

A-Z Guide

WORKER ENGAGEMENT, PARTICIPATION & REPRESENTATION



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Use this guide to understand

- Your obligation in involving your employees in health and safety matters in your workplace
- The election of health and safety representatives
- The establishment of health and safety committees
- The functions of and your obligations to health and safety committees

Introduction

Involving your employees in health and safety issues in your workplace is a significant part of your obligations under the Health and Safety at Work Act 2015 (“the Act”).

The Act sets out two overarching duties for persons conducting a business or undertaking (“PCBU”):

- Duty to engage workers, and
- Duty to have worker participation practices.

Duty to Engage Workers

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

If the PCBU and the workers have agreed to procedures for engagement, the engagement must be in accordance with those procedures.

Nature of engagement

Engagement with workers under the Act requires the following:

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

If the workers are represented by a health and safety representative, the engagement must involve that representative.

When engagement is required



Worker Engagement Participation and Representation

Engagement with workers under the Act is required in relation to work health and safety matters in the following circumstances:

- Identifying hazards and assessing risks regarding the work to be carried out
- When making decisions about eliminating or minimising those risks
- When making decisions regarding facilities for the welfare of workers



- When proposing changes that may affect the health and safety of workers
- When making decisions about procedures for
 - engaging with workers, or
 - monitoring the health of workers, or
 - monitoring the conditions of the workplace under the PCBU management, or
 - providing information regarding training for workers.
- When making decisions regarding procedures (if any) for resolving work health and safety issues at the workplace
- When developing worker participation practices, including when determining work groups, or
- When carrying out any other activity prescribed by regulations.

Duty to Have Worker Participation Practices

A PCBU must have practices that provide reasonable opportunities for workers who carry out work for the business or undertaking to participate effectively in improving work health and safety in the business or undertaking on an on-going basis. This means the PCBU must comply with prescribed requirements relating to worker participation, including requirements relating to a particular industry, sector, or kind of workplace and if applicable take into account any type of approved code of practice.

In this context the term reasonable opportunities means:

- The number of workers in the business or undertaking
- The number of different workplaces, the distance between them
- The likely risks to health and safety
- The nature of the work performed
- The nature of the employment arrangements or contracts arrangements, temporary workers
- The willingness of workers and their representative to participate
- The duty to act in good faith as required by section 4 of the Employment Relations Act 2000.

Health and Safety Representatives

Functions of health and safety representatives:

- to represent the workers in the work group in matters relating to health and safety
- to investigate complaints from workers in the work group regarding health and safety
- if requested by a worker in the work group, to represent the worker in relation to a matter relating to health and safety (including a complaint)
- to monitor the measures taken by the PCBU that are relevant to health and safety
- to inquire into anything that appears to be a risk to the health or safety of workers in the work group arising from the conduct of the business or undertaking
- to make recommendations relating to work health and safety
- to provide feedback to the PCBU about whether the requirements of this Act or regulations are being complied with
- to promote the interests of workers in the work group who have been harmed at work, including in relation to arrangements for rehabilitation and return to work.



Powers and functions of health and safety representatives are fully detailed in Schedule 2 of the Act.



Obligations of PCBU to health and safety representatives:

- consult, so far as is reasonably practicable, about health and safety matters with any health and safety representative for a work group of workers carrying out work as part of the conduct of the business or undertaking
- confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group
- allow a health and safety representative to spend as much time as is reasonably necessary to perform his or her functions or exercise his or her powers under this Act
- provide any health and safety representative for a work group with any information necessary to enable the health and safety representative to perform his or her functions or exercise his or her powers, including information relating to hazards (including associated risks) at the workplace affecting workers in a work group, and the health and safety of the workers in a work group
- allow the health and safety representative to be present at an interview relating to health and safety between a worker and an inspector, or the PCBU at that workplace or the PCBU's representative
- allow the health and safety representative to be present at an interview concerning health and safety between a group of workers and an inspector, or the PCBU at that workplace or the PCBU's representative
- provide to a health and safety representative for the work group, any resources, facilities, and assistance that are reasonably necessary or prescribed by regulations to enable the representative to perform his or her functions and exercise his or her powers under this Act
- allow a person assisting a health and safety representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided
- permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works.

A PCBU must also adopt a recommendation made by a health and safety representative, or provide a written statement to the representative setting out the reasons for not adopting the recommendation.

A health and safety representative is entitled to normal pay for the time spent performing or exercising his or her powers under the Act.

Health and safety representative training

A health and safety representative must complete initial training which is achieved when he or she is assessed as having completed the New Zealand Qualifications Authority unit standard 29315.

