



Health and Safety Toolkit



Clearing the way for safer workplace practices

We are pleased to present our updated Health and Safety Toolkit, compiled to assist organisations in keeping workers and others safe.

The Health and Safety at Work Act's focus on requiring organisations to take reasonably practicable steps to ensure the health and safety of workers and others is sufficiently flexible to address all manner of risks in a workplace.

Health and safety in New Zealand has advanced significantly since we prepared our original toolkit in 2016. However, the level of harm in New Zealand workplaces remains unacceptably high: per the [Worksafe data centre](#), [injuries resulting in more than a week away from work](#) in 2022 were 30,624 (down from 35,046 last in 2021). [Fatalities](#) were 60 in 2022, down from 64 in 2021.

Ensuring healthy and safe workplaces requires more than simply understanding the law. At all levels of an organisation, leadership that demonstrates a real commitment to worker safety and engagement is critical. To improve health and safety in New Zealand, everyone must think constantly about what must be done to keep themselves and others safe in the workplace. It is only then that we will start to see real improvement in our country's health and safety culture and a decline in the rates of injury.

Should you have any questions about your health and safety obligations, our team has experience across a broad range of health and safety matters and is able to assist you.

This document contains guidance material and is not legal advice. Data last updated May 2023.

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New Zealand's health and safety landscape

If you are a director or an officer

As a director, managing your organisation's health and safety risk is just as important as managing financial and reputational risk and it should receive the same focus.

- "Officers" include individuals who hold positions that allow them to exercise significant influence over the management of the business or undertaking.
- Directors and officers are required to exercise due diligence to ensure compliance.
- The legislation and the Good Governance for Directors Guide detail steps directors and officers should take, including:
 - Acquire and maintain current knowledge of health and safety matters, the organisation's operations and the hazards and risks arising from those operations.
 - Verify that the organisation has appropriate resources available to manage health and safety risks, and that the organisation is utilising those resources.
 - Ensure the organisation complies with its health and safety duties.
- Directors and officers will be personally liable for penalties if they fail to exercise due diligence under the Health and Safety at Work Act 2015 (the Act).

If you are a Person Conducting a Business or Undertaking (PCBU)

The legislation imposes a primary obligation on PCBUs to take "reasonably practicable" steps to ensure the health and safety of workers and ensure that others are not put at risk from their work.

The Act also imposes:

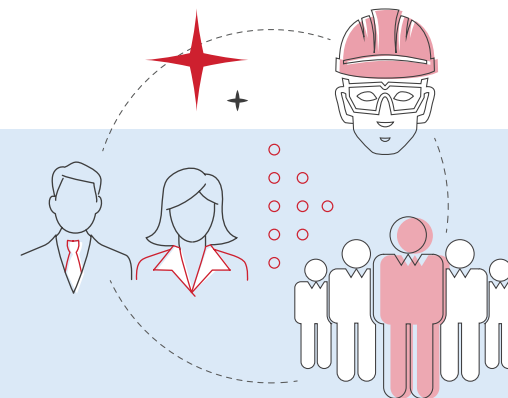
- Specific duties on PCBUs that manage or control workplaces or fittings or plant at workplaces, and designers, importers, manufacturers and installers of plant, substances or structures to be used in a workplace.
- Obligations on PCBUs to support worker participation, to consult with workers and, if requested, to train health and safety representatives.
- Significant penalties for non-compliance with a focus on enforcement.

If you are a worker or involved in the workplace in another role

The Act contains the following relevant features for workers:

- Workers and others must take reasonable care to ensure their own health and safety and the health and safety of others in the workplace.
- Participation and consultation between workers and PCBUs.
- A system for workers to request the election of health and safety representatives and to form work groups.
- Significant penalties for non-compliance.

The regulations also contain detail about worker participation.

