

FACT SHEET

OFFENCES AND PENALTIES UNDER THE HEALTH AND SAFETY AT WORK ACT 2015

This fact sheet outlines the offences and penalties under the Health and Safety at Work Act 2015 (HSWA). There are a range of offences and penalties under HSWA and regulations. Imprisonment is reserved for the most serious offences.

Penalties depend on the offence and what type of duty holder the offender is, ie:

- > an individual who is not a person conducting a business or undertaking (PCBU) (eg a worker or other person at the workplace)
- > an individual who is a PCBU (eg self-employed) or an officer of a PCBU, or
- > any other person, such as an organisation that is a PCBU (eg a company, government department or non-profit organisation).

In addition to court-imposed penalties, infringement notices can be issued by a regulator for specified offences against HSWA or regulations. The person receiving the infringement notice is required to pay an infringement fee or may appeal against the notice in court.

The following sections describe offences and penalties under HSWA.

HEALTH AND SAFETY DUTY OFFENCES IN RELATION TO SECTIONS 36 TO 46 OF HSWA

The most serious offences under HSWA are for failures to comply with health and safety duties under sections 36 to 46 of HSWA. These cover the duties of PCBUs, officers, workers and other persons at workplaces. These offences are described below.

RECKLESS CONDUCT IN RESPECT OF DUTY (SECTION 47 OF HSWA)

This is the most serious offence under HSWA. The maximum penalties, which include imprisonment, reflect the severity of the offence. The maximum penalties are shown in Table 1.

A duty holder commits this offence if:

- > they have a health and safety duty under sections 36 to 46 of HSWA, and
- > they engage in behaviour that causes someone to be put at risk of being seriously injured, made seriously ill or killed (including where death or serious injury or illness actually occurred), and

- > the person put at risk is a person to whom the duty holder owes the health and safety duty, and
- > the duty holder is reckless about the risk of injury, illness or death, and
- > they do not have a reasonable excuse for their behaviour.

The prosecution must prove this beyond reasonable doubt.

Recklessness does not necessarily mean that the duty holder intended to cause someone to be put at risk of injury, illness or harm; the emphasis is on awareness. A duty holder may be found to have been reckless if he or she was aware that their actions could cause someone to be put at risk of death, or serious illness or injury, but took the relevant action anyway, and it was unreasonable for the duty holder to take the action, given the seriousness and nature of the risk he or she was aware of.

FAILURE TO COMPLY WITH A DUTY THAT EXPOSES AN INDIVIDUAL TO A RISK OF SERIOUS INJURY, SERIOUS ILLNESS OR DEATH (SECTION 48 OF HSWA)

A duty holder commits this offence if:

- > they have a health and safety duty under sections 36 to 46 of HSWA, and
- > they fail to comply with the duty, and
- > their failure causes someone to be put at risk of being seriously injured, made seriously ill or killed (including where death, or serious injury or illness actually occurred).

The prosecution must prove beyond reasonable doubt that a duty has not been carried out, which caused a risk of serious injury, illness or death. They do not need to prove that the offender was aware that their actions may cause a risk to someone's health and safety. The maximum penalties are shown in Table 1.

FAILURE TO COMPLY WITH A DUTY (SECTION 49 OF HSWA)

A duty holder commits this offence if they owe a health and safety duty under sections 36 to 46 of HSWA and fail to comply with it.

The prosecution must prove this beyond reasonable doubt. Unlike the two other offence-creating provisions above, there is no need to prove an individual was exposed to serious injury or illness. The maximum penalties are shown in Table 1.

EXAMPLE

Anne, Alan and Bill are on the board of directors at Endless Aisles supermarket. They are officers of the PCBU (the supermarket). They have a duty to exercise due diligence to ensure that the supermarket is operating in a healthy and safe way.

They have not exercised due diligence to ensure Endless Aisles complies with HSWA including by failing to ensure Endless Aisles has processes for:

- > assessing incidents or near misses
- > carrying out risk assessments.

This is a failure to carry out their due diligence duty and an offence under section 49 of HSWA.

OFFENCE	INDIVIDUAL WHO IS NOT A PCBU OR OFFICER (EG A WORKER OR OTHER PERSON AT A WORKPLACE)	OFFICER OF A PCBU OR AN INDIVIDUAL WHO IS A PCBU (EG SELF-EMPLOYED)	ANYONE ELSE (EG AN ORGANISATION THAT IS A PCBU)
Section 47 (reckless conduct in respect of duty that exposes an individual to a risk of serious injury, serious illness or death)	Five years in prison or \$300,000 fine, or both	Five years in prison or \$600,000 fine, or both	\$3 million fine
Section 48 (failure to comply with a duty that exposes an individual to a risk of serious injury, serious illness or death)	\$150,000 fine	\$300,000 fine	\$1.5 million fine
Section 49 (failure to comply with a duty)	\$50,000 fine	\$100,000 fine	\$500,000 fine

Table 1: Maximum penalties for health and safety duty offences

OFFENCES THAT APPLY TO OTHER OBLIGATIONS

There are offences under HSWA for failing to meet or comply with other obligations. These are highlighted as follows.

