU)

This is a key term under the Act and means a person conducting a business or undertaking whether the person conducts a business or undertaking alone or with others; and whether or not the business or undertaking is conducted for profit or gain.

Essentially, a PCBU is the business or business entity –often a company. However, a person might be a PCBU if they are a sole trader or a self-employed person. PCBUs will have the primary duty of care under the new Act as PCBUs are in the best position to control health and safety risks.

Examples of PCBUs include:

- A manufacturing business
- A retail business
- A wholesale business
- A partnership
- Government agencies
- Self-employed persons
- Franchisors and franchisees
- Principals and sub-contractors
- A not for profit organisation that employs staff
- Businesses which design, manufacture, import or supply plant, substances and structures to be used at work
- Businesses which control workplaces, fixtures, fittings, plant at workplaces.

The Act also provides for some clear exclusions from the definition of a PCBU. These are as follows:

- A person to the extent that the person is employed or engaged solely as a worker in, or as an officer of, the business or undertaking
- A volunteer association
- An occupier of a home to the extent that the occupier employs or engages another person solely to do residential work
- A statutory officer to the extent that the officer is a worker in, or an officer of, the business or undertaking
- A person, or class of persons, that is declared by regulations not to be a PCBU for the purposes of the Act or any provision of the Act.

PCBUs have a primary duty of care to ensure, so far as is reasonably practicable:

- The health and safety of workers who work for the PCBU while the workers are at work in the business or undertaking; and
- Workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work.

A PCBU must also ensure, so far as is reasonably practicable, that the health and safety of other persons (for example, members of the public, visitors and customers) is not put at risk from work carried out as part of the conduct of the business or undertaking.

### Multiple PCBUs

The health and safety duties of PCBUs may overlap with the duties of other PCBUs, for instance in situations where workers work for more than one PCBU or in shared workplaces. In these types of situations, the Act requires PCBUs to consult, cooperate and



coordinate with each other, so far as is reasonably practicable. This means that where there are multiple PCBUs, each must do what is reasonable in terms of their ability to influence and control to keep workers safe.



## Reasonably practicable

Another important term defined under the Act is reasonably practicable meaning that in relation to health and safety, PCBUs must ensure they do everything they are reasonably able to do taking into account and weighing up all relevant matters including:

- the likelihood of the hazard or risk occurring
- the likely degree of harm involved
- what the person concerned knows, or reasonably ought to know, about –
  - the hazard or risk and
  - ways of eliminating or minimising it
- the availability or suitability of ways of eliminating the hazard or risk, and
- after assessing the extent of the risk and the available ways to eliminate or minimise the risk, the cost associated with those ways including whether the cost is grossly disproportionate to the risk.

## Hazard

Includes a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person's behaviour).

## Worker

Unless the context otherwise requires the Act defines a worker to mean an individual who carries out work in any capacity for a PCBU, including work as: an employee, a contractor or subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company who has been assigned to work in the business or undertaking, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or undertaking a work trial, a volunteer worker or a person of a prescribed class.

## Workplace

The Act defines a workplace to mean a place where work is carried out, or is customarily carried out, for a business or undertaking, and includes any place where a worker goes, or is likely to be, while at work.

## Officer

An officer in relation to a PCBU means a person occupying a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (for example, a chief executive, director, board member or partner).

## Volunteer workers and associations

Volunteer workers are people who regularly work for a PCBU with the knowledge or consent of the PCBU on an ongoing and regular basis and that is an integral part of the business or undertaking. In these circumstances a PCBU will owe a duty to ensure, so far as reasonably practicable the health and safety of volunteer workers as if they were any other worker.



However, the Act also provides for exceptions in situations where casual volunteers are doing certain activities which excludes them from the volunteer worker definition, for example participating in a fund-raising activity, assistance with sports or recreation for an educational institute, sports or recreation club, assistance with activities for an educational institution outside the premises of the educational institution and providing care for another person in the volunteer's home.

Additionally, the Act also excludes volunteer associations from the meaning of PCBU. The Act will not apply to these types of groups. A volunteer association is defined under the Act to mean a group of volunteers working together for community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

To avoid doubt a volunteer organisation which has one or more employees is a PCBU and will have the same duties as a PCBU to ensure, so far as reasonably practicable, the health and safety of its workers and others.

## Supply

Businesses or undertakings that are involved in the supply of things may also have obligations under the Act depending on that nature of the supply. Supply means in relation to a thing, includes the supply (or resupply) of the thing, by way of sale, exchange, lease hire, or hire purchase, and whether as a principal or agent; but does not include the return of possession of a thing to the owner of the thing at the end of the lease or other agreement; or the supply of a thing by a person who does not control the supply or has no authority to make decisions about the supply (for example, a registered auctioneer who auctions a thing without having possession of the thing or a real estate agent acting in his or her capacity as a real estate agent); or prescribed supply. The supply occurs on the passing of possession of the thing to the other person or agent to be supplied.

## Notifiable injury or illness

Unless context requires otherwise, a notifiable injury or illness, in relation to a person means any of the following injuries or illnesses that require the person to have immediate treatment (other than first aid).