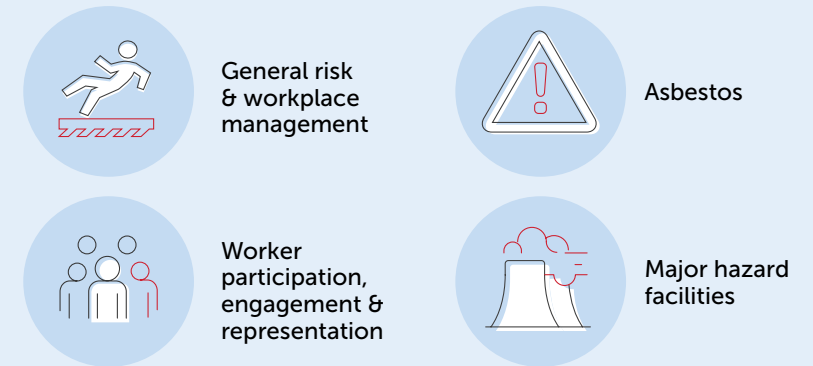


New Zealand's health and safety landscape

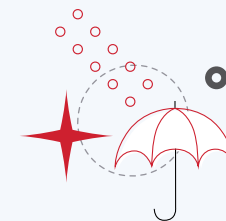


The regulations

The Act is supported by several associated regulations. They are based on Australia's Model Regulations and primarily provide guidance on specific areas of workplace health and safety, including:



Compliance with the regulations is mandatory and failure to comply may result in fines.



Insurance

Insurance against fines imposed for breaching health and safety obligations is invalid, and is a breach of the Act.

What does this mean for your organisation?

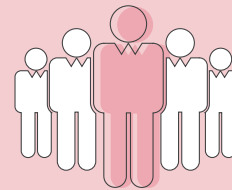
What is a PCBU?

A PCBU is any **person conducting a business or undertaking**, whether that person conducts a business or undertaking alone, or with others, and whether or not the business or undertaking is conducted for profit or gain.

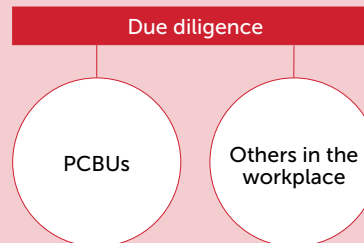
PCBUs include employers, principals, self-employed people, partnerships, and people who manage or control a workplace.

Workers, officers and volunteer associations that have no employees are not PCBUs under the Act.

A worker is a person who carries out work for a PCBU, including as an employee, contractor, subcontractor, employee of a contractor or subcontractor, apprentice or trainee, or volunteer worker. Workers owe their own duties to take reasonable care for their own health and safety, and that of others.



Directors and officers



What duties does a PCBU have?

Every PCBU has a responsibility to take “reasonably practicable” steps to ensure the health and safety of workers and other persons.

This includes taking reasonably practicable steps to ensure:

- the work environment does not pose risks to health and safety;
- safe plant, structures and systems of work are maintained;
- there are adequate facilities for workers’ welfare while at work;
- all people receive the appropriate information, training, instructions and/or supervision necessary to protect them from health and safety risks; and
- the health of workers and the conditions at the workplace are monitored so as to prevent workers’ injury or illness.

Practical steps for PCBUs

If you are a PCBU, you should:

- Track health and safety performance and monitor other information that may reflect latent health and safety issues (such as rates of sick leave absence, exposure to risks that are potentially harmful and reports of non-compliance).
- Investigate incidents (including near-misses) and conduct root cause analyses.
- Review incident reports and statistics to identify trends and implement appropriate responses.
- Monitor contractors’ health and safety performance and ensure contractors have robust processes in place that are consistent with the organisation’s expectations.
- Ensure inductions and training provided to employees and contractors is consistent and comprehensive.
- Implement and update the health and safety management system, as necessary.
- Conduct and finalise risk assessments, implement the controls identified in those assessments and update risk assessments where risks or controls may have changed.
- Support a ‘no-blame’ culture where health and safety is supported and promoted through enabling worker participation, ensuring adequate resources are allocated to health and safety initiatives and providing training and information about specific health and safety risks.
- Check whether your contractual terms with suppliers/customers are appropriate and, if necessary, amend.

