

A safer workplace - are you affected by the latest Health and Safety Reform Bill changes?

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The spotlight is back on the Health and Safety Reform Bill (the Bill), following the select committee's recommended changes. The revised Bill has been described as 'watered down' and has lost the support of Labour and the Greens. Most substantive obligations have not changed, but the people and organisations to whom they apply have. This article outlines three key changes and how they may affect you.

Officers' due diligence duty

The select committee has narrowed the definition of 'officer' which means that fewer people will be subject to the 'due diligence' duty. This change does not affect directors, partners, or those occupying a similar position (eg trustees), but some managers will no longer be subject to due diligence.

Previously, the duty was to apply to individuals who made decisions affecting "*the whole, or a substantial part, of the business*". It will now apply to individuals that "*exercise significant influence over the management of the business*".

The committee's explanation for this change is that due diligence should be limited to "*very senior governance roles*". While the reference to 'governance' sits uncomfortably with the reference to 'management' in the Bill, the select committee's clear intention is to reserve due diligence for the most senior people within organisations. In practice the duty will probably be limited in SMEs to the chief executive (or equivalent), and extended in larger organisations to a small group of highly influential second tier managers.

A word of advice to managers who will no longer be officers for health and safety purposes – this will not necessarily affect your health and safety responsibilities in practice. All workers must take 'reasonable care' not to adversely affect the health and safety of others through their acts or omissions. For managers, 'due diligence' provides a helpful framework for understanding this obligation.

Volunteers

The select committee has distinguished 'volunteer workers' from other volunteers - a distinction that exists in current health and safety legislation. Volunteers outside the definition of 'volunteer worker' will no longer be workers under the Bill. This means that PCBUs (persons conducting a business or undertaking) will not owe these volunteers the same duties owed to workers generally. Note that volunteers who are not volunteer workers are still protected by the PCBUs obligation to ensure that its work does not put the health and safety of 'other persons' at risk.

Engagement, participation and representation

Where a business is not in a high-risk sector and has fewer than 20 workers, a PCBU will not be obliged to initiate the election of a health and safety representative or to consider the establishment of a health and safety committee. While not subject to the prescriptive requirements that apply to riskier and larger businesses, these PCBUs will still have to engage with workers and must "*have practices that provide reasonable opportunities for workers...to participate effectively in improving health and safety*".

This article was written by Hamish Kynaston, partner in our employment and litigation team, for the National Business Review (NBR) on 21 August.

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