- The amputation of any part of his or her body
- A serious head injury
- A serious eye injury
- A serious burn
- The separation of his or her skin from underlying tissue (such as de gloving or scalping)
- A spinal injury
- The loss of bodily function
- Serious lacerations
- An injury that requires, or would usually require, the person to be admitted to hospital for immediate treatment
- An injury or illness that requires, or would usually require, the person to have medical treatment within 48hrs of exposure to a substance
- Any serious infection (including occupation zoonoses) to which the carrying out of work is a significant contributing factor, including any infection that is attributable to carrying out work
  - With micro-organisms
  - That involves providing treatment or care to a person
  - Involves contact with human blood or bodily substances
  - Involves handling or contact with animals, animal hides, animal skins, animal wool or hair, animal carcasses, or animal waste products
  - Involves handling or contact with fish or marine animals
- Any other injury or illness declared by regulations to be a notifiable injury or illness.



## Notifiable incident

Unless context otherwise requires, a notifiable incident means an unplanned or uncontrolled incident in relation to a workplace that exposes a worker or any other person to a serious risk to that person's health or safety arising from an immediate or imminent exposure to any of the following:

- An escape, a spillage, or leakage of a substance
- An implosion, explosion, or fire
- An escape of gas or steam
- An escape of a pressurised substance
- An electric shock
- The fall or release from a height of any plant, substance, or thing
- The collapse, overturning, failure, or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with regulations

## Notifiable event

Unless the context otherwise requires, a notifiable event means any of the following events that arise from work:

- The death of a person
- A notifiable injury or illness
- A notifiable incident.

## Your Obligations

As already indicated, you have an obligation in respect of your workers to provide a safe workplace and safe systems of work. You also have obligations to other people, including contractors, volunteers, visitors and other persons to ensure that they are not harmed by hazards or risks occurring in or arising out of your workplace.

You should note that under the Act, duties can be imposed on more than one person at a time in relation to any matter which affects health and safety. For example, a PCBU and a worker may have duties in common under this Act. You should also note that where duties are imposed on more than one person in relation to any matter those duties are not diminished or affected by the fact that they may be common between people.

What this means is that if your failures as a PCBU cause or nearly cause a person to suffer harm, then you may be liable under the Act even if that person also breached their obligations under that Act and was found liable.

## General Provisions

### PCBU must not levy workers

A PCBU must not impose a levy or charge on a worker for anything done, or provided, in relation to health and safety. A PCBU will be treated as having levied or charged a worker who is its employee if the PCBU requires the employee to provide his or her own personal protective equipment as a pre-condition of employment or a term or condition in an employment agreement. A conviction under this section of the Act can see fines of up to \$25,000.



## No contracting out

A term of any agreement or contract that purports to exclude, limit or modify the operation of the Act, or any duty owed pursuant to it has no effect to the extent that it does so.

## Insurance against fines unlawful

To the extent that an insurance policy or contract indemnifies or purports to indemnify a person for the person's liability to pay a fine or infringement fee under the Act has no effect. Additionally, no court or tribunal has jurisdiction to grant relief in respect of such a policy or contract. A conviction under this section of the Act can see fines of up to \$250,000.

# Health and Safety Duties – Key Principles

## Management of risks

A duty imposed on a person under the Act requires the person to:

- To **eliminate** risks to health and safety, so far as is reasonably practicable; and
- If not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

A person must manage the risks in accordance with the standards prescribed under the Act to the extent to which the person has, or would reasonably be expected to have, the ability to influence and control the matter which relates to the risks.

Our more detailed **A-Z Employer Guide on Hazard Identification and Management** is available here.

## Duties not transferrable

A duty imposed on a person under the Act may not be transferred to another person.

## Person may have more than one duty

A person may have more than one duty imposed on the person under the Act if the person belongs to more than one class of duty holder.

## More than one person may have the same duty

More than one person may have the same duty imposed by or under the Act at the same time and each duty holder must comply with that duty to the required standard even if another duty holder has the same duty.

## PCBUs must consult other PCBUs with the same duty

If more than one PCBU has a duty in relation to the same matter imposed under the Act, each PCBU with the duty must, so far as reasonably practicable, consult, co-operate with, and coordinate activities





## Duties of PCBUs

### PCBUs and the primary duty of care

The **primary duty of care** means that PCBUs must ensure so far as reasonably practicable:

- The provision and maintenance of a work environment without risk to health and safety
- The provision and maintenance of safe plant and structures
- The provision and maintenance of safe systems of work
- The safe use, handling, and storage of plant, substances, and structures
- The provision of adequate facilities for the welfare at work of workers in carrying out work for The business or undertaking, including ensuring access to those facilities
- The provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the business or undertaking
- That the health of workers and the conditions at the workplace are monitored for the purpose of preventing injury or illness of workers arising from the conduct of the business or undertaking.

### Duty of PCBU who manages or controls a workplace

A PCBU who manages or controls a workplace must ensure so far as reasonably practicable, that the workplace, the means of entering and existing the workplace, and anything arising from the workplace are without risks to the health and safety of any person.

A PCBU who manages or controls a workplace does not owe a duty under the Act to any person who is at the workplace for an unlawful purpose.

Where a PCBU is conducting a farming business or undertaking, the duty owed by the PCBU applies only in relation to the farm buildings and any structure or part of the farm immediately surrounding the farm buildings that are necessary for the operation of the business or undertaking. The Act does not apply in relation to the main dwelling house on the farm (if any), or any other part of the farm, unless work is being carried out in that part at the time.