The representative may choose a training opportunity in consultation with the PCBU about the time, date and location of, and the costs relating to the training.

If the work group for a health and safety representative relates to more than one PCBU, the PCBUs concerned must share the costs, unless they agree otherwise.

A PCBU must allow a health and safety representative paid leave each year to attend health and safety training. Most health and safety representatives are entitled to two days per year, or the number of days specified by regulations for specific industries. The PCBU must meet the cost of the training. For the purposes of training day's entitlement, a year means a period starting on 1 April in a year and ending on 31 March in the following year.



The maximum total number of days paid leave that a PCBU is required to allow for training of health and safety representatives in the whole business or undertaking in a calendar year is based on the number of workers who work for the business or undertaking as at the specified date according to the following table.



Workers as at specified date*	Maximum number of days' paid leave
1-5	2
6-50	6
51-280	1 day for every 8 workers or part of that number
281 or more	35 days plus 5 days for every 100 workers or part of that number

*The **specified date** means 1 April

Election of health and safety representatives

A worker who carries out work for a business or undertaking may notify the PCBU that the worker wishes one or more health and safety representatives to be elected to represent workers who carry out work for that business or undertaking. If a PCBU receives notification in these circumstances the PCBU must initiate the election within two months of receiving the notification. A PCBU may, on the PCBU's own initiative, initiate the election of health and safety representatives. In order to initiate the election, the PCBU must inform the workers of the work group they are in and of the number of health and safety representatives to be elected for that work group. If the work group relates to more than one PCBU, those PCBUs must also consult each other about the way in which they will comply with those requirements.

Under the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Act 2023, businesses that have fewer than 20 workers, and are not within the scope of any high-risk sector or industry are **no longer an exception** to the requirement above.

To avoid doubt, a PCBU's obligation to hold an election in response to a worker's request for an election applies only in relation to holding an election for the work group to which that worker belongs.

Requirements for conducting elections

An election for health and safety representatives may be undertaken by any form of voting, and conducted by any person, except a candidate for the election. The person conducting the election must call for nominations, and based on the number of number of nominations, determine whether an election needs to be held.

Elections must be by secret ballot if requested by a member of the workgroup, a candidate, or the PCBU(s). If there are fewer candidates than vacancies the election need not be conducted and each candidate is treated as being elected.

A PCBU must provide the resources, facilities and assistance necessary to conduct the election, including the payment of any costs associated with the election.



Term of office

A health and safety representative holds office for a term not exceeding three years, or a lesser period agreed between the PCBU and members of the relevant work group. They may be re-elected for any number of terms, and if the PCBU agrees, remain in office after the expiry of the term until a successor is elected.

A health and safety representative can resign at any time by giving notice to the PCBU.

They also cease to hold office if:

- They cease to be a member of the work group that he/she was elected to represent, or
- They are removed from office by the regulator, or
- A simple majority of the members of the work group resolve that the representative should no longer represent the work group.

A PCBU must keep a readily accessible list of names and contact details of health and safety representatives for each work group and provide this to the regulator on request.

Determination of work groups

If a worker makes a request or the PCBU initiates the election of a health and safety representative, the PCBU must determine one or more work groups, in accordance with the following:

- Unless a PCBU determines otherwise, a work group comprising of all the workers in the business or undertaking, or
- A PCBU may determine one or more work groups if the PCBU considers that the work group comprised of all the workers in the business or undertaking would be inappropriate having regard to the structure of the business or undertaking.

If the PCBU determines more than one work group on the basis of the information specified above then the PCBU must ensure that the workers are grouped in a way that most effectively enables the health and safety interests of the workers to be represented, and takes account of the need for a health and safety representative to be accessible to the workers that he or she represents. The PCBU must also have regard to:

- The number of workers
- The views of the workers in relation to the determination or variation of workgroups, and the number of health and safety representatives to be elected
- The number of different places of work for the workers and the distances between those places
- The number and grouping of workers who carry out the same or similar types of work
- The nature of the areas or places where work is carried out
- The diversity of workers and their work
- The nature of any hazards or risks to the health and safety of workers at the workplace(s)
- The pattern of work carried out by workers, for example, whether the work is full-time, part-time, casual, or fixed-term
- The times at which the work is carried out
- Any arrangements at the workplace(s) that relate to overtime or shift work.



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To avoid doubt, two or more PCBUs may, by agreement, determine one or more work groups that comprise workers who carry out work for any PCBU who is party to the agreement for example, a multiple PCBU work arrangement provided the PCBU determine the work group in a way that enables workers to be represented and takes account for the need for health and safety representatives to be accessible to the workers they represent.