OFFENCES IN RELATION TO CHARGING WORKERS

PCBUs must not impose a levy on or charge workers for doing or providing anything that the PCBU is required to do or provide under HSWA. For example, PCBUs who are employers need to provide employees with personal protective equipment (PPE) if it is needed to carry out work. The PCBU must not charge for this or require employees to provide their own PPE at their own cost.

It is an offence to impose a levy on or charge workers for anything done or provided under HSWA (section 27 of HSWA). The maximum penalties are shown in Table 2.

OFFENCE	INDIVIDUAL PCBU (EG A SELF-EMPLOYED PCBU)	OTHER PCBU (EG AN ORGANISATION THAT IS A PCBU)
Section 27 (PCBUs must not levy workers)	\$5,000 fine	\$25,000 fine

Table 2: Maximum penalties for charging workers

OFFENCES IN RELATION TO NOTIFIABLE EVENTS

Notifiable events include someone's death, a notifiable injury, illness or incident. The PCBU must:

- > inform the regulator of any notifiable event (section 56 of HSWA)
- > keep records of notifiable events for at least five years (section 57 of HSWA)
- > take all reasonable steps to ensure the site where the notifiable event has occurred is preserved until an Inspector releases it (applies only to PCBUs who manage or control the workplace; section 55 of HSWA).

A PCBU commits an offence if it fails in these duties. The maximum penalties are shown in Table 3.

OFFENCE	INDIVIDUAL PCBU (EG A SELF-EMPLOYED PCBU)	OTHER PCBU (EG AN ORGANISATION THAT IS A PCBU)
Section 55 (duty to preserve sites)	\$10,000 fine	\$50,000 fine
Section 56 (duty to notify notifiable events)	\$10,000 fine	\$50,000 fine
Section 57 (requirement to keep records)	\$5,000 fine	\$25,000 fine

Table 3: Maximum penalties for notifiable event offences

OFFENCES IN RELATION TO AUTHORISATIONS

Some work needs to be authorised by WorkSafe New Zealand (WorkSafe). Authorisations can relate to workplaces, plant, substances, work types, and worker qualifications or experience. Authorisations may contain conditions that need to be met.

It is an offence to:

- > conduct a business or undertaking, or direct or allow a worker to carry out work, at a workplace that needs to be authorised, without an authorisation (section 204 of HSWA)
- > use plant or substances requiring authorisation without an authorisation, or, if a PCBU directs or allows a worker to use them without an authorisation (section 205 of HSWA)
- > do work that needs authorised workers without authorisation, or, if a PCBU directs or allows unauthorised workers to do work that needs authorisation (section 206 of HSWA)
- > do work that needs qualified workers without qualifications, or, if a PCBU directs or allows unqualified workers to work (section 207 of HSWA)
- > do work that needs qualified supervision without qualified supervision, or, if a PCBU directs or allows unqualified supervisors to supervise work (section 207 of HSWA)
- > fail to comply with the conditions on an authorisation (section 208 of HSWA).

The maximum penalties are shown in Table 4.

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU OR WORKER)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 204 (requirements for authorisation of workplaces)	\$50,000 fine	\$250,000 fine
Section 205 (requirements for authorisation of plant or substances)	\$20,000 fine	\$100,000 fine
Section 206 (requirements for authorisation of work)	\$20,000 fine	\$100,000 fine

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU OR WORKER)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 207 (requirements for prescribed qualifications or experience)	\$20,000 fine	\$100,000 fine
Section 208 (requirements to comply with conditions of authorisation)	\$20,000 fine	\$100,000 fine

Table 4: Maximum penalties for authorisations offences

OFFENCES IN RELATION TO WORKER ENGAGEMENT AND PARTICIPATION

Engaging with workers (excludes volunteer workers and prisoners and the armed forces for certain provisions)

It is an offence if PCBU's do not:

- > engage with workers when required (section 58 of HSWA)
- > have practices that provide reasonable opportunities for workers who carry out work for the business or undertaking to participate in improving health and safety on an ongoing basis (section 61 of HSWA).

The maximum penalties are shown in Table 5.

OFFENCE	INDIVIDUAL PCBU (EG A SELF-EMPLOYED PCBU)	OTHER PCBU