To avoid doubt, a PCBU who manages or controls a workplace, means a PCBU to the extent that the business or undertaking involves the management or control (whole or in part) of the workplace, but does not include –the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or under taking; or a prescribed person.

### Duty of PCBU who manages or controls fixtures, fittings, or plant at workplace

Duties are also imposed on PCBUs who manage or control workplace fixtures, fittings or plant or are designers, manufacturers or importers of plant, substances or structures, or install, construct or commission plant, substances or structures (second hand goods where the onus falls on the purchaser are excluded).

A PCBU who manages or controls fixtures, fittings, or plant at a workplace must, so far as is reasonably practicable, ensure that the fixtures, fittings, or plant are without risks to the health and safety of any person.

Again, a PCBU who manages or controls fixtures, fittings, or plant at a workplace does not owe a duty under the Act to any person who is at the workplace for an unlawful purpose.

To avoid doubt, a PCBU in this context means a PCBU to the extent that the business or undertaking involves the management or control of fixtures, fittings, or plant (whole or in part) at a workplace; but does not include –the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or a prescribed person.



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## Duty of PCBU who designs plant, substances, or structures

The Act also applies to a PCBU (a designer) who conducts a business or undertaking that designs: plant, substances or structures that are to be used, or could reasonably be expected to be used, at a workplace.

This means the designer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is designed to be without risks to health and safety of persons:

- who at a workplace, use the plant, substance, or structure for a purpose for which it was designed
- who handle the substance at a workplace
- who store the plant or substance at a workplace▶who construct the structure at a workplace
- who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance or repair at a workplace) in relation to: The manufacture, assembly, or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling, or disposal of the plant
- The manufacture or use of the substance for a purpose for which it was designed, or the proper handling, storage, or disposal of the substance
- The manufacture, assembly, or use of the structure for a purpose for which it was designed, or the proper demolition or disposal of the structure.

It also applies to persons who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to above.

## Duty of PCBU who manufactures plant, substances, or structures

The Act applies to a PCBU (a manufacturer) who conducts a business or undertaking that manufactures: plant, substances or structures that are to be used, or that could reasonably be expected to be used, at a workplace.

This means the manufacturer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is manufactured to be without risks to the health and safety of persons:

- who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured
- who handle the substance at a workplace
- who store the plant or substance at a workplace
- who construct the structure at a workplace
- who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to:
  - The assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant
  - The use of the substance for a purpose for which it was designed of manufactured, or the proper handling, storage, or disposal of the substance
  - The assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure.

It also applies to persons who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to above.



## Duty of PCBU who imports plant, substances, or structures

The Act applies to a PCBU (an importer) who conducts a business or undertaking that imports: plant, substances or structures that are to be used, or that could reasonably be expected to be used, at a workplace. This means the importer must, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the health and safety of persons:

- who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured
- who handle the substance at a workplace
- who store the plant or substance at a workplace ▶ who construct the structure at a workplace
- who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to:
  - The assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant
  - The use of the substance for a purpose for which it was designed of manufactured, or the proper handling, storage, or disposal of the substance
  - The assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure.

It also applies to persons who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to above.

## Duty of PCBU who supplies plant, substances, or structures

The Act applies to a PCBU (a supplier) who conducts a business or undertaking that supplies: plant, substances or structures that are to be used, or that could reasonably be expected to be used, at a workplace.

This means the supplier must, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the health and safety of persons:

- who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured
- who handle the substance at a workplace
- who store the plant or substance at a workplace
- who construct the structure at a workplace
- who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to:
  - The assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant
  - The use of the substance for a purpose for which it was designed of manufactured, or the proper handling, storage, or disposal of the substance
  - The assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure.

It also applies to persons who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose health or safety may be affected by a use or an activity referred to above.



## Further duties of designers, manufacturers, importers and suppliers

A designer, a manufacturer, an importer and a supplier must also carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of their duties under the Act. Importers and suppliers may also have to ensure that the calculation, analysis and testing have been carried out. A designer, a manufacturer, an importer or a supplier must give to each person whom a designer provided a design, or a manufacturer, importer or supplier who provided or supplied any plant, substance, or structure, adequate information concerning:

- Each purpose for which the plant, substance, or structure was designed
- The results of any calculations, analysis, testing, or examination, including, in relation to a substance, any hazardous properties of the substance identified by the testing
- Any conditions necessary to ensure that the plant, substance, or structure is without risks to health and safety when used for a purpose for which it was designed or when carrying out any activity referred to above.

Finally, a designer, manufacturer, importer or supplier must, on request, make reasonable efforts to give current relevant information on the matters set out in (a) –(c) to a person who carries out, or is to carry out, any of the activities prescribed under the Act. However, the obligations prescribed under this section of the Act do not apply to suppliers in the sale of plant, whether or not in trade, if the plant is second-hand and sold. To avoid doubt, the term “as is” means that the plant is sold without any representations or warranties about its quality, durability, or fitness, and with the entire risk in those respects borne by the buyer.

## Duty of PCBU who installs, constructs, or commissions plant or structures

The Act applies to a PCBU who installs, constructs, or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as or at a workplace. This means that the PCBU must, so far as reasonably practicable, ensure that the way in which the plant or structure is installed, constructed, or commissioned is without risk to the health and safety of persons:

- who, install or construct the plant or structure at a workplace
- who use the plant or structure at a workplace for a purpose for which it was installed, constructed, or commissioned
- who carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning, or dismantling of the plant or demolition, or disposal of the structure
- who are in the vicinity of a workplace and whose health and safety may be affected by a use or an activity set out above.

