



Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 15th day of February 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under sections 211, 214, and 218, and clause 12(1)(b) of Schedule 2, of the Health and Safety at Work Act 2015—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made after complying with section 217 of that Act.

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Regulations

1 Title

These regulations are the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

2 Commencement

These regulations come into force on 4 April 2016.

Part 1

Preliminary provisions

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Health and Safety at Work Act 2015

additional training means training about work health and safety, or an aspect of work health and safety,—

- (a) that is within the occupational health and safety subfield of the New Zealand Qualifications Framework; or
- (b) that the PCBU and the health and safety representative agree is relevant to the health and safety representative's role

annual training entitlement means the training entitlement that a health and safety representative has under clause 12(1)(a)(i) of Schedule 2 of the Act

ANZSIC classification code means the *Australian and New Zealand Standard Industrial Classification (New Zealand Version) 2006*—

- (a) published by Statistics New Zealand in chapter 8 of the ANZSIC 2006 Manual; and
- (b) accessible at an Internet site maintained by or on behalf of Statistics New Zealand

initial training means training that covers the content required to achieve the New Zealand Qualifications Authority unit standard 29315

transition training means training defined in clause 1(4) of Schedule 1.

- (2) Unless the context otherwise requires, terms and expressions that are used, but not defined, in these regulations have the same meanings as in the Act.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

Part 2

Worker engagement, participation, and representation

Subpart 1—High-risk sectors or industries

5 High-risk sectors or industries for purposes of sections 62(4)(b) and 66(3)(b) of Act

- (1) For the purposes of sections 62(4)(b) and 66(3)(b) of the Act, the high-risk sectors or industries—
- (a) include a business or undertaking that is subject to any of the following regulations:
 - (i) Health and Safety at Work (Adventure Activities) Regulations 2016;
 - (ii) Health and Safety at Work (Major Hazard Facilities) Regulations 2016;
 - (iii) Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016;
 - (iv) Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016; and
 - (b) include a business or undertaking that is subject to the Civil Aviation Rules Part 115; and
 - (c) include a business or undertaking—
 - (i) that is carrying out an activity for which a maritime document is required; and
 - (ii) that would, but for regulation 4(2)(a) of the Health and Safety at Work (Adventure Activities) Regulations 2016, have been subject to those regulations; and
 - (d) include a business or undertaking that is operating predominantly in a high-risk sector or industry specified in Schedule 2; but

- (e) exclude a business or undertaking that is carrying out work of a type or in a sector specified in the third column of Schedule 3 (**Schedule 3 work**) if—
 - (i) the business or undertaking only carries out Schedule 3 work and no other type of work; or
 - (ii) the Schedule 3 work carried out by the business or undertaking is in conjunction with any other type of work and the Schedule 3 work is predominant, relative to all other work carried out by that business or undertaking.
- (2) This regulation and Schedules 2 and 3 are subject to review, by the Minister, as follows:
 - (a) a review must commence as soon as practicable after 4 April 2018 (**the first review**); and
 - (b) another review must be completed within 5 years from the date of completion of the first review; and
 - (c) subsequent reviews must be completed no less frequently than 5 years from the date of completion of the immediately preceding review.
- (3) However, nothing in subclause (2) prevents the Minister from reviewing this regulation and Schedules 2 and 3 at any other time.
- (4) In this regulation, **maritime document** has the same meaning as in section 2(1) of the Maritime Transport Act 1994.

Subpart 2—Work groups

6 Default ratio of health and safety representatives to workers in work group

- (1) The prescribed minimum ratio of health and safety representatives for a work group referred to in section 65(1) of the Act (relating to a work group that comprises all the workers in the business or undertaking) is 1 representative for every 19 workers.
- (2) For the purposes of applying subclause (1), if the number of workers divided by 19 does not equal a whole number, the number of health and safety representatives to be elected is increased to the next whole number.

