

## NEW BUILDING LAWS FOR NZ

New building laws coming into effect on 1 January 2015 will require all builders carrying out residential building work valued over \$30,000 to have written contracts and disclose their skills, qualifications and licensing status, together with their dispute history. Failure to comply may result in fines. If you are a builder then this will significantly increase your compliance requirements.

The aim of this new legislation is to improve the quality of building work, with a focus on professionalism and open disclosure. Builders will need to ensure consumers have a clear expectation of what work is to be done, at what price and in what timeframe.

The contract between the builder and consumer must include specific clauses around the process for varying the contract, the payment process, dispute resolution and remedies. Consumers will also be supplied with a checklist which must include an explanation of the legal obligations of both the consumer and the builder, an outline of the risks associated with payment in advance for completion of the work, together with advice on engaging the builder and managing the project. These new initiatives aim to increase the protection of consumers and reduce disputes going forward.

Part of the reason for these "consumer protection" measures is to move away from what is seen as a current reliance on building consent authorities for building quality. Builders are being encouraged to take ownership and responsibility for the quality of the services they provide.

## LEPTOSPIROSIS CAN EASILY BE FATAL

<http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/leptospirosis-the-control-of-occupationally-acquired/leptospirosisguide.pdf>



## HEFTY FINES OVER FORKLIFT ACCIDENT 19 August 2014

Three companies have been fined a total of almost \$120,000 dollars and ordered to pay combined reparation of \$20,000 after a woman was struck by a reversing forklift at a kiwifruit pack house at Mount Maunganui. Erica Machado, 33, suffered a fractured ankle which required pins inserted in it as well as a large laceration to one of her legs in the May 2013 accident. She had been straightening rows of boxes in an area of the pack house designated for the assembly of kiwifruit packaging trays when the forklift backed into her.

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## News & views from Summit – October 2014



### HEALTH & SAFETY LAWS APPLY IN RUSSIAN FEDERATION?

We have decided to run a few issues that will include an examination of the HSE laws in other countries that otherwise we might think would oppose or ignore the ILO Conventions and UNESCO recommendations to its member countries.

Labour legislation in the Russian Federation comprises certain provisions of the Russian Constitution, the Labour Code, the Basic Law on Labour Protection, and enabling legislation, which consists of the relevant legal acts, regulations and directives, as well as guidelines, instructions, state standards and various standards approved by the appropriate authorities of the Russian Federation and those of the republics in the territory of Russia.

Article 37 of the Constitution of the Russian Federation stipulates that each citizen has the right to work in an environment that meets occupational safety and health requirements, to remuneration for work that is paid without any discrimination at a rate that is not less than the minimum established by the federal government, and to be protected from unemployment.

The Basic Law on Labour Protection, adopted in August 1993, contains provisions ensuring workers' rights to protection of their health. It also regulates labour relations between employers and workers in all branches of the economy regardless of the forms of property. According to Article 4 of this Law, workers have the right to:

- safe and healthy working conditions
- workplaces that are protected against occupational hazards that may cause occupational accidents or diseases or decrease working capacity
- compensation for occupational injuries and occupational diseases
- information on existing occupational hazards and health risks and the measures undertaken by the employer to control them
- provision of personal protective equipment at the expense of the employer.

Article 9 of the Basic Law on Labour Protection makes management responsible for ensuring safe and healthy working conditions, while Article 16 specifies economic penalties for allowing unsafe and unhealthy working conditions, as well as for the impairment of workers' health resulting from occupational exposures, injuries or diseases.

Chapter 10 of the Labour Code of the Russian Federation concerns occupational safety and health in industry. Article 139 stipulates the responsibility of management for the provision of safe and healthy working conditions through the introduction of up-to-date safety procedures and accident prevention measures that will ensure appropriate hazard control and the prevention of occupational accidents and diseases.

Article 143 of the Labour Code requires management to equip worksites with safe machinery and equipment and create safe working conditions in conformity with technical and hygienic standards as well as inter-industry and sectoral regulations on occupational safety and health that have been developed and adopted in accordance with the existing labour legislation.

## 2.

### EXEMPTIONS FOR SEAT BELTS MAY BE JUSTIFIED / OBTAINED?

It is compulsory to wear seat belts where a vehicle is fitted and is used on road. It is also compulsory to wear seat belts where they are fitted on farm vehicles unless there are good reasons where it would be foolish and unsafe to do so.