## Supervision, training, and instruction of workers

A PCBU must ensure, so far as is reasonably practicable, that every worker, who carries out work of any kind, uses plant of any kind, or deals with a substance of any kind that is capable of causing a risk in a workplace, either:

- Has adequate knowledge and experience of similar places, and work, plant, or substances of that kind, to ensure that the worker carrying out the work, using the plant, or dealing with the substance is not likely to adversely affect the health and safety or cause harm to the worker or any other person; or
- Is adequately supervised by a person who has that knowledge and experience, and is adequately trained in the safe use of –
  - All plant, objects, substances, or equipment that the worker is or may be required to use or handle; and
  - All personal protective equipment that the worker is or maybe required to wear or use.

A PCBU must ensure that the supervision and training provided to a worker are suitable and adequate having regard to the nature of the work, nature of the risks and any control measures which might be relevant. In addition, a PBCU must ensure that the training is readily understandable by any person to whom it is provided. A PCBU who contravenes this regulation commits an offence and is liable on conviction

- For an individual, to a fine not exceeding \$10,000:
- For any other person, to a fine not exceeding \$50,000.



# Duties of officers, workers and other persons – Due diligence

## Duty of officers (due diligence)

If a PCBU has a duty or an obligation under the Act, an officer of the PCBU must exercise due diligence to ensure that the PCBU complies with that duty or obligation. This means that an officer of a PCBU must exercise the care, diligence, and skill that a reasonable officer would exercise in the same circumstances, taking into account (but without limitation) the nature of the business or undertaking and the position of the officer and the nature of responsibilities undertaken by the officer.

Under the Act due diligence includes:

- taking reasonable steps, to acquire, and keep up to date, knowledge of work health and safety matters
- to gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations
- ensure that the PCBU has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking
- ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information
- ensure that the PCBU has, implements, processes for complying with any duty or obligation of the PCBU under the Act to verify the provision and use of the resources and processes set out above.

A member of the governing body of a territorial authority or regional council elected in accordance with the Local Electoral Act 2001 does not have a duty to exercise due diligence to ensure that any council-controlled organisation (as defined by section 6 of the Local Government Act 2002) complies with its duties or obligations under this Act unless that member is also an officer of that council-controlled organisation.

## Duties of workers

While at work, a worker must:

- take reasonable care for his or her own health and safety
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
- comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act or regulations
- co-operate with any reasonable policy or procedure of the PCBU relating to health and safety at the workplace that has been notified to workers.

## Duties of other persons at workplace

A person at a workplace (whether or not the person has another duty under the Act) must:

- take reasonable care for his or her own health and safety
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons
- comply, as far as he or she is reasonably able, with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act or regulations.



# General Duties Under the Regulations

## General workplace facilities

A PCBU must ensure, so far as reasonably practicable, that -

- the layout of the workplace allows, and the workplace is maintained to allow, persons to enter and exit the workplace and to move within it without risks to health and safety, both under normal working conditions and in an emergency
- work areas have sufficient space for work to be carried out without risks to health and safety
- floors and other surfaces are designed, installed, and maintained to allow work to be carried out without risks to health and safety
- there are suitable and sufficient lighting to enable
  - each worker to carry out work without risks to health and safety, and
  - persons to move within the workplace without risks to health and safety, and
  - safe evacuation in an emergency
- there is suitable and sufficient ventilation to enable workers to carry out work without risks to health and safety:
- workers carrying out work in extremes of heat and cold are able to do so without risks to health and safety.

A PCBU who contravenes this regulation commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$10,000:
- For any other person, to a fine not exceeding \$50,000.

## Duty to provide certain workplace facilities

A PCBU must ensure, so far as is reasonably practicable, that adequate facilities are provided for workers at a workplace, including -

- toilets
- drinking water
- hand-washing facilities
- facilities where workers can eat and take breaks
- if it is not reasonable for workers to leave the workplace if they become unwell, facilities where workers can rest.

In addition, a PCBU must ensure that the following facilities are provided for workers at a workplace if the work is of such a nature that the facilities are reasonably likely to be required:

- facilities for washing the body
- a place in which to change clothes that become contaminated or wet
- facilities for keeping clothes that will not be used at work clean and dry
- if it is reasonable for workers to perform work while seated, facilities for sitting
- if it is not reasonable for workers to perform work while seated, facilities for sitting that enable workers to take any reasonable opportunity for rest that may occur in the course of the work
- facilities that prevent workers from becoming wet from a wet floor, whether by way of drainage of the floor or otherwise
- facilities that enable any airborne contaminants to be controlled as closely as possible to their source and to be treated or carried off.

A PCBU who contravenes these regulations commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$10,000:
- For any other person, to a fine not exceeding \$50,000.



## Duty to provide first aid

A PCBU must ensure that

- adequate first aid equipment is provided for the workplace; and
- each worker at the workplace has access to the equipment; and
- workers have access to facilities for the administration of first aid.

A PCBU must ensure that

- an adequate number of workers are trained to administer first aid at the workplace; or
- workers have access to an adequate number of other persons who have been trained to administer first aid.

