

Worker engagement, participation and representation

HEALTH AND SAFETY AT WORK ACT (2015) | GUIDANCE

What this guidance document contains

This guidance is aimed at maritime operators and explains the duty to engage workers and provide opportunities for worker participation and representation on health and safety matters. This duty is required under the Health and Safety at Work Act. This document focuses on how this duty applies to the maritime sector.

Introduction

The Health and Safety at Work Act 2015 (the HSWA) introduced some new requirements.

Maritime operators and other businesses that work on ships need to understand and manage their duties to engage with workers and encourage effective participation on health and safety.

What the law requires

Maritime operators and any other businesses that work for a maritime operation, are PCBUs¹. Under the HSWA, PCBUs must:

- > engage with workers on health and safety matters, and
- > have effective, on-going ways for workers to participate in improving health and safety in their operation.

Maritime operators and other businesses that work on ships can agree with their workers on the best way to meet these duties.

What is reasonable and practicable will vary across workplaces. It will depend on the circumstances, including the nature and size of the operation, the risks involved, and the approach that suits those involved.

The goal is to get an approach that works, rather than to impose any particular system.

Why have these duties been introduced?

Workplaces are healthier and safer when workers actively engage and participate in health and safety. Better decisions are made when everyone in the workplace shares their knowledge and experience. Safer workplaces are also good for performance and productivity.

¹ The term PCBU is short for a 'person conducting a business or undertaking'. The word 'person' should not be taken literally. Normally the PCBU will be an organisation – e.g. a company.

When and how to engage workers on health and safety

The requirement to engage with workers is broad and includes essentially everything to do with health and safety.

Maritime operators, and any other businesses that work for them, must engage with workers when:

- > identifying hazards and assessing risks to health and safety and deciding how to eliminate or minimise those risks
- > deciding whether the facilities for workers are adequate²
- > proposing changes that may affect the health or safety of workers
- > making decisions about health and safety procedures. For example:
 - health monitoring
 - monitoring workplace conditions
 - providing information and training
 - resolving workplace health or safety issues
- > developing participation practices.

The workers do not need to be employed/engaged by the maritime operator. The duty to engage extends to any worker who is directly affected by the operation. This could include workers employed or engaged by another PCBU.

A maritime operator must take the workers' views on health and safety into account, but it does not have to adopt them. However, the operator should continue the two-way flow of information and explain why a recommendation was not adopted.

What is effective engagement and participation?

A PCBU must adopt an approach to engagement and participation that suits the workplace and the people involved. It must give workers reasonable and on-going opportunities to help improve health and safety.

Good engagement and participation is about two-way communication. This means:

- > share information and discuss health and safety matters
- > give workers opportunities to state their views and take part in decisions
- > give weight to, and consider, the views of workers
- > tell workers the final decision.

Engagement can be formal or informal, depending on the size of the operation, how it is run and the risks involved.

Examples of opportunities for engagement include:

- > team talks
- > meetings
- > training sessions
- > one-to-one talks with masters, supervisors or managers.

Using a mix of approaches may be most effective. It's good practice to discuss health and safety as part of the daily routine.

Workers are more likely to be involved with health and safety when they see their suggestions being acted on.

² Facilities in the regulations include sufficient room to work; lighting; ventilation; places for unwell workers; toilets; drinking water; hand-washing facilities; eating facilities; shower or a way to wash; places to change clothes and keep clothes dry; control and disposal of airborne contaminants.

How requirements for engagement and participation fit with the role of the master

Under section 19 of the Maritime Transport Act 1994, the master of a ship has final authority to control the ship when it is at sea and for maintaining discipline by everyone on board.

Under the HSWA, the master is a 'worker' (unless they also own the operation). This is similar to a branch manager of a store or a team leader in an office – the master has certain responsibilities but this does not change the maritime operator's (PCBU) duties.

Maritime operators may not be present, but must still fulfil their duty to engage with workers. Maritime operators cannot contract out or transfer their duties to the masters or anyone else.