7 Duty in relation to determination of work groups and number of health and safety representatives if work group does not comprise all workers in business or undertaking

- (1) This regulation sets out the prescribed requirements referred to in sections 64(4)(b) and (5)(b) and 65(2) of the Act.
- (2) If section 64(3) of the Act applies, the PCBU must have regard to—
 - (a) the number of workers:

- (b) the views of workers in relation to—
 - (i) the determination or variation of work groups:
 - (ii) the number of health and safety representatives to be elected:
- (c) the number of different places of work for the workers and the distances between those places:
- (d) the number and grouping of workers who carry out the same or similar types of work:
- (e) the nature of the areas or places where each type of work is carried out:
- (f) the extent to which any worker must move from place to place while at work:
- (g) the diversity of workers and their work:
- (h) the nature of any hazards or risks to the health and safety of workers at the workplace or workplaces:
- (i) the pattern of work carried out by workers, for example, whether the work is full-time, part-time, casual, or fixed-term:
- (j) the times at which work is carried out:
- (k) any arrangements at the workplace or workplaces that relate to overtime or shift work.

Compare: Model Work Health and Safety Regulations r 17 (Aust)

8 Withdrawal from and variation of agreements concerning multiple PCBU work group arrangements

- (1) This regulation applies in relation to a multiple PCBU work group arrangement referred to in section 64(5) of the Act.
- (2) A PCBU may withdraw from an agreement or negotiations for an agreement concerning a work group at any time by giving reasonable notice to the other parties.
- (3) If a PCBU withdraws from an agreement or negotiations for an agreement concerning a work group, the withdrawal does not affect the validity of any agreement reached between the original or remaining parties.

Compare: Model Work Health and Safety Act s 58 (Aust)

Subpart 3—Health and safety representatives

Eligibility

9 Eligibility to nominate candidates

- (1) A member (**person A**) of a work group may nominate a candidate (**person B**) for election as a health and safety representative for the work group if person B is eligible to stand for election under regulation 10.

- (2) A worker may nominate himself or herself as a candidate for election as a health and safety representative.

10 Eligibility to stand for election

A person is eligible for election as a health and safety representative for a work group if the person—

- (a) is a worker who is a member of that work group; and
- (b) is willing to act as a health and safety representative; and
- (c) works sufficiently regularly and for a sufficient amount of time to be able to carry out the functions and to exercise the powers of a health and safety representative effectively.

Compare: Model Work Health and Safety Act s 60 (Aust)

11 Eligibility to vote at election

A person is eligible to vote at an election for a health and safety representative if the person—

- (a) is a worker; and
- (b) is a member of the work group in respect of which the election is conducted.

Compare: Model Work Health and Safety Act s 62 (Aust)

Prescribed requirements for elections under section 63 of Act

12 Duty in relation to timing of election requested by worker

- (1) If a worker notifies the PCBU under section 62(1) of the Act of the worker's wish for 1 or more health and safety representatives to be elected, the prescribed time to initiate the election referred to in section 62(2) of the Act is within 2 months of the date on which the notification is received by the PCBU.
- (2) A PCBU must carry out the duties described in regulation 16(2) within the time prescribed in subclause (1).

13 Elections

- (1) An election for a health and safety representative—
 - (a) may be undertaken using any form of voting; and
 - (b) may be conducted by any person, except a candidate for the election.
- (2) A person conducting an election for a health and safety representative must—
 - (a) call for nominations from workers for candidates, specifying a reasonable time frame in which workers must respond; and
 - (b) based on the number of nominations received, determine whether an election needs to be held and notify workers and the PCBU of that decision.

- (3) Subclause (1)(a) is subject to regulation 14.
- (4) Subclause (2)(b) is subject to regulation 15.

14 Secret ballots

An election of 1 or more health and safety representatives must be conducted by secret ballot if a secret ballot is requested by—

- (a) a member of the work group; or
- (b) a candidate for election; or
- (c) the PCBU or PCBUs.

15 Candidates elected if nominations fewer than or equal to vacancies

- (1) If the number of candidates for election as a health and safety representative for a work group is fewer than or equal to the number of vacancies, the election need not be conducted and each candidate is treated as having been elected as a health and safety representative for the work group.
- (2) If there are no candidates for election as a health and safety representative for a work group, the election need not be conducted.

