DUTY HOLDER REVIEW – WORKSAFE NZ

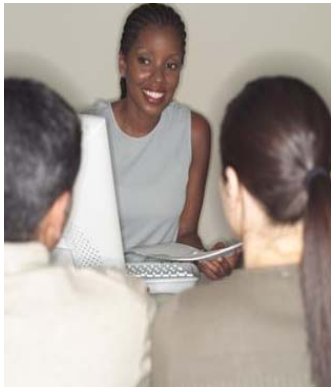
Regulatory duty-holder's reviews are investigations of health and safety incidents conducted by duty-holders at the request of a health and safety inspector. They are requested when we (Worksafe) have become aware of a health and safety incident at your workplace and we determine that you should not only examine the incident yourself (as is required under the Health and Safety in Employment Act 1992), but also provide us with your report.

Formal duty-holder's reviews are triggered only on request from a health and safety inspector. Worksafe states that unless it asks for a formal duty-holder review, one is not expected. This is fine for the Department, but if a professional report is not made, the duty-holder is left "swinging in the wind" for up to six months – waiting for the day that a prosecution might be notified.

The ideal result of a duty-holder's review is that the improvements you make to your workplace health and safety systems are **sustainable**. You fix not only the immediate problem, but also address everything that contributed to it **to make sure that it won't happen again**.

Worksafe may review a report to ensure sites have done this. They may liaise with any victims of an incident to keep them informed of progress. Worksafe may visit a workplace to check that improvements described in a report have been completed or are under way. Duty-holders can be employers, principals, persons who control places of work, self-employed, employees, persons in charge, or persons selling or supplying plant for a place of work.

SSL/BPIL INITIATIVE FOR AUDITORS



It is believed that NZ has an acute shortage of compliance auditors. The shortage could be as many as 10,000 people. About half of this number would be required in the NZ Government sector and the balance in Local Government and the Private Sector.

Most of the current appointees are called HR Manager, Safety Manager, Risk Manager, HSE Auditor, Compliance Manager, Systems Analyst, Systems Auditor, and Process or QA Monitor. We propose to carry out research into the needs and gaps and then see if we might provide trainees to satisfy some of the needs. Clients are invited to advise us of any vacancies or pending vacancies.

SSL Manager Name _____

Telephone/Fax _____

HEAD OFFICE ADDRESS: 77 Tarewa Road, Morningside, Whangarei 0110
TELEPHONE 09 438 7555 or 7550, FACSIMILE 09 438 7556, MOB 021 070 9141
EMAIL: safetynz@xtra.co.nz gpaul_134@hotmail.com **www.summitsystems.co.nz**
ARCHIVED NEWS - go to the Summit Systems Ltd website, click on newsletters

SUMMIT SYSTEMS LIMITED

News & views from Summit – September 2014

HSE EXEMPTIONS – NOW FEW AND FAR BETWEEN?

We have been advised to discuss the relationship of innocence and exemptions under the revised HSE legislation. Firstly, it will be known as the Workplace Health and Safety Act 2014. The ignorance of individuals both at management and worker level continues to amaze us. We can say that we have completed many thousands of training sessions with management and staff. Staff members would occasionally decline to sign the acknowledgement page of the management system. They were concerned that by signing up they would increase their liability. After explaining to the groups of workers many times that their liability was actually reduced by having signed up, we included a statement on the acknowledgement page saying much the same thing.

To our astonishment, we are now informed that managers are making exactly the same claim but in a slightly different direction. We are informed that Managers of companies now believe that "ignorance is bliss, when tis folly to be wise". They apparently hold the view that by having a proper management system they are adding to their risk. This view could not be farther from the truth. The law spells out that "ignorance is no excuse". It is also a well-worn saying that "the more you do, the less liable you are and the less you do, the more liable you are".

Readers should be aware that the HSE Act is not written with adherence to the principles of English Law. English law holds that "a person is innocent, until proven guilty". Indeed, an ordinary person cannot be expect to know all of the many laws and therefore can be excused from knowing all of the intricate details relating to Health and Safety legislation. All of this sounds fine. The only problem is that the legislation is not English law, it is international law written to take account of the Sharia law as observed by Moslems and others. This holds you are probably guilty until proven innocent. So then, what are the grounds for excuse?

The law does state that conformance with the HSE Act requires observance of what is "reasonably practicable". It follows of course, that it is reasonably practicable for a manager to have a proper safety system, it is reasonably practicable for a manager to get all staff trained in their HSE responsibilities and in injury prevention. It is also reasonably practicable for a manager to practise risk management and to ensure that controls are in place. It is reasonably practicable for a manager to see that sufficient Safety Officers are appointed and qualified. ACC will not pay out WSD / WSMP discounts unless Safety Officer certificates are issued. OSH will have little regard to in house training unless it is supplemented with the full range of professional training from qualified tutors.

