

4.

Number eight; you need to think about having some independent contractors.

The reasons for this are several. a) It gives you more flexibility in the allocation of work and the ability to meet the demands of customers; b) it means that you can have people on call and can treat them in much the same way as independent managers with your company; c) you do not have to follow some sections of the legislation with the same degree of care plus all your attention to detail and political correctness. Contact Summit for the forms.



Number nine; you should have a performance management system. The quickest and simplest way is to obtain the Summit Systems Ltd HR system. It contains a section on performance management. It is designed to help you change the culture in your business from good work to extremely good work.

Operation of this section means that you can pay the workers or independent contractors a flat or similar wage. Then you pay a monthly bonus based on up to ten measures. They are often weighted according to perceived importance. They may include a) no serious harms; b) no damage to plant or equipment; c) no customer complaints etc.



Finally, if your ACC premium is near or over \$10,000 p.a. you need to invite Summit to get both your ACC and Insurance reviewed.

Experience rating is lifting to 75% bonus / loading in mid 2014. This will affect many sites in much the same way as if they have a spate of unexpected insurance claims. Those with claims will pay twice as much and those with control and / or prevention procedures will make huge savings of up to 75%.

Consultant Name _____

Telephone/Fax _____

All information in this newsletter is to the best of our knowledge true and accurate. No liability is assumed by the author, or publisher, for any losses suffered by any person relying directly or indirectly upon this newsletter. Please call our Head Office for specialist advice.



News & views from
Summit – April May 2014



EMAIL: safetynz@xtra.co.nz gpaul_134@hotmail.co

ARCHIVED NEWS - go to Summit Systems Ltd website, click on newsletters

**HEAD OFFICE ADDRESS: 77 Tarewa Road, Morningside, Whangarei 0110
TELEPHONE 09 438 7555 or 7550, FACSIMILE 09 438 7556, MOB 021 070 9141**

HEALTH & SAFETY REFORM ACT 2013 DRAFT- PLANNING AHEAD

Firstly, it is important to think about PCBUs. This means all of the sole traders and individuals (professionals or otherwise) who currently fall outside of the legislation such as lawyers and advisors, volunteers and coaches. It may include your electrician, plumber, cleaner, lawn mower guy and gardener, the house designer, the seamstress, the hairdresser, the taxi operator, the lady who runs a stall at the local market, the rugby coach, the arborist, the pool maintenance person and a hundred other types of people.

You will now need to consider asking all of them what they have done about their Health and Safety liabilities. They will probably look at you as though you have lost your marbles and then exclaim, "none of that stupid stuff applies to me". You must immediately retort that it now does and they must prove that they have taken action to get a proper safety system and safety qualifications for working in NZ. You also tell them you do not wish to carry their risks.

It is not possible to take out insurance by paying a broker to provide cover for the cost of fines. The broker is one of the people who will suddenly become liable to huge fines of up to \$600,000 and at the same time another lesser fine for encouraging you to think that it could be possible to insure out of the risk of fines. The architect will suddenly have huge liabilities even if working alone. The importer who works alone will have a range of responsibilities to prove that the imported goods are both safe and fit for purpose. At the same time, s/he will provide the end user sufficient good quality information to prevent accidents that is both comprehensive and comprehensible. You may suddenly see cars with stickers on them stating that the driver can provide basic systems and training for Health and Safety. There will be twice the number of HSE Inspectors on the job.

Secondly, you will need to think about consultation. The first act was strong on hazard analysis and control. The legislation as amended in 2003 started to talk about consultation as being even more important. The new Act will build on that and reinforce the need to engage with staff. It will be important to ensure that you have an operative safety committee that has at least half of the members appointed by the staff. You will also ensure that sufficient members are formally trained as Safety Officers. If you do not do this and do not understand the imperatives then you will fall into a major trap deliberately set by the designers of the legislation.

2.

