

## **Building Industry Controls Update**

Glass barrier requirements to be amended 1 June 2016

On 1 June 2016 Ministry of Business Innovation & Employment will amend the glass barrier requirements in the acceptable solution B1/AS1, to those requirements in NZS 4223.3:2016. The current glass barrier requirements in B1/AS1 will cease to have effect at the same time.

The changes will mean that all new frameless glass barriers that comply with B1/AS1 will be required to have an interlinking rail, unless the barrier is laminated safety glass and has features to retain panes of glass in the event of breakage.

Prior to 1 June 2016, MBIE encourages anyone installing a frameless glass barrier to use the Standard NZS 4223.3:2016 and incorporate an interlinking rail.

### **Employees, workers, staff?**

It is important to note that those who work for a business or an employer can be called any or all of the above.

In the HSAW Act, unless the context otherwise requires, a worker means an individual who carries out work in any capacity for a PCBU, including work as—

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work in the business or undertaking; or
- (e) an outworker (including a homeworker); or
- (f) an apprentice or a trainee; or
- (g) a person gaining work experience or undertaking a work trial; or
- (h) a volunteer worker; or a person of a prescribed class.

In plain language, what does this mean?  
It means that every employer or PCBU is now responsible for **all of the categories as if employees of the PCBU.**



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## News & views from Summit May 2016



### **Mining and exploration deaths start to decline (China)**

On March 10, the director of the State Administration of Work Safety (SAWS) told a Beijing press conference that coal mine accidents claimed 931 lives last year, as the death toll dropped below 1,000 for the first time. "The situation has been greatly improved," said the SAWS director, Yang Dongliang, according to Agence France-Presse.

Speaking on the sidelines of China's annual legislative sessions, Yang mixed praise for safety advances with a promise that the agency was determined to do more. The most recent fatality figure represented an 86.7 percent decline from the toll of some 7,000 in 2002, the official Xinhua news agency reported.

"The nation is still confronted with grave and complicated challenges in coal mine work safety, as the authorities aim to achieve a zero-death target," Yang said. There seems little doubt that China has made major steps forward in lowering the casualty count in an industry that accounts for half the world's coal output.

In 1996-2000, deaths in coal mines averaged 7,619 annually, or over 20 per day, about eight times more than last year, as cited in previous official reports.

Government efforts to tighten safety rules and close thousands of smaller, more dangerous mines have led to dramatic cuts in official death counts and fatality rates over the years.

In 1990, the ratio of deaths per million tons of coal production stood at 6.1, according to a 2004 study by Wang Shaoguang at the Chinese University of Hong Kong. That rate was 24 times higher than that calculated from earlier SAWS data for last year.

Safety campaigns, gas monitoring, mine closures and consolidations have produced more rapid results in recent years, based on government reports. In 2005, for example, China mined 2.1 billion tons of coal and recorded 5,986 deaths.

By that reckoning, the death toll has dropped 84 percent, while production has grown by 84 percent in the course of the past decade.

## 2.

### **WARNING FOR ALL SITE MANAGERS, OFFICERS, SUPERVISORS**

On 1 April, substantial changes to our employment laws were made that all business managers, owners and HR managers should be aware of.

Why the changes? The changes are aimed at ensuring that employers comply with minimum employment standards, such as paying the correct holiday pay.

In the past it has become clear that a number of employers have failed to meet their obligations, even following an order from the Employment Relations Authority. Many of these then chose to avoid having to pay what they owed, by closing down their business and starting again as a new business, therefore leaving the disaffected employee without redress.

The changes may also be aimed at employers who may have previously worked abroad and are unfamiliar or unwilling to become compliant with New Zealand's minimum employment law requirements.

What are the changes? The new legislation changes the Employment Relations Act 2000 (the Act). It introduces the concept of 'Officers' within an employing entity, such as a company, trust, or any other organisation that has employees.

Officers can include directors, partners, those in a position comparable to that of a director if the employer is not a company (such as a partnership or limited partnership) and those who can exercise significant management or administration influence. Therefore, a CEO, CFO or HR Manager could be an Officer. The changes allow both the employing company and any Officers to be penalised.

How do the changes affect managers, business owners and HR Managers?

Where an employer has breached minimum entitlement provisions (for example, not paying minimum wage), and the breach is serious (for example, involving a significant amount of money, is repetitive, or was intentional or reckless) a Labour Inspector can apply to the Court for a declaration of breach against the employer and any relevant Officer.

What are the penalties? Once a declaration of breach has been made, the Court can then make the following orders against the Officer or employer:

**Pecuniary penalty order** – The could be \$50,000 for individuals (such as HR Managers) and \$100,000 for the employer or three times the amount of the financial gain made by the employer from the breach;

**Compensation order** – This is where the affected employee(s) affected by the breach have, or are likely to, suffer loss or damage. The Court can order compensation against a person involved in a breach for wages or other money payable to an employee.

**Banning order** – The Court can ban a person from; entering into an employment agreement as an employer; being an officer of an employer; or, being involved in the hiring or employment of employees. A banning order can last for 10 years. A breach of a banning order will attract a fine not exceeding \$200,000, or a term of imprisonment not exceeding 3 years or both. The Court is not limited to only one of the above orders. It can make multiple orders against a person in relation to the same breach.

## 3.

### **CLOUDS CAN BRING RAIN**

We need to spend some more time on the technological breakthrough under which it is possible for employers to send HSE information to workers via cloud or internet.

It is important to note that in the event of an accident, the Inspectors will not be too interested in the wonders of the cloud. They will be looking for proper documentation that is issued in hard copy to the workers. It must be comprehensive, comprehensible and signed off for every section.

More importantly, the cloud system will fail as it does not encourage worker participation and assumes that the worker is a friendly "blotter" to absorb information. The law is very specific in terms of education, training and involvement.



### **CONTRACTOR GIVEN MAJOR FINE FOR FAILURE TO SHORE UNDER NEW LAWS THE FINES COULD BE 3-6 TIMES HIGHER**

The director of Waikato company Steelcon Construction Limited, Rodney Bishop, has been sentenced to four months home detention over the death of a worker who died after he was buried when a trench he was working in collapsed. SteelCon Construction was also fined \$56,000 and ordered to pay reparation of \$121,320.

Michael Haines, who was 34, died in May 2014. He was helping to install a concrete effluent transfer tank and pipes at a farm at Te Poi, Matamata at the time of the incident.

Mr Haines was clearing dirt in the area where the tank pit joined to the four-metre-deep pipe trench when the face of the trench collapsed and approximately five cubic metres of soil with an estimated weight of eight tonnes fell and buried him. Despite immediate efforts to rescue him he died.

WorkSafe New Zealand's investigation found that the trench had not been shored up (by the installation of appropriate panels to prevent collapse). It had been cut with vertical sides and not "battered" (in other words it had not had its sides cut back at a safe slope to ensure the face remains stable).

There had also not been any geotechnical assessment of the site to check the stability of the soil before work began.

Both Mr Bishop and Steelcon Construction plead guilty to one charge under the Health and Safety in Employment Act and were sentenced today in the Hamilton District Court. Mr Bishop was charged under sections 6, 49 and 56 and Steelcon Construction under sections 6 and 50(1)(a) of the HSE Act for failing to take all practicable steps to ensure the safety of Michael Haines while at work.

WorkSafe's Chief Inspector, Keith Stewart, says Mr Haines death was a tragic reminder of the inherent risks of excavation work and the need to closely manage those risks. WorkSafe's thoughts are with Michael Haines's family. "Anyone digging a four metre deep trench should be aware of the possibility of collapse and should take proper precautions against collapse – such as shoring or battering work.