However, the master can perform an important role. In practice maritime operators will need to make appropriate arrangements with masters to ensure that the duty to engage with workers is met when the ship is at sea. Just how the master gets involved will depend on the operation and the personalities involved.

Health and safety representatives and health and safety committees

The Act and the Regulations³ set out detailed requirements for:

- > health and safety representatives
- > work groups
- > health and safety committees.

The key points are summarised below.

Health and Safety Representatives (H&S reps)

Workers can elect one or more health and safety representatives (H&S rep) to speak or act on their behalf.

The functions of H&S reps include:

- > representing workers on health and safety matters
- > monitoring health and safety measures taken by the PCBU
- > inquiring into health and safety risks and making recommendations to the PCBU
- > promoting the interests of workers who have been harmed at work, including arrangements for rehabilitation and returning to work.

H&S rep elections

Any worker can ask the PCBU to organise an election for one or more H&S reps.

If there are 20 or more workers, or the sector is high risk, the PCBU must respond to the request by initiating an election for H&S reps. Fishing and aquaculture are high risk sectors.

The PCBU must support the H&S rep election by providing resources, facilities and assistance. An election does not need to be conducted if there are no candidates.

If there are fewer than 20 workers and the sector is not high risk, the operator can choose not to initiate an election. They must advise their decision in writing.

An operator can also choose to initiate an election for a health and safety representative. Doing so can help to meet their worker engagement and participation duties.

³ The Health and Safety (Worker Engagement, Participation and Representation) Regulations 2016

PCBU obligations to H&S reps

In workplaces where a H&S rep has been elected, the PCBU must:

- > pay for the training of H&S reps
- > allow paid time for H&S reps to perform their functions
- > consult and confer with H&S reps on matters of health and safety, and provide them with relevant information
- > consider recommendations made by H&S reps.

Work groups

Where H&S reps have been elected, PCBUs must also establish a 'work group'. The 'default' provision in the Act is that all workers in a workplace comprise a work group. There must be a minimum of one H&S rep for every 19 workers.

A PCBU can decide that more than one work group is required to meet the needs of the business, but must take into account:

- > What the workers think about work group arrangements and the number of H&S reps to be elected.
- > The nature of the workplace: Eg the kinds of hazards or risks; the number and diversity of workers; how and where they are grouped; and the distance between workplaces.
- > The nature of the working arrangements: Eg employee or contractor; whether the work is full-time, part-time, casual, or fixed-term; the times at which work is carried out; and overtime or shift work arrangements.

If two or more PCBUs are in a workplace, they can agree to have a shared work group. For example, this could apply where a maritime operator and another business both have workers on the same ship.

Forming health and safety committees

A H&S rep, or any five workers, may ask the PCBU to establish a health and safety committee. If the PCBU is working in a high risk sector, or has 20 or more workers, they must consider the request. As noted above, fishing, aquaculture and maritime adventure activities are defined as a high risk.

A PCBU may decline the request if they are satisfied that existing worker participation practices are sufficient. They must advise their decision in writing.

A PCBU can choose to establish a health and safety committee. Doing so can help meet their worker engagement and participation duties.

PCBU obligations to health and safety committees

If the maritime operation has a health and safety committee, the operator (PCBU) and any other business that works for that operation must:

- > consult with the a health and safety committee on health and safety matters
- > provide the committee with relevant information
- > consider the committee's recommendations
- > allow paid time for committee members to meet.

More information from Maritime NZ

This guidance is part of a series of guidance documents produced by Maritime NZ to assist operators and other businesses working on ships to understand their duties under the HSWA. This suite of guidance documents includes:

- > How MOSS and the Health and Safety Act work together
- > The roles of the ship operator and ship's master
- > Overlapping and upstream health and safety duties
- > Worker engagement, participation and representation
- > Duty to provide adequate facilities
- > Duty to safely manage asbestos
- > Officers' due diligence duties

For general information on the Health and Safety at Work Act

Visit the WorkSafe New Zealand website: <http://www.business.govt.nz/worksafe/hswa/legislation>