A PCBU must have regard to all relevant matters, including:

- the nature of the work being carried out at the workplace
- the nature of the hazards at the workplace
- the size and location of the workplace
- the number and composition of the workforce at the workplace.

A PCBU who contravenes this regulation commits an offence and is liable on conviction

- for an individual, to a fine not exceeding \$10,000;
- for any other person, to a fine not exceeding \$50,000.

## Duty to prepare, maintain, and implement emergency plan

A PCBU must ensure that an emergency plan is prepared for the workplace. The emergency plan must

- provide emergency procedures, including:
  - an effective response to an emergency; and
  - evacuation procedures; and
  - procedures for notifying emergency service organisations at the earliest opportunity; and
  - medical treatment and assistance procedures; and
  - procedures to ensure effective communication between the person authorised by the PCBU to co-ordinate the emergency response and all other persons at the workplace
  - provide for testing of the emergency procedures, including the frequency of testing
  - provide for information, training, and instruction to be given to relevant workers in relation to implementing the emergency procedures.

The PCBU must maintain the emergency plan for the workplace so that it remains effective. A PCBU must have regard to all relevant matters, including:

- the nature of the work being carried out at the workplace
- the nature of the hazards at the workplace
- the size and location of the workplace
- the number and composition of the workforce at the workplace.

The PCBU must implement the emergency plan for the workplace in the event of an emergency.

A PCBU who contravenes this regulation commits an offence and is liable on conviction:

- for an individual, to a fine not exceeding \$10,000;
- for any other person, to a fine not exceeding \$50,000.





## General duty of PCBU to provide personal protective equipment

A PCBU who directs the carrying out of work at a workplace must provide personal protective equipment to workers carrying out the work unless the personal protective equipment has been provided by another PCBU.

A PCBU who contravenes this regulations commits an offence and is liable on conviction,

- for an individual, to a fine not exceeding \$10,000:
- for any other person, to a fine not exceeding \$50,000.

## Worker may choose to provide personal protective equipment

A PCBU does not have to comply with the duty described above if

- a worker genuinely and voluntarily chooses to provide his or her own personal protective equipment for reasons of his or her comfort or convenience; and
- the PCBU is satisfied that the personal protective equipment provided by the worker is suitable.

A worker who has chosen to provide his or her own personal protective equipment under the regulation may, after giving reasonable notice to the PCBU, choose that the PCBU provide personal protective equipment instead of providing it himself or herself, and the PCBU must then provide the personal protective equipment to the worker.

This regulation does not apply to the Armed Forces.

A PCBU who contravenes this regulation commits an offence and is liable on conviction:

- for an individual, to a fine not exceeding \$10,000:
- for any other person, to a fine not exceeding \$50,000.

## Managing risks associated with remote or isolated work

A PCBU must manage risks to the health and safety of a worker who performs remote or isolated work.

To minimise risks to health and safety of a worker associated with remote or isolated work, a PCBU must provide a system of work that includes effective communication with the worker.

A PCBU who contravenes this regulation commits an offence and is liable on conviction:

- for an individual, to a fine not exceeding \$10,000:
- for any other person, to a fine not exceeding \$50,000.

More information on these and other duties specified under The Health and Safety at Work (General Risk and Workplace Management Regulations) 2016 is available [here](#).

## Offences relating to duties

### Offence of reckless conduct in respect of duty

A person commits an offence against the Act where that person holds a duty under the Act and without reasonable excuse, engages in conduct that exposes any individual to whom that duty is owed to risk of death or serious injury or serious illness, and is reckless as to the risk to an individual of death or serious injury or serious illness.





A person who commits an offence under this section of the Act is liable on conviction:

- For an individual who is not a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$300,000, or both;
- For an individual who is a PCBU or an officer of a PCBU, to a term of imprisonment not exceeding 5 years or a fine not exceeding \$600,000, or both;
- For any other person, to a fine not exceeding \$3 million.

## Offence of failing to comply with duty that exposes individual to risk of death or serious injury or serious illness

A person commits an offence against the Act where that person holds a duty under the Act and the person fails to comply with that duty; and that failure exposes any individual to a risk of death or serious injury or serious illness.

A person who commits an offence under this section of the Act is liable on conviction:

- For an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$150,000;
- For an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$300,000;
- For any other person, to a fine not exceeding \$1.5 million.

## Offence of failing to comply with duty

A person commits an offence against the Act where that person holds a duty under the Act and the person fails to comply with that duty.

A person who commits an offence under this section of the Act is liable on conviction:

- For an individual who is not a PCBU or an officer of a PCBU, to a fine not exceeding \$50,000;
- For an individual who is a PCBU or an officer of a PCBU, to a fine not exceeding \$100,000;
- For any other person, to a fine not exceeding \$500,000.

An officer of a PCBU may be convicted or found guilty of an offence for failing to exercise due diligence under the Act whether or not the PCBU has been convicted or found guilty of an offence under the Act.

# Duties to preserve sites and notify notifiable events (accidents)

## Duty to preserve sites

A PCBU who manages or controls a workplace at which a notifiable event has occurred must take all reasonable steps to ensure that the site (includes any plant, substance, structure or thing associated with the notifiable event) where the event occurred is not disturbed until authorised by an inspector.

However, the duty to preserve sites does not prevent action to: assist an injured person, to remove a deceased person, or that is essential to make the site safe or to minimise the risk of a further notifiable event, or for which an inspector or the regulator has given permission. Additionally, this duty does not apply if the notifiable event is being investigated under the Armed Forces Discipline Act 1971 or the Transport Accident Investigation Commission Act 1990.