You will find that just one member of your staff can require you and force you to have an election for a safety representative to be elected even if it is the person who raised the matter. Not only that, the law provides that if you obstruct this process you are up for a fine of up to \$50,000. We hasten to warn - don't think it will be a slap on the hand with a wet bus ticket. There will be eligibility for a further large fine if you do not like the Safety Rep and take action to fire that person.

The Safety Rep will no longer have the legal power to issue a hazard notice. Much more important, the Safety Rep will have the power to issue a provisional improvement notice that will have much the same effect as if issued by a qualified OSH Inspector. If you fail to comply with the improvement notice, you can be liable for a fine of up to \$250,000. You will also note that the Safety Rep will remain in office for 3 years unless removed by the Regulator (MBIE).

You must also at the same time as appointing a Safety Rep, take action to define adequate work groups in relationship to the divisions of the business and they will nominate and appoint additional Safety Reps. In plain language, you will end up with the potential for trade unionists to be nominated, appointed and actively taking control of your business. If you think that this is unlikely, then perhaps you need to think about the warning that was personally given to us by a former Chief Inspector of Australia.

The third thing to think about seriously is to appoint Summit Systems Ltd as your Health and Safety Manager on call.

This is perhaps the most important thing to do of the three listed to this point in time. We have the ability to discuss with the Departmental Officials the nature of the accident and to get their view on it before your identity is disclosed. This means that often we can save you a huge amount of hassle and worry. The definition of serious harm is likely to follow the wording of section 10 as stated in our March 2014 newsletter. There will be much more emphasis on **infection** and **illness** not just **injury**. An admission to hospital is likely to be notifiable.



Fourthly, the new legislation is expansive on the need to prevent adversive or coercive conduct. The new sections of the Act have required consequential amendments to the Employment Relations Act 2000.

In plain language this means that you cannot act in a diverse manner in relationship to Health and Safety and nor can you discriminate against workers who hold Health and Safety roles, particularly the Safety Reps. You are strongly advised to use Summit Systems Ltd HR management system for employment purposes. You should also contact us for advice. Casual advice is free.

3.



Fifthly, you should look yet again at the list of duties, as it is possible that you will have to think carefully about the range of liabilities.

For example, the new legislation means that in relationship to a company – it will now be considered in the same manner as any other PCBU. But more importantly, it will mean that the company can be fined three or four times at once. To make this clear, it will become more common for a company to face several fines for the one event. The General Manager, a Director, a Supervisor and an Employee could all be fined for the one event.

This does not end the matter. The new law also provides that several sections of the legislation can be contravened at the one time and several fines can be imposed at the same time on one or more of the above people. For example, the company could have failed to notify the serious harm on time, could have failed to secure and freeze the scene of the accident, could have failed to provide proper care for the victim, could have been negligent and could have failed in relationship to adverse conduct and could have failed to provide proper Health and Safety training for its workers and Safety Committee. Remember to always retain the certificates issued by Summit Systems Ltd. Do not throw away the old ones, they provide an historical record of commendable attention to the law.

The duties as enumerated under the Act are summarised as follows:

Section 13 Duty to Manage Risk

Section 14 Duties not transferable

Section 15 Person may have more than one duty

Section 16 More than one person may have the same duty

Section 17 Duty to consult other duty holders

Section 18 PCBU must not levy workers

Section 19 No contracting out

Section 20 Primary duty of care

Sixthly, you need to think about annual audits on a regular basis. If you do not understand the need for this, you should find out about the case of DoL vs Metalcraft Palmerston North. The company was able to build an impressive defence with the briefs prepared by Summit Systems Ltd. It also had good records of the contracts in place with local engineers charged with the maintenance of the equipment in a safe and reliable condition and for regular site visits to be scheduled.

Seventhly, you need to think about top quality legal defence. If you do not understand the need for this, then you need to find out how many lawyers in NZ actually have a first class track record in terms of the H&S legislation. You will find that there are only a few as nearly all lawyers encourage their clients to plead guilty on the assumption that “the Judge will go easy on them”. With the fines now several times the size, clients are warned not to go along with this advice (as it may prove to be very expensive).