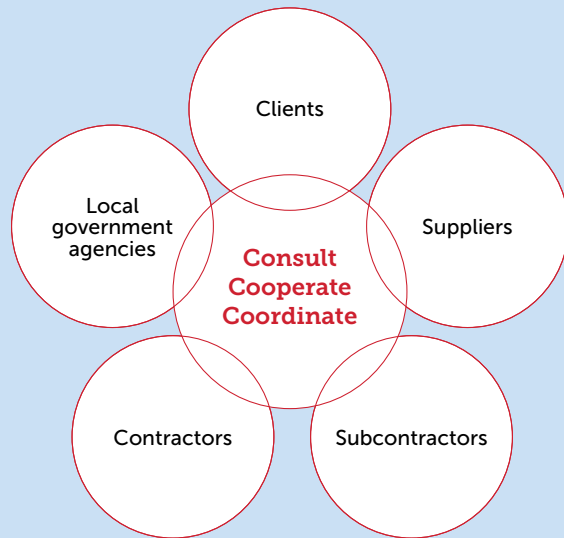
What is a workplace?

In the Act, “workplace” is defined as a place where work “is being” carried out or is “customarily carried out” for a business or undertaking.

What if PCBUs work together?

When will PCBU duties overlap?

Health and safety duties can overlap when PCBUs share a health and safety duty in relation to the same matter. For example, where PCBUs share a workplace or work together.



Triple C duty

If there are overlapping duties, each PCBU has a duty to Consult, Cooperate and Coordinate activities, so far as reasonably practicable, with each PCBU they share overlapping duties with.

The rationale for the 'triple C duty' is to avoid unnecessary duplication of effort, prevent

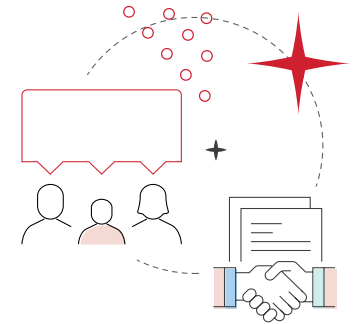
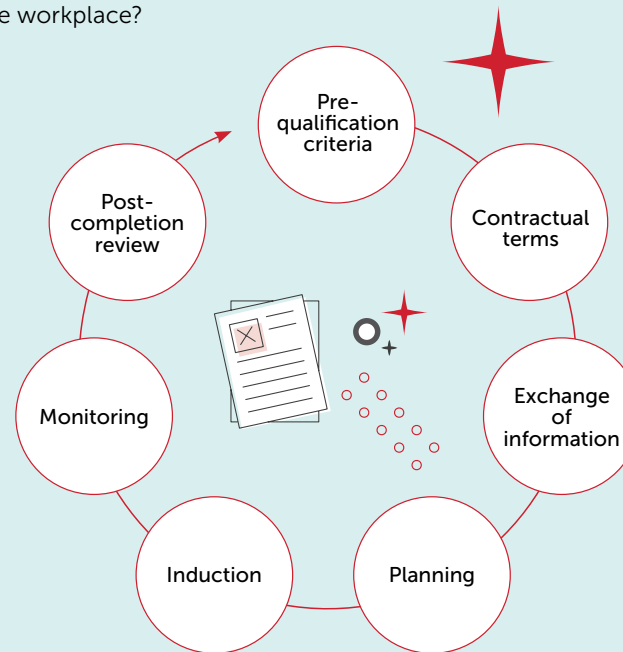
PCBUs from shirking responsibility, help businesses reach a common understanding around the roles and responsibilities of each PCBU, and facilitate the sharing of responsibility for health and safety.