A person who contravenes this section of the Act commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$10,000:
- For any other person, to a fine not exceeding \$50,000.

## Duty to notify notifiable event

A PCBU must, as soon as possible after becoming aware that a notifiable event arising out of the conduct of the business or undertaking has occurred, ensure that the regulator is notified after the event. A notification under this section of the Act may be given by telephone or in writing (including by email, or other electronic means), and must be given by the fastest possible means in the circumstances.

Where a person is giving notice by telephone the person must give the details of the incident requested by the regulator, and if required by the regulator, give written notice of the incident with 48 hours of being informed of the requirement. Such notice must be provided in a form, or contain the details, approved by the regulator.

If the regulator receives notice by telephone and a written notice is not required, the regulator must give the PCBU details of the information received, or an acknowledgement of having received the notice.

A person who contravenes this section of the Act commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$10,000:
- For any other person, to a fine not exceeding \$50,000.

A PCBU must keep a record of each notifiable event for at least 5 years from the date on which notice of the event is given to the regulator. Such a record must contain the particulars prescribed by the regulations (if any).

A person who contravenes this section of the Act commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$5,000
- For any other person, to a fine not exceeding \$25,000.

# Worker Engagement, Participation and Representation

## Engagement and Participation

A PCBU must, so far as is reasonably practicable, engage with workers who carry out work for the business or undertaking and who are, or are likely to be, affected by a matter relating to work health or safety.

This means that relevant information about the matter must be shared with workers in a timely manner; and that workers must be given a reasonable opportunity to express their views and to any raise work health or safety issues in relation to the matter, contribute to the decision-making process relating to the matter, have their views taken into account by the PCBU and be advised of the outcome of the engagement in a timely manner.

A PCBU must have practices that provide reasonable opportunities for workers to participate in improving health and safety on an on-going basis and which comply with requirements relating to any industry sector or kind of workplace and/or any approved code of practice.



## Health and Safety Representatives

A worker can request an election for one or more health and safety representatives and the PCBU must decide on the work groups to be represented, the number of representatives and deputy representatives to be elected to each group and the workplace or places to which the work groups will apply. A PCBU may on its own, initiate the election of one or more health and safety representatives to represent workers who carry out work for the business or undertaking.

Previously small businesses with fewer than 20 workers in low-risk sectors were excluded from the requirement to have a health and safety representative when requested by workers. However, under the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Act 2023, if a worker asks for a health and safety representative, the business must initiate an election since small businesses with fewer than 20 workers are **no longer an exception** from this requirement.

## Health and Safety Committees

If requested to do so by a health and safety representative or by a group of five or more workers, or if required by regulations, a PCBU must, within two months of the request, establish a health and safety committee. Again, small businesses with fewer than 20 workers in low-risk sectors **are no longer excluded** from the requirement to have a health and safety committee when requested by workers.

Additionally a PCBU **may no longer refuse** a request made for establishing a health and safety committee even if it is satisfied that existing worker participation practices at the workplace sufficiently meet the requirements of the PCBU's duty to have worker participation practices.

To avoid doubt the Act allows for in-house participation systems to transfer and continue under the new legislation. This means PCBUs may still use staff meetings and tool box meetings as an acceptable system under the new framework. However, such participation systems must still comply with the broader purpose and requirements of the Act. While it is not mandatory to have health and safety representatives or a committee as part of worker participation processes they are both effective ways of supporting worker engagement and participation on health and safety issues.

## Powers of Health and Safety Representatives

The Act spells out the functions of health and safety representatives and health and safety committees and the quite extensive obligations of PCBUs to both. The activities of health and safety representatives are confined to health and safety matters. They can involve:

- the issue of provisional improvement notices
- directing unsafe work to cease (although as at present, a worker can refuse to work if he or she considers the work unsafe but must notify the PCBU as soon as practicable).

Our more detailed **A-Z Employer** guide on **Worker Engagement** Participation and Representation is available here.

## Provisional improvement notices (PIN)

A health and safety representative may issue a provisional improvement notice requiring the person to: remedy the contravention, prevent a likely contravention from occurring, or remedy the things or activities causing the contravention or likely to cause a contravention. However, a health and safety representative must not issue a provisional improvement notice in relation to a matter unless he or she has first consulted the person.

A health and safety representation must not issue a provisional improvement notice in relation to a matter if an inspector has already issued an improvement notice in relation to the same matter. If a health and safety representative issues a provisional improvement notice, he or she must provide a copy of that notice to the PCBU of the workgroup that the health and safety representative represents, as soon as practicable.



A health and safety representative must not issue a provisional improvement notice unless the representative has: completed training prescribed by or under the regulations, or previously completed that training when acting as a health and safety representative for another work group. Requirements relating to provisional improvement notices.

A provisional improvement notice must be in writing and must state:

- that the health and safety representative believes the person is contravening, or is likely to contravene, a provision of the Act or regulations
- the provision the representative believes is being, or is likely to be, contravened
- how the provision is being, or likely to be, contravened and the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

A provisional improvement notice may include recommendations relating to the measures to be taken to remedy the contravention or prevent a likely contravention, or things or activities causing the contravention, or likely to cause a contravention, to which the notice relates. Such recommendations may refer to an approved code of practice or offer the person to whom it is issued various ways in which to remedy the contravention or prevent the likely contravention.