A PCBU must determine the number of health and safety representatives who may be elected for that work group in accordance with the prescribed minimum ratio of health and safety representatives to workers. The prescribed minimum ratio is one representative for every 19 workers.



Provisional improvement notices

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 work group 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 the likely contravention, or things or activities causing the contravention, or likely to cause a contravention, to which the notice relates. Such recommendation may refer to an approved code of practice or offer the person to whom it is issued a choice of 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.

Review of provisional improvement notice



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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 work 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 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 is usually carries an understood risk to health and safety unless the risk has materially increased beyond the understood risk. A health and safety representative must not give any direction to cease work unless they 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
- 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 Regulator 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 engages in adverse conduct against a worker that causes a worker any detriment or disadvantage for 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 coercion and inducement

- A person must not request, instruct, induce other persons to engage in adverse conduct.



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- A person must not organise, threaten or organise to take actions against another person (to engage in adverse conduct)
- Our guide for Employers and Managers
 - A person must not knowingly or recklessly make false or misleading comments regarding obligations / participation and making complaints under the Act.

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.



Health and Safety Committees

The following persons may request that the PCBU at a workplace establish a health and safety committee for the business or undertaking or part of the business or undertaking

- A health and safety representative for a work group of workers carrying out work at that workplace; or
- Five or more workers at that workplace.

The PCBU must decide within two months of receiving the request whether to establish a health and safety committee. Under the Health and Safety at Work (Health and Safety Representatives and Committees) Amendment Act 2023, all businesses must comply with this rule as businesses with fewer than 20 workers and that are not within the scope of any high-risk sector or industry are **no longer an exception** from this requirement.

Additionally, under the Health and Safety at Work (Representatives and Committees) Amendment Act 2023, a PCBU can no longer refuse to establish a committee on the grounds that it is satisfied that existing worker participation practices at the workplace sufficiently meet the requirements relating to the duty of a PCBU to have worker participation practices under the Act.

To avoid doubt, a PCBU at a workplace may establish a health and safety committee for the workplace or part of the workplace on the PCBU's own initiative.

Functions of a health and safety committee

- to facilitate co-operation between the PCBU and workers in instigating, developing, and carrying out measures designed to ensure the workers' health and safety at work
- to assist in developing any standards, rules, policies, or procedures relating to health and safety that are to be followed or complied with at the workplace
- to make recommendations relating to work health and safety
- to perform any other functions that are agreed between the PCBU and the committee, or prescribed by regulations.

Obligations of PCBUs in relation to health and safety committees

The PCBU must:

- consult, so far as is reasonably practicable, about health and safety matters with a health and safety committee
- allow each member of a health and safety committee to spend as much time as is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee
- provide the health and safety committee with any information that is necessary to enable the committee to perform its functions, including information relating to hazards (including associated risks) at the workplace, and the health and safety of the workers at the workplace.



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The PCBU must also, within a reasonable time, adopt a health and safety committee recommendation, or provide a written statement to the committee setting out the reasons for not adopting the recommendation.

A health and safety committee member is entitled to normal pay for the time spent on committee functions.



Membership of health and safety committees

The PCBU and the workers must agree on the membership of the committee. The committee must include one member appointed by the PCBU and authorised by the PCBU to make decisions on behalf of the PCBU on health and safety issues. At least half of the members must be workers representing the workers at the workplace, and must not have been nominated by the PCBU. Each health and safety representative is eligible to be a member of the committee.

Meeting requirements for health and safety committees

The committee must meet regularly at the times agreed by the members, but at least once every three months, and at any other reasonable time on the request of a simple majority of members of the committee.

High-risk sectors or industries

For the purpose of obligations in relation to health and safety representatives and committees, high-risk sectors or industries include a business or undertaking that is:

- subject to any of the Health and Safety at Work (Adventure Activities, Major Hazard Facilities, Mining Operations and Quarrying operations, Petroleum Exploration and Extraction) Regulations 2016
- subject to the Civil Aviation Rules Part 115
- carrying on an activity for which a maritime document is required
- operating predominantly in *specified high-risk sector or industry*

Specified high-risk sectors or industries are listed as:

- Aquaculture
- Forestry and logging
- Fishing, hunting, and trapping
- Coal mining
- Food product manufacturing
- Water supply, sewerage, and draining services
- Waste collection, treatment, and disposal services
- Building construction
- Heavy and civil construction
- Construction services



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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