Breach of the duty carries a fine of up to NZD20,000 for individuals and NZD100,000 for other persons.

Triple Cs in practice

Has your organisation had the following discussions with PCBUs with overlapping duties:

1. How will health and safety risks be allocated between the PCBUs?
2. How will each health and safety risk be managed?
3. How do each PCBU's work activities impact the health and safety risks of other PCBUs, workers or others in the workplace?
4. What information does each PCBU need to provide to the other(s) for health and safety purposes?
5. If a notifiable event occurs, who will notify WorkSafe? How will that be decided?



Ongoing communication is required

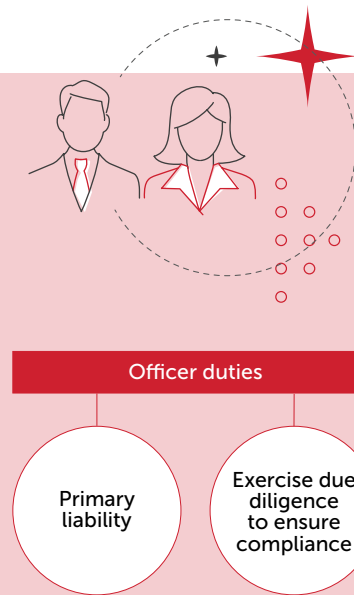
1. Discuss what work activities are being carried out.
2. Consider the health and safety risks arising from those work activities.
3. Agree on the degree of influence and control each PCBU has over those work activities.
4. Agree on who will manage what risks and how those risks will be managed.
5. Monitor and check in with each other on an ongoing basis.

What does this mean for directors and officers?

Who is an officer under the Act?

An officer is a director, a partner (or a general partner in a limited partnership), or a person occupying a position in a body corporate or an unincorporated body that is comparable to that of a director.

The definition of officer includes any person who holds a position that allows them to exercise significant influence over the management of the PCBU. This includes, for example, the Chief Executive, and others in governance roles. Whether someone is an officer is a factual question. A relevant factor is whether the person has enough authority to make governance decisions that have a significant influence on the business.



What obligations do officers have?

The obligations of directors and officers under the Act are not to ensure the health and safety of workers and others, but rather to exercise due diligence to ensure the PCBU complies with its duties. Due diligence includes taking reasonable steps to:

- acquire and keep up-to-date knowledge of health and safety matters;
- understand the nature of the PCBU's operations and of the associated hazards and risks;
- ensure the PCBU has appropriate resources and processes to eliminate or minimise risks to health and safety;
- 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, and implements, processes for complying with any duty or obligation; and
- verify the provision and use of the above resources and processes through reviews and audits.

When determining the extent of the due diligence that an officer is required to undertake the nature of the business or undertaking, the position of the officer, and the nature of the responsibilities undertaken by the officer will be taken into account.

Practical steps for directors and officers

If you are a director or officer you should:

- Prepare a Board charter that outlines the Board's commitment to health and safety and update the charter periodically.
- Understand the organisation's operations, the hazards and risks associated with the operations and the controls in place to manage those hazards and risks.
- Hold senior management to account for health and safety by developing specific targets, implementing stringent reporting requirements and including health and safety targets in KPIs.
- Receive and review comprehensive updates on health and safety incidents, near misses, illnesses, contractors' health and safety performance, progress with implementing formal plans, risk assessments and findings from internal and external audits.
- Monitor the organisation's health and safety performance and understand its processes by reviewing audits, management plans, risk assessments, risk registers and incident investigations.
- Ensure the organisation allocates adequate resources and engages appropriate expertise to implement, develop and maintain the health and safety management system.
- Obtain independent expert advice as required.
- Arrange periodic formal reviews of the organisation's health and safety performance, and ensure appropriate steps are implemented to address any recommendations from reviews.
- Form a Board subcommittee to monitor health and safety performance in greater detail and provide periodic reports to the entire Board.