Compare: Model Work Health and Safety Act s 63 (Aust)

16 Duty in relation to election

- (1) A PCBU to whom a work group relates must provide the resources, facilities, and assistance that are reasonably necessary to conduct an election of 1 or more health and safety representatives, including the payment of any costs associated with—
 - (a) determining the method, date, times, and location of the election; and
 - (b) calling for nominations from workers for candidates; and
 - (c) providing information about candidates to workers; and
 - (d) the calculation of results; and
 - (e) the communication of the results to relevant parties.
- (2) In order to initiate the election of a health and safety representative under section 62(2) or (3) of the Act, a PCBU must—
 - (a) inform the workers in the business or undertaking—
 - (i) of the work group they are in; and
 - (ii) of the number of health and safety representatives to be elected for that work group; and
 - (b) inform the representatives of those workers, if any, of the information provided under paragraph (a).
- (3) If the work group relates to more than 1 PCBU, those PCBUs must—
 - (a) comply with the requirements of subclauses (1) and (2); and

- (b) consult each other about the way in which they will comply with those requirements.
- (4) A PCBU who fails to comply with subclause (1) or (2) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Act s 61(4) (Aust); Model Work Health and Safety Regulations r 18 (Aust)

17 Prohibition on unreasonable delay of election and interfering with or influencing workers voting in election

- (1) No person may unreasonably delay the progress of an election for a health and safety representative.
- (2) No person may interfere with or influence any worker who votes in an election for a health and safety representative.
- (3) A person who fails to comply with this regulation commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$6,000;
 - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations r 19 (Aust)

Office of health and safety representatives

18 Term of office for health and safety representatives

- (1) A health and safety representative—
 - (a) holds office for—
 - (i) a term not exceeding 3 years; or
 - (ii) a lesser period agreed between the PCBU and the members of the relevant work group; and
 - (b) may be re-elected for any number of terms; and
 - (c) if the PCBU agrees, remains in office after the expiry of his or her term until a successor to that representative is elected under this Part.
- (2) This regulation is subject to regulation 19.

Compare: Model Work Health and Safety Act s 64 (Aust)

19 Resignation and removal from office of health and safety representatives

- (1) A health and safety representative of a work group may resign from office at any time by giving notice to the relevant PCBU for that work group.
- (2) A health and safety representative ceases to hold office if—

- (a) that representative ceases to be a member of the work group that he or she was elected to represent; or
- (b) that representative is removed from office under clause 17 of Schedule 2 of the Act; or
- (c) a simple majority of the members of the work group resolve that the representative should no longer represent the work group.

Compare: Model Work Health and Safety Regulations r 20 (Aust)

20 Duty to maintain list of health and safety representatives

- (1) A PCBU to whom 1 or more work groups relate must ensure that a list of the names and contact details of health and safety representatives for each work group—
 - (a) is readily accessible to the workers; and
 - (b) is provided to the regulator on request; and
 - (c) is updated whenever there is a change in health and safety representatives for that work group.
- (2) In this regulation, **readily accessible** means capable of being accessed without difficulty in hard copy, electronic form, or other form.
- (3) A PCBU who contravenes subclause (1) is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$2,000;
 - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Act s 74 (Aust)

Training

21 Training required for purposes of sections 70(a) and 85(a) of Act

- (1) For the purposes of sections 70(a) and 85(a) of the Act, a health and safety representative must complete initial training.
- (2) A health and safety representative has **completed initial training** when he or she is assessed as having achieved the New Zealand Qualifications Authority unit standard 29315.
- (3) This regulation is subject to clause 1 of Schedule 1.

22 Types of health and safety representative training

A health and safety representative may use his or her annual training entitlement to attend initial training, additional training, or transition training.

23 Choice of training

A health and safety representative may choose a training opportunity (whether initial or additional training) in consultation with the PCBU about the time,

date, and location of, and the costs (including training fees) relating to, the training.

24 Duty in relation to access to training for health and safety representatives

- (1) A PCBU must make a decision on a request from a health and safety representative to use his or her annual training entitlement to attend initial or additional training—
 - (a) as soon as practicable; and
 - (b) in any event, at a date no later than 3 months from the date of receiving the request for training from the health and safety representative.
- (2) Subclause (1) is subject to the maximum total number of days' paid leave specified in regulation 26.
- (3) The PCBU must—
 - (a) pay the health and safety representative's training fees; and
 - (b) pay for any other reasonable expenses that the health and safety representative may incur, or has incurred, in attending training (including the cost of travel and accommodation that may be booked or paid for in advance, or both).

Compare: Model Work Health and Safety Act s 72 (Aust)

25 Sharing of costs for training in multiple PCBU arrangements

If the work group for a health and safety representative relates to more than 1 PCBU, the PCBUs concerned must equally share the costs referred to in regulation 24(3), unless they agree otherwise.