A person to whom a provisional improvement notice is issued must, as soon as practicable, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice. A person must not intentionally remove, destroy, damage, or deface a notice displayed during the period that the notice is in force.

To avoid doubt, provisional improvement notices may be altered by a health and safety representative to clarify, correct or reflect changes of address and any irregularities or defects in such notice does not make it invalid. A person must comply with a provisional improvement notice within the time specified in the notice by remedying the contravention or avoiding any likely contravention. A person may comply with such notice in a different way from that directed by the health and safety representative provided the person substantially complies with the requirement to remedy the contravention or avoid any likely contravention.

A person who does not comply with a provisional improvement notice within the specified time period commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$50,000;
- For any other person, to a fine not exceeding \$250,000

## Review of provisional improvement notice

A person to whom a provisional improvement notice has been issued under the Act may, within 7 days after a provisional improvement notice is issued to the person, ask the regulator to appoint an inspector to review the notice. If a request for such a review is made then the notice is stayed until the inspector makes a decision on the review.

The regulator must ensure that an inspector does review the provisional improvement notice as soon as practicable and make inquiries as to the circumstances of such notice. After reviewing the notice the regulator must confirm the notice, or confirm with changes, or cancel the notice.

## Right to Cease or Direct Cessation of Unsafe Work

A worker may cease, or refuse to carry out, work if the worker believes that carrying out the work would expose the worker, or any other person, to a serious risk to health or safety arising from an immediate or imminent exposure to a hazard.

A worker may continue to refuse to carry out the work if:

- The worker attempts to resolve the matter with the PCBU as soon as practicable after first refusing to do the work; and
- The matter is not resolved; and



- The worker believes on reasonable grounds (having been advised by a health and safety representative) that carrying out the work would expose the worker or any person to a serious risk to the worker's or other person's health and safety arising from an immediate or imminent exposure to a hazard.

A worker who exercises their right under the Act to cease work must, as soon as practicable, notify the PCBU that the worker has stopped. The right to cease work under the Act does not authorise a worker to refuse to do work that, because of its nature, inherently or usually carries an understood risk to the worker's health and safety, unless that risk has materially increased beyond the understood risk.

A health and safety representative must not give a direction to cease work unless the matter is not resolved within a reasonable time after consultation about Health and Safety -Employers Guide | 33 the matter with the PCBU for whom the workers are carrying out work, unless the risk is so immediate or imminent that it is not reasonable to consult before giving the direction. Again, such a direction cannot be issued where the nature of the work usually carries an understood risk to health and safety, unless the risks has materially increased beyond the understood risk. A health and safety representative must not give any direction to cease work unless they have completed training prescribed by the regulations, or previously completed such training when acting as a representative for another work group.

If a worker ceases work, the PCBU may direct the worker to carry out alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties. A worker must remain available to carry out alternative work as directed by the PCBU. Alternative work means:

- For a worker who is an employee, work that is within the scope of their employment agreement; and
- For a worker that is not an employee, work within the scope of the worker's contract.

In addition, a worker may agree (but cannot be directed) to do other work that is safe and appropriate for the worker. Separately, the WorkSafe or a relevant designated agency may assist as soon as practicable in resolving issues around the cessation of work.

## Prohibition of Adverse, Coercive, or Misleading Conduct

The Act provides for significant penalties where a person has engaged in adverse conduct against a worker that causes a worker any detriment or disadvantage on the basis of their involvement in health and safety matters prescribed under the Act, for example –for being a health and safety representative or member of a health and safety committee or ceasing work under the Act.

### Prohibition on adverse conduct

A person must not engage in adverse conduct for a prohibited health and safety reason. A person who contravenes this section of the Act commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$100,000;
- For any other person, to a fine not exceeding \$500,000.

Prohibition on coercion and inducement

- A person must not request, instruct, induce other persons to engage in adverse conduct
- A person must not organise, threaten or organise to take actions against another person (to engage in adverse conduct)
- A person must not knowingly or recklessly make false or misleading comments regarding obligations / participation and making complaints under the Act.

A person who contravenes these sections, commits an offence and is liable on conviction:

- For an individual, to a fine not exceeding \$100,000;
- For any other person, to a fine not exceeding \$500,000.



**Note:** the Act provides for exceptions under the rules on coercion and inducement, for example constables and emergency services who give reasonable directions where the circumstances may require.

## Enforcement and Other Matters

The Act provides for various mechanisms of enforcement, including the following notices:

- An improvement notice
- A prohibition notice
- A non-disturbance notice
- A suspension notice.

### Improvement notices

If an inspector reasonably believes a person is contravening a provision of the Act or regulations, or is likely to contravene the Act or regulations, then the inspector may issue an improvement notice requiring the person to:

- Remedy the contravention
- Prevent a likely contravention from occurring
- Remedy the things or activities causing the contravention or likely to cause a contravention.

An improvement notice must state the reason for the contravention, the provisions of the Act that are being breached, a reasonable time period within which the person is required to remedy the contravention, and may include recommendations. Extensions of time can be issued by an inspector.

A person must comply with the improvement notice within the period specified in the notice. A person who contravenes this section of the Act commits an offence and is liable upon conviction:

- For an individual, to a fine not exceeding \$50,000;
- For any other person, to a fine not exceeding \$250,000.