The Institute of Directors' and WorkSafe's Health and Safety Guidance: *Good Governance for Directors* is a useful reference tool.

For officers who are not directors, not all of these steps will be relevant/possible. However, it is prudent to take as many of these steps as is practicable.

Expectations for internal health and safety investigations

WorkSafe requires employers, principals and people in control of places of work (“duty holders”) to conduct internal health and safety investigations and, in some circumstances, to provide the findings of those investigations to a health and safety inspector. Here is what that means.

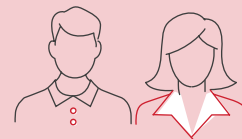
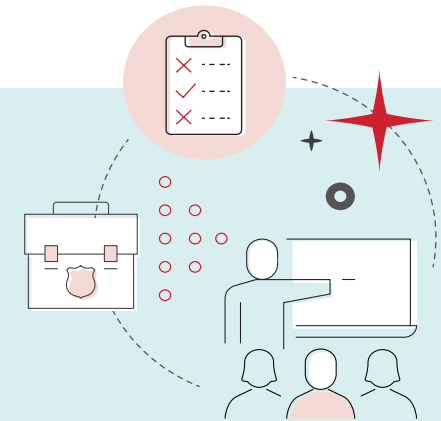
The duty holder review

- WorkSafe New Zealand sometimes requires organisations to carry out a “duty holder review”. There is no statutory basis that provides for this review. The duty holder review is an internal investigation of a health and safety incident conducted by a PCBU or duty holder at the request of a health and safety inspector.
- The purpose of the duty holder review is to address everything “that contributed to an accident” to make sure it won’t happen again. It provides reassurance to WorkSafe that the duty holder has taken the incident seriously and has taken the opportunity to learn from it and make improvements.
- A key aspect of the investigation will involve identifying the immediate, underlying and root causes of the event.
- Health and safety inspectors will request a duty holder review when an incident occurs at the workplace and the inspector determines that the duty holder should examine the incident itself and provide WorkSafe with a report of the investigation.
- Health and safety inspectors will review the duty holder’s report to check that improvements described in the report have been completed or are under way.
- Health and safety inspectors will also liaise with any victims of the incident to keep them informed of the progress of the report.

What are the implications for my organisation?

Internal health and safety investigations play an important part in all organisations’ health and safety management systems.

- The Health and Safety Guide: *Good Governance for Directors* recommends that directors review serious incidents and satisfy themselves that management has taken adequate steps to respond to such incidents. Managers can therefore expect directors to take greater interest in the conduct and findings of internal health and safety investigations.
- Duty holders can use different strategies in conducting and reporting internal investigations. Depending on the circumstances and the findings of the investigation, duty holders may wish to consider using legal privilege to protect certain parts of the investigation.



Who is a Duty Holder?

A Duty Holder is a person who is subject to duties under the Act.

A Duty Holder can be employers, principals, persons who control places of work, self-employed people, employees, persons in charge, or persons selling or supplying plant for use on a place of work.

When must WorkSafe be notified?

WorkSafe must be notified when a “notifiable event” occurs. The requirements, and steps to follow in deciding whether WorkSafe must be notified under the Act, are outlined below.

What is a notifiable event?

A notifiable event means any of the following events that arise from work:



Notification requirements

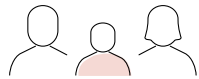
Under the Act, if you’re a PCBU, you will be required to:

- Keep a record of every notifiable event for at least five years.
- Ensure that WorkSafe is notified as soon as possible after you become aware of a notifiable event occurring at the business or undertaking.
- Notification can be by telephone or in writing (including by email). If you notify WorkSafe by telephone then you must, if required by WorkSafe, provide written notice of the notifiable incident within 48 hours of being requested to do so.



How should PCBUs prepare for notifiable events?

