

February 2019

WORKSAFE POSITION

Officers' due diligence

Purpose

This position sets out what we expect officers of an organisation to do when carrying out due diligence.

An officer holds a specific role in an organisation that allows them to exercise significant influence over the management of the business or undertaking. Officers have a due diligence duty under the Health and Safety at Work Act 2015 (HSWA).

Why do we need a positive and robust health and safety culture?

All influential stakeholders must be involved and accountable for work health and safety. A positive and robust health and safety culture begins at the board table and spreads throughout an organisation. It can add significant value and lead to the organisation having a good reputation for:

- demonstrated commitment to health and safety
- workers participating positively in risk management
- more engaged and productive workers
- decreased worker absence and turnover
- increased economic returns.

What does the law require?

HSWA creates a due diligence duty on an officer. This means an officer must take appropriate, proactive steps to ensure the person conducting a business or undertaking (PCBU) complies with HSWA.

Who is an officer?

An officer can be:

- a director of a PCBU that is a company

- a partner in a PCBU that is a partnership (in limited partnerships, only general partners are officers)
- a person in any other entity who holds a position similar to a company director (such as a board member)
- paid or voluntary.

Those in senior governance roles in an organisation are also officers. These roles influence how the organisation is managed (such as a Chief Executive Officer).

A person who only advises or makes recommendations is not an officer.

What should all officers do about health and safety?

All officers must exercise due diligence to make sure that the organisation complies with its health and safety duties. The extent of an officer's due diligence depends on the size of the organisation, and on the type of its operations (including the level of risk).

What exercising due diligence means

An officer must make sure the organisation has appropriate systems of work. They must also actively monitor and evaluate how health and safety is managed within the organisation.

Exercising due diligence as an officer means taking reasonable steps to:

- continuously learn about, and keep up to date with, work health and safety issues
- understand the work of the organisation
- know the risks that workers, volunteers, and any other people who could be affected by the organisation's actions may face

- check the organisation has processes:
 - and appropriate resources to eliminate or minimise risks to health and safety, and uses them
 - in place to communicate and consider information about work health and safety, and to respond to that information
 - in place to comply with any duties and requirements under HSWA, and uses them.

Relying on information from others to meet the due diligence requirements

An officer doesn't have to be an expert in health and safety. They may rely on information from others to meet their due diligence requirements. This includes information from senior managers, subject matter experts, line managers and supervisors.

If an officer chooses to rely on others, they must show that it was reasonable to do so. They must have enough knowledge to ask the right questions, get credible information, and follow up and challenge that information if needed.

In a large business, senior management and frontline workers may have little direct contact with officers. An officer may need to set up structured processes to make sure they meet their due diligence duty. Keeping records will help an officer and a PCBU to track progress and measure the effectiveness of their health and safety management.

Is anything different for a volunteer 'officer'?

An officer of a PCBU that is a volunteer has the same due diligence duty under HSWA as all other officers. However, they cannot be prosecuted if they fail to meet that duty.

WorkSafe provides information on volunteers at: worksafe.govt.nz/managing-health-and-safety/getting-started/understanding-the-law/volunteers

WorkSafe may consider enforcement action

Our focus is on sector-wide HSWA issues. We engage with officers when:

- there is evidence of systemic failure in the PCBU's governance
- the officer's failure is preventing the PCBU from meeting its duties.

Examples include failures by a PCBU across multiple sites or a series of incidents over time.

WorkSafe may consider taking enforcement action when:

- a PCBU is not meeting their duties
- evidence has established that at a governance level, an officer has not met their due diligence duties under HSWA.