These circumstances could include some or all of the following:

- a) any driver driving a vehicle alongside a riverbank or irrigation canal or similar where there is a risk of the vehicle capsizing into the canal;
- b) where the vehicle does not have a strong ROPS (roll over protective structure) in place and the canopy is not super strong and the vehicle could roll into a gully or similar
- c) where a person doing spraying or fertiliser application is using a vehicle that does not have exceptionally low balance point and could roll into a ravine
- d) where icy conditions prevail and a vehicle could easily lose control and traction and could quickly run into a ravine or river etc

In the above circumstances the safety system would need to document the above exceptions and would need to express the need for training in sudden escape and what to do in such a situation.

The safety rules for the above situations would need to be comprehensive and comprehensible. For example it is only safe to escape to the top side of a vehicle as applies in the capsize of a digger. Secondly it must be done by jumping clear of the vehicle not just getting out and thirdly it must be done in a manner that will not cause the victim to get his or her belt or clothes caught in the door or vehicle gears.

We do not expect the DoL to verify the above examples or procedures but we think that they would stand up in court as acceptable solutions by any proper thinking judge.

An outcome of the circulation of the above was a helpful response from an official of DoL indicating that exemptions can be obtained from NZ Transport Agency in certain circumstances.



### SAFE USE OF MACHINERY – GUIDELINES IN DRAFT

**We recommend that you look into this guideline as it is likely to be used in court work by MBIE. <http://www.business.govt.nz/worksafe/about/who-we-work-with/consultation/closed-for-consultation-reports-under-development/consultation-on-the-proposed-best-practice-guidelines-for-the-safe-use-of-machinery-1/BestPracticeGuidelinesSafeUseMachineryConsultationDraft-20June2013.pdf>**

## 3.

### AUSTRALIAN MODEL SAFETY LAWS BEING FURTHER REVIEWED

THE AUSTRALIAN FRIDAY AUG 15 2014

The Business Council of Australia is urging a review of the occupational health and safety laws to find ways to convince Western Australia and Victoria to join the national scheme and issues a fresh warning that employers face higher costs.

In a new submission to the Dept of Employment, the group says the “full benefits” of harmonisation of workplace safety rules agreed to by the Council of Australian Governments in 2008 have not been achieved.

In 2008, Kevin Rudd had pitched harmonisation as part of his government’s commitment to “ending the blame game” between Canberra and the states, saying that a lack of national uniformity would “cause people to pull their hair out and scream blue murder”.

Later Julia Gillard used her first press conference as prime minister to say the workplace safety proposals were one of her biggest achievements.

But the BCA has spoken against the fact. Victoria and Western Australia have yet to adopt the model work health and safety laws while there have been moves by other states to model in the original blueprint it is highly likely that divergence between jurisdictions will increase if the goal is not to start with anything but full alignment. “Accordingly a key objective of the review must be to identify a set of reforms that will incentivise Victoria and Western Australia to join, and for all other jurisdictions to achieve full alignment in the scheme’s application.

As Victoria and Western Australia’s WHS performance is better than many other Australian jurisdictions, one option would be to consider amending the model WHS laws to incorporate differences that demonstrably result in safer workplaces.

The submission comes after the nation’s governments agreed in June to look at improvements to the model laws in order to slash red tape and make it easier to comply.

Last month, Master Builders Australia called for changes to the model WHS laws including requiring union officials to give 24 hours notice “in all circumstances” before they can walk in to projects.

The BCA also used its submission to also argue that penalties and sanctions by regulators enforcing the laws should be “a last resort or where health and safety risks are assessed as high”.

### \$80,000 fine - selling dangerous travel plug adaptors - August 2014

A chain of convenience stores in central Auckland which sold electrically unsafe travel plug adaptors despite repeated warnings has been fined a total of \$80,000.

Dtown and Zolo Limited, trading as City Star Convenience Stores and Britomart Magazine, were convicted under Section 163C of the Electricity Act 1992 and regulation 80 and 84 of the Electricity (Safety) Regulations 2010. They were sentenced at the Auckland District Court earlier this week.

The two companies have been unable to say how many of the unsafe travel adaptors they have sold through their chain of 15 stores in central Auckland.