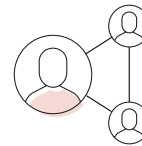
To ensure that WorkSafe is notified as soon as possible following a notifiable event, PCBUs should consider:



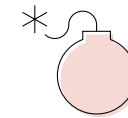
Are senior managers trained in reporting notifiable events?



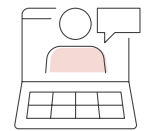
Are workers trained in preserving sites where notifiable events occur?



Does the PCBU have a clear escalation protocol in place to ensure the appropriate managers and officers are contacted regarding a notifiable event?

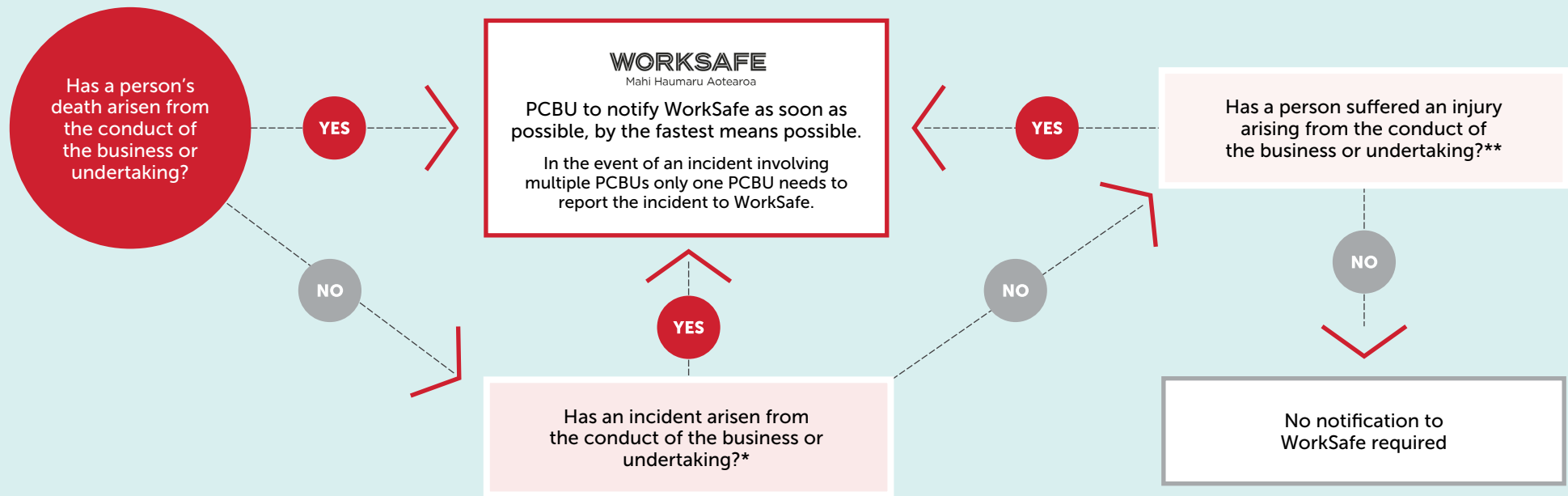


Who is in charge of notifying WorkSafe New Zealand when a notifiable event occurs?



Who is in charge of notifying other relevant parties when a notifiable event occurs (e.g. emergency services and family)?

Has a notifiable event even occurred?



*Have any of the following incidents occurred in a way that was unplanned / uncontrolled and that exposed someone to serious risk:

- an escape, spillage or a 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 must be used in accordance with regulations;
- the collapse or partial collapse of a structure;
- the collapse or failure of an excavation or any shoring supporting an excavation;
- the inrush of water, mud or gas in workings or the implementation of the main system of ventilation, in an underground excavation or tunnel; and
- a collision between two vessels, a vessel capsizing or the inrush of water into a vessel.

Note: There are other categories of notifiable incidents in the Major Hazard Facilities regulations.

**Has anyone suffered the following:

- 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 an underlying tissue (e.g. degloving of skin or scalping);
- a spinal injury;
- the loss of a bodily function; and
- serious lacerations.

**Has anyone suffered an injury or illness that:

- requires or would usually require, the person to be admitted to hospital for immediate treatment;
- requires or would usually require the person to have medical treatment within 48 hours of exposure to the substance; and
- is a serious infection where carrying out of work was a significant contributing factor.

Talk to our experts

Our reputation as leading health and safety law experts is built on our specialist knowledge of the relevant legislation and how it applies to specific industries.

We'll provide you with strategic advice focused on effective methods of compliance so you can successfully manage your legal risk. Health and safety issues often intersect with industrial relations, accident compensation, and discrimination claims. Our team will view matters within an organisation's industrial and commercial landscape, rather than focusing only on the legal issues.

Our health and safety practice spans a wide range of industries, both in the public and private sectors. We do a significant amount of work in the energy and resources, construction, health, transport and manufacturing industries where there is often an inherent risk of serious injury. We understand how the health and safety enforcement agencies operate. We use that knowledge to assist our clients through the investigation process, including attendance at interviews and proactive engagement with agencies to minimise the risk of prosecutions and other enforcement actions. We have significant experience defending clients where prosecutions are brought in the civil courts.

We are also regularly called on to guide boards and individual directors and officers on protections against personal liability in the health and safety context.



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Stacey has more than 20 years' experience successfully representing corporate clients and public sector entities and directors and officers in significant litigation and regulatory matters.

In addition to a broad regulatory and litigation practice, Stacey regularly provides company directors, in house counsel and health and safety teams with advice about health and safety matters, including the exercise of due diligence. She routinely assists clients with internal and WorkSafe investigations following incidents, together with acting as defence counsel in response to prosecutions. Recently, by way of example, Stacey acted as defence counsel for Ritchies in a major prosecution brought by WorkSafe relating to a bus crash that resulted in three fatalities and many other injured victims. She was also engaged as lead counsel for certain company directors and officers following the Pike River coal mine explosion.

Stacey has also co-authored a book titled *Health and Safety at Work in New Zealand: Know the Law*.



Megan Richards
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Acting for both public and private sector clients, Megan's practice traverses strategic, litigious and time-critical day-to-day advice on all aspects of employment-related law including health and safety matters.

Megan advises on medical incapacity and medical retirement terminations as well as workplace accidents (including WorkSafe New Zealand investigations and prosecutions). She provides expert advice on risk management, particularly involving issues that arise from asbestos removal, earthquake prone buildings where employees are working, and activities outside the school classroom.

Clients value Megan's extensive experience advising on health and safety policies (including bullying and harassment, and drug and alcohol policies) and conducting disciplinary investigations in the event of health and safety breaches. Megan regularly provides in-house training on compliance with health and safety obligations and audit checks.



Gillian Service
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Gillian regularly represents clients at all levels of the court system and brings significant experience to the firm's national Employment and Health and Safety team.

Gillian helps boards of directors manage health and safety risks by providing proactive compliance advice and practical solutions to comply with New Zealand's health and safety regime. This interacts with other aspects of her clients' businesses such as drug and alcohol testing in the workplace, worker participation systems and interactions with unions. Gillian also provides emergency strategic advice during high profile and sensitive situations. She has experience with Coronial Inquests, WorkSafe investigations, subsequent prosecutions and communicating with all stakeholders and media as necessary.

Health and safety, industrial relations, human rights and privacy are focus areas of Gillian's practice. She advises clients on all aspects of risk management and represents them through official processes.

Talk to our experts



June Hardacre
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June has broad experience in all aspects of employment and health and safety law.

She regularly advises clients across a range of sectors on their health and safety obligations. This is in respect of duties and obligations of directors and officers, the primary responsibilities of PCBUs and contractor duties. In addition, June has particular experience in advising clients in the agriculture sector and implementing compliance based training.