The law also provides that a volunteer may be exempt from obligations of Director and Owner of a company or PCBU. This does not mean that everyone can be appointed in the capacity of a voluntary worker or voluntary manager. In our opinion, a volunteer would need to be a genuine volunteer and for a limited period of time. We have suggested to a church organisation that the young people working in their organisation should be invited to register as volunteers under training, until such time as they reach 18 years.

We have also advised the same organisation that they should have a good number of their people qualified and certificated as Safety Officers. Our advice was that it would be reasonable for 20% of all workers to be qualified as Safety Officers. We further advised that they would need to be formally trained and certificated for the appointment to be genuine. The reasoning behind this recommendation was that to the best of our knowledge – no safety officer has ever been prosecuted or fined.

Having said that, we hasten to add that it is possible for a safety officer to be prosecuted or fined. Our point is that most inspectors would err on the side of lenience where the person went to the trouble of getting qualified. Now that we have traversed the issues, we clearly signal that many more managers would be wise to become trained, formally qualified and certificated as Safety Officers.

Also refer to top lawyer warning: http://www.nzherald.co.nz/bay-of-plenty-times/news/article.cfm?c_id=1503343&objectid=11299015

APPROVED NZ CODES OF PRACTICE

http://www.business.govt.nz/worksafe/information-guidance/approved-codes-of-practice-acops/approved-codes-of-practice-acops

Clients should note in particular that many of the Approved Codes of Practice were issued prior to the HSE amendment and a number of the standards they refer to are now out-of-date. Any amendments to, or revocation of, an approved code of practice, must be approved by the Minister.

WORKSAFE NZ – PROSECUTION - FORESTRY

Forestry company HarvestPro was fined $80,000 in June and ordered to pay reparations of $40,000 after one of its workers was hit by a log weighing more than a tonne.

Tau Henare was working on a logging operation at Whakaangiangi on the East Coast when the incident occurred in September 2012. His job was to attach strops to fallen logs, which were then dragged up a hillside to be prepared for transport away from the forest. Mr Henare was hit by a log that had come lose from the jaws of a loader on a landing above and slid down a steep hillside. He suffered fractures to his arm and leg that have required multiple surgeries and left him unable to work.

HarvestPro New Zealand Limited was found guilty at the Gisborne District Court under the Health and Safety in Employment Act of failing to take all practicable steps to protect the safety of Mr Henare.

Judge Adeane found that the accident was caused by the decision to allow Mr Henare to enter the danger zone at the same time that another worker was using the loader to stack logs on the landing above him. The Judge found that there were practical steps available to limit the hazard, including improved communication and effective supervision. WorkSafe New Zealand's General Manager of Health and Safety Operations Ona de Rooy says the work Mr Henare was doing was inherently dangerous, and HarvestPro had a duty to do more to protect his safety.

"Much of the forestry work in New Zealand is done on steep hillsides. It is not just the felling of trees that is dangerous – workers are at risk whenever logs are being handled and moved. "WorkSafe NZ is working hard with the forestry industry to improve safety standards across the board. Our inspectors have carried out more than 220 inspections of log removal operations since August 2013 and issued almost 300 enforcement notices, including 25 prohibition notices.

WORKSAFE NZ – PROSECUTION POLICY

http://www.business.govt.nz/worksafe/information-guidance/legal-framework/worksafe-new-zealand-prosecution-policy/download-the-worksafe-new-zealand-prosecution-policy-201-kb-pdf

The key factors and non-compliant behaviours that would contribute towards a decision by WorkSafe to prosecute will of course vary but WorkSafe expects that prosecution would normally be recommended where, following an investigation, one or more of the following circumstances apply:

- Death was a result of a breach of the legislation;
- The gravity of an alleged offence, taken together with the seriousness of any actual or potential harm, or the general record and approach of the offender warrants it;
- There has been a disregard of health and safety requirements that is reckless, or negligent, or both;
- There have been repeated breaches which give rise to significant risk, or persistent and significant poor compliance;
- Work has been carried out without or in serious non-compliance with an appropriate license or safety case;
- A duty holder's standard of managing health and safety is found to be far below what is required by health and safety law and to be giving rise to significant risk;
- There has been a failure to comply with an improvement or prohibition notice; or there has been a repetition of a breach that was subject to a warning or simple caution;
- Inspectors have been obstructed in the lawful course of their duties;
- Where the offending occurs within an identified focus area for WorkSafe.