Compare: Model Work Health and Safety Act s 73 (Aust)

26 Duty in relation to maximum total number of days' paid leave to be allowed to health and safety representatives for training

- (1) For the purposes of clause 12(2) of Schedule 2 of the Act, the maximum total number of days' paid leave that a PCBU is required to allow for training of health and safety representatives in the whole business or undertaking is determined by applying subclauses (2) and (3).
- (2) The maximum total number of days' paid leave that a PCBU is required to allow in a calendar year is based on the number of workers who work for the business or undertaking as at the specified date in the year, and is determined in accordance with the following table:

Workers as at specified date in year	Maximum total number of days' paid leave that PCBU is required to allow to be taken
1–5	2
6–50	6
51–280	1 day for every 8 workers or part of that number
281 or more	35 days plus 5 days for every 100 workers or part of that number

- (3) In this regulation, **specified date** means 1 April.

Compare: 1992 No 96 s 19F

Subpart 4—Health and safety committees

27 Duty to give notice of decision on health and safety committee

For the purposes of section 66(6)(b) of the Act, the time within which a PCBU must give written notice of its decision under section 66(2) of the Act as to whether to establish a health and safety committee is 14 days after the date of the decision.

28 Membership of health and safety committees

- (1) The PCBU who establishes a health and safety committee for a workplace (or part of a workplace) and the workers at that workplace (or their representatives) must agree on the membership of the health and safety committee.
- (2) However,—
- (a) one of the members appointed by the PCBU to the committee must be authorised by the PCBU to make decisions on behalf of the PCBU on health and safety issues; and
 - (b) at least half of the members on the committee—
 - (i) must be workers and must represent the workers at the workplace; and
 - (ii) must not have been nominated by the PCBU.
- (3) Each health and safety representative is eligible to be a member of the health and safety committee.

Compare: Model Work Health and Safety Act s 76 (Aust)

29 Meeting requirements for health and safety committees

A health and safety committee must meet—

- (a) regularly at the times agreed by the members of the committee, but at least once every 3 months; and
- (b) at any other reasonable time on the request of a simple majority of members of the committee.

Compare: Model Work Health and Safety Act s 78 (Aust)

Subpart 5—Specified issue for purposes of section 99(3) of Act

30 Issue that inspector may decide under section 99(3) of Act

- (1) For the purposes of section 99(3) of the Act, an inspector may decide an issue in relation to the membership of a health and safety committee referred to in regulation 28.
- (2) A PCBU who fails to comply with a decision of the inspector about a matter referred to in subclause (1) commits an offence and is liable on conviction,—
 - (a) for an individual, to a fine not exceeding \$10,000;
 - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act ss 72, 76 (Aust)

Schedule 1

Transitional, savings, and related provisions

r 4

Part 1

Provisions relating to regulations as made

1 Transitional provision regarding training

- (1) This clause applies to a person who, immediately before the commencement of these regulations, was a trained health and safety representative within the meaning of section 46A(1) of the Health and Safety in Employment Act 1992.
- (2) For the purposes of sections 70(a) and 85(a) of the Act, the person has completed initial training if he or she completes the transition training defined in subclause (4).
- (3) For the purposes of subclause (2), transition training begun or completed before or after the commencement of these regulations may be taken into account.
- (4) In these regulations, **transition training** means the course—
 - (a) that is called Health and Safety Representative Transition Training; and
 - (b) that is to be provided for a temporary period by Safety-N Action Limited; and
 - (c) that covers—
 - (i) knowledge of the requirements under the Act and the benefits of effective worker engagement, participation, and representation practices;
 - (ii) representing workers on health and safety issues;
 - (iii) making recommendations on health and safety to a PCBU;

- (iv) entering workplaces to conduct inspections:
- (v) directing workers to cease work that exposes them to serious or imminent danger:
- (vi) issuing provisional improvement notices to address a health and safety problem:
- (vii) the role and function of health and safety representatives.