Prior to joining MinterEllisonRuddWatts, June practiced at a magic circle firm in London for several years, and at another top tier New Zealand law firm prior to that.



Aaron Lloyd
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Aaron helps clients to assess health and safety risks in their businesses, implement comprehensive policies and programmes, conduct internal audits and investigations into incidents and represents clients in investigations and prosecutions.

Aaron was part of the Pike River team dealing with the Department of Labour inspectors and at the Coronial Inquest. Aaron also defended the pilot of the Tug Vessel Kuratau in a prosecution by the Maritime Safety Authority. Aaron has experience advising clients on investigations by the Transport Air Accident Investigation Commission, and with respect to the cross over of aviation regulatory and health and safety obligations in the aviation sector.



Jane Parker
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Jane helps clients manage their contractual and compliance issues regarding health and safety throughout the procurement planning, supplier selection, supplier engagement and supplier management stages.

Having advised extensively on clients' health and safety contracting and related issues, Jane can get to the nub of the issue quickly and generate practical and pragmatic health and safety options and documentation appropriate for the context. She regularly provides strategic advice and detail for health and safety policies, contract reviews and negotiations, template clauses and checklists, and assists clients to roll out the engagement and contracting approach within the client's organisation.



Matthew Ferrier
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Matthew has a background in prosecution of regulatory offending, including for health and safety breaches, as a senior Crown prosecutor in the Wellington Crown Solicitor's office.

Since joining MinterEllisonRuddWatts, Matthew has been involved in advising clients being investigated by WorkSafe for breaches of the Health and Safety at Work Act 2015. Matthew's background in regulatory prosecution gives him a helpful insight in terms of investigation and litigation strategy in this area, and when dealing with regulators generally. Matthew recently worked on a prosecution brought by WorkSafe against Ritchies following a bus crash that resulted in three fatalities and multiple injuries.

Talk to our experts



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Emma specialises in employment law, health and safety, public law and education law.

Emma provides advice on and assistance with matters under health and safety legislation, both generally and in relation to specific situations or incidents – whether contentious or non-contentious. She also assists with reviewing and amending clients' health and safety policies and procedures, regularly conducts training on health and safety matters, including work-related stress, and advises employers on accident compensation issues, the management of sick or injured employees, and investigations into potential health and safety breaches.



April Payne
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April is an accomplished general commercial litigator who specialises in health and safety, alongside consumer and competition law.

April frequently advises on a wide range of health and safety matters. She has wide-ranging experience in dealing with regulatory enquiries from New Zealand regulators, including assisting with WorkSafe investigations and prosecutions.

April joined MinterEllisonRuddWatts in 2012. She then worked at the Competition and Markets Authority in London before returning to the firm in 2016.



Joshua Kimpton
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Joshua is an employment, health and safety, and immigration law expert, with broad experience in advisory and contentious matters. He advises on all aspects of the law involving workers.

He is passionate about people and takes the time to get to know his clients – what they need and how they operate. Joshua recognises that every business is different and likes to work alongside his clients to problem solve and help achieve desired outcomes. As a trusted advisor to many organisations, Joshua provides clear, accurate, and commercially pragmatic legal advice to support the needs of his clients.

An expert on health and safety, Joshua reviews contracts and policies, advises on strategic health and safety compliance, and negotiates and drafts enforceable undertakings. He also represents clients in health and safety litigation.



Hannah King
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Hannah is a solutions-driven employment law expert. Her experience spans the full range of contentious and advisory employment law and worker relations issues, as well as health and safety, privacy, and immigration work.

When it comes to the most confronting and sensitive issues that arise in the workplace, Hannah is particularly adept at supporting clients to manage risk, find practical solutions and deliver the best outcomes. She balances a high level of technical proficiency and skill in dealing with complex legal issues, with a pragmatic and commercial approach.

Hannah regularly conducts training for clients on health and safety matters, and advises on health and safety documentation, risk and compliance.

ASSESS



ACT

SAFEGUARD