### Prohibition notices

If an inspector reasonably believes (a) that an activity at a workplace that involves or will involve a serious risk to the health or safety of a person arising from an immediate or imminent exposure to a hazard, or that such an activity may occur at a workplace, or (b) substance, or work that is required to be authorised under subpart 2 of Part 5 or a mining operation, an inspector:

- Believes there is a serious risk to any person because of a failure to comply with the Act or regulation
- Believes on reasonable grounds that it is likely that a person will fail to comply with this Act or regulations, and that failure would be likely to cause a serious risk to the health and safety of any person.

The inspector may give a person who is in control over the matter a direction prohibiting them from carrying on the activity until the matter is resolved to the satisfaction of the inspector. Such direction may be given orally, but must be confirmed by written notice (a prohibition notice issued to the person as soon as practicable).

A prohibition notice must state that the inspector believes that grounds for the issue of a prohibition notice exist and the basis for that belief, and describe briefly the matter or activity that the inspector believes gives rise or will give rise to the risk, and specify the provisions of the Act or regulations that the inspector believes is being, or is likely to be, contravened by that matter or activity. A prohibition notice may include recommendations on the measures that could be taken to remedy the risk, activities, or matters to which the notice relates, or the contravention or likely contravention. A prohibition notice issued under the Act which prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following:

- A workplace or part of a workplace, at which the activity is not to be carried out





- Anything that is not to be used in connection with the activity
- Any procedure that is not to be followed in connection with the activity. A person to whom a probation notice is issued must comply with the direction or notice.

A person who contravenes this section commits an offence and is liable upon conviction:

- For an individual, to a fine not exceeding \$100,000;
- For any other person, to a fine not exceeding \$500,000.

## Non-disturbance notices

An inspector may issue a non-disturbance notice to a PCBU who manages or controls a workplace if the inspector reasonably believes that it is necessary to do so to facilitate the exercise of his or her compliance powers. A non-disturbance notice may require a person to preserve the site at which a notifiable event has occurred for a specified period, or prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.

A non-disturbance notice must specify the period (not exceeding 7 days) for which it applies, and set out:

- The obligations of the person to whom the notice is issued
- The measures to be taken to preserve a site or prevent the disturbance of a site

The penalty for contravening the notice. However, a non-disturbance notice does not prevent any action:

- To assist an injured person
- To remove a deceased person
- That is essential to make the site safe or prevent a further notifiable event
- Assisting an injured person
- Done by, or under a direction of a constable or at the direction of an inspector
- Or for which an inspector or the regulator has given their permission.

A person must not, without reasonable excuse, refuse or fail to comply with a non-disturbance notice issued to them. A person who contravenes this section of the Act commits an offence and is liable upon conviction:

- For an individual, to a fine not exceeding \$50,000;
- For any other person, to a fine not exceeding \$250,000.

## Enforcement Tools and New Penalties

The Act gives the courts the power to require offenders to publish adverse publicity orders, meaning an offender may have to publish the offence, the consequence and the penalty imposed related to the matter in a public forum.

The Act also creates new types of court orders, for example: improvement, project, restoration and training orders and carries over the ability of third parties to bring private prosecutions.

Finally, the Act provides for graduated categories of offences which impose substantially higher penalties than those under the Health and Safety in Employment Act 1992. The maximum penalties under the new regime for both individuals and corporate entities held liable for reckless conduct that results in the death of a worker can be up to \$3 million and/or up to 5 years imprisonment for individuals.



## Civil Liability

Even if you are prosecuted by WorkSafe New Zealand for an offence under the Health and Safety at Work Act 2015 you may be required to account for the same matter in an action for common law damages in the District or High Court, or in a personal grievance claim in the Employment Relations Authority or Employment Court.

Your obligations as an PCBU are not just covered by the Health and Safety at Work Act 2015; you have contractual obligations pursuant to your employment agreements (written and unwritten) and obligations arising out of the common law because of the special nature of the relationship between an employer and employee.

If you breach any of your obligations in respect of an employee's health or safety and that causes the employee to suffer a disadvantage in their employment and/or lose or resign their employment, then you may find that the employee claims that your actions were a breach of the employment agreement.

Alternatively, the employee may sue you in negligence for a breach of your duty of care as an employer to provide the employee with a safe workplace. If you have reason to believe that an accident or incident involving an employee at work may give rise to a civil action you should contact EMA Advice immediately; your Consultant will be able to provide you with specialist advice on your obligations so as to avoid liability.

## Regulations

You should be aware of the key regulations that support the Act. Further information on the regulations can be found [here](#).

## Conclusion

Understanding the legislative environment with respect to health and safety at work is one aspect of understanding your obligations as an employer (PCBU) to provide a safe place of work and safe systems of work so that no harm comes to you, your employees, contractors, or any other people because of the work you do.

Once you understand your obligations, putting into place policies and procedures becomes a logical extension of that and you'll be surprised how straightforward it can be.

EMA Advice OSH Consultants are able to assist you with understanding and meeting your obligations under the applicable legislation.

If you are to be prosecuted for an offence under the Act, or you have reason to believe that WorkSafe New Zealand may investigate you and/or your workplace in relation to any alleged offence under the Act, you should obtain specialist advice immediately.





## Remember

- Always call AdviceLine to check you have the latest guide
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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