Schedule 2

High-risk sectors or industries

r 5(1)(d)

ANZSIC classification code	High-risk sectors or industries
A02	Aquaculture
A03	Forestry and logging
A04	Fishing, hunting, and trapping
B06	Coal mining
C11	Food product manufacturing
D28	Water supply, sewerage, and drainage services
D29	Waste collection, treatment, and disposal services
E30	Building construction
E31	Heavy and civil engineering construction
E32	Construction services

Schedule 3

Types of work or sectors excluded from high-risk sectors or industries

5(1)(e)

ANZSIC classification code	Sector or industry	Work type/sector excluded
A02	Aquaculture	
A0203		Onshore aquaculture
A03	Forestry and logging	Forest product gathering, which comprises— Kauri gum digging Native orchid gathering Pine cone gathering Resin gathering Mushroom gathering
A04	Fishing, hunting, and trapping	Hunting or trapping of certain non-New Zealand species, which comprises— Turtle hunting Buffalo hunting Crocodile hunting Dingo hunting or trapping Kangaroo hunting Snake catching
C11	Food product manufacturing	
C117		Bakery product manufacturing when carried out in the home
C1174		Bakery product manufacturing (non-factory-based)
E32	Construction services	Curtain installation Fly wire screen installation

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 4 April 2016,—

- prescribe matters relating to work groups, health and safety representatives, and health and safety committees; and

- specify the health and safety issues that an inspector, appointed by the regulator, may assist the parties in resolving.

Part 1 (preliminary provisions)—

- defines or refers to the terms that are used or defined in these regulations:
- refers to *Schedule 1*, which deals with transitional, savings, and related provisions.

Part 2 (worker engagement, participation, and representation) is divided into 5 subparts.

Subpart 1 (high-risk sectors or industries), in *regulation 5*,—

- specifies the high-risk sectors or industries for the purposes of sections 62(4)(b) and 66(3)(b) of the Health and Safety at Work Act 2015 (the **Act**):
- refers to *Schedule 2* where those sectors or industries are further specified:
- excludes some businesses or undertakings that are exclusively or predominantly carrying out work of a type, or in a sector, as specified in *Schedule 3*.

Regulation 5 and the associated *Schedules 2 and 3* are subject to review by the Minister at any time, but as soon as practicable after 4 April 2018, and then no less frequently than 5 years from the date of the immediately preceding review.

The ANZSIC classification codes referred to in *regulation 5(1)(d)* are accessible at <https://www.businessdescription.co.nz/#/home>

Subpart 2 (work groups)—

- prescribes the default ratio of health and safety representatives to workers to be maintained in a work group comprising all the workers in the business or undertaking:
- prescribes the requirements for determining work groups, if the PCBU considers that the default work group comprising all the workers in the business or undertaking would be inappropriate for the business or undertaking:
- prescribes the requirements for withdrawal from, and variation of, agreements concerning multiple PCBU work group arrangements.

Subpart 3 (health and safety representatives)—

- specifies, in relation to elections for health and safety representatives, who is eligible to—
 - nominate candidates for elections; and
 - stand for elections; and
 - vote at elections:
- prescribes election procedures, including the duties of a PCBU in relation to an election of 1 or more health and safety representatives:
- prescribes the term of office of health and safety representatives:

- provides for the resignation of health and safety representatives and the procedure for removing a health and safety representative:
- requires a PCBU to display a list of the names and contact details of health and safety representatives for each work group:
- provides for the training of health and safety representatives, including—
 - types of training for health and safety representatives:
 - requiring PCBUs to decide on health and safety representatives' access to training, to pay the costs of, and reasonable expenses for, training, and to share the costs of training in multiple PCBU arrangements:
 - prescribing the maximum total number of days' paid leave a PCBU must allow for training of health and safety representatives.

Subpart 4 (health and safety committees)—

- prescribes the time within which a PCBU must give written notice of its decision whether to establish a health and safety committee for the business or undertaking, or part of the business or undertaking:
- provides for the membership of health and safety committees:
- provides the meeting requirements for health and safety committees.

Subpart 5 (issue that inspector may decide under section 99(3) of the Act) specifies that an inspector, appointed by the regulator, may assist the parties in resolving an issue in relation to the membership of a health and safety committee.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 21 September 2015 and 4 February 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of these regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/ris-cabinet-paper-phase-one-regulations.pdf>
- <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/ris-further-decisions-to-improve-whss-system.pdf/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 18 February 2016.

These regulations are administered by the Ministry of Business, Innovation, and Employment.