



New legislation raises the stakes

With employees becoming "workers" and employers now "persons conducting a business or undertaking" (PCBUs) there is much in the new Health and Safety at Work Act 2016 to confuse.

Questions around higher penalties and their potential impact on education outside the classroom (EOTC) have also been raised.

In a bid to address this *PPTA News* has put together a brief outline of the changes and how they might impact on you.

The positions

The legislation introduces four categories of person;

1. *Person conducting a business or undertaking* – Despite its name, the PCBU will usually be a business or corporate entity. In the context of the school sector the PCBU will be a school's board of trustees. The PCBU has "primary duty of care".

2. *Officer* – Officers are the individual members of a board, including the principal. They have the duty of "due diligence".

3. *Worker* – Worker is a broader term than "employee". It means any person who carries out work in any capacity for boards of trustees, including principals, assistant and deputy principals, teachers, caretakers, contractors and volunteer workers.

The act requires stronger worker engagement, encouraging worker participation to ensure safety for all.

4. *Other persons* – This is any person within the school environment including students, parents, visitors, casual volunteers and members of the public.

Education outside the classroom (EOTC)

The intention of the new legislation is not to curtail EOTC experiences. EOTC is an example of where more than one PCBU may be involved, such as a school board of trustees and a museum or adventure activity operator. The PCBUs must consult, coordinate and collaborate with each other to meet their shared responsibilities and work together to ensure that the work or activity does not pose risks to people's health and safety.

Offences and penalties

The bill provides for three graduated offences in relation to a breach of health and safety duty and a tiered penalty and fine regime to distinguish between individuals and corporate entities.

There are two "failure to comply with health and safety duty" offences – one with risk of death or serious illness/injury and one without. The third, most serious, offence is "reckless conduct" – without reasonable excuse, engaging in conduct that exposes any individual to a risk of death or serious illness/injury and is reckless as to the risk.

Taking into account the maximum possible amounts, a board of trustees as an entity can be fined from up to \$300,000 to \$3 million and a principal from up to \$100,000 to \$600,000 and five years in prison. Teachers and other staff (including assistant and deputy principals) can face fines of up to \$50,000 to \$300,000 and five years in prison and other people (students, the public and parents) the same.

Workplace relations and safety minister Michael Woodhouse said the maximum fines were only imposed in extreme circumstances for the most serious offences where the duty holder had been reckless.

If your school has sound existing policies then there should be no issues.

Full details can be found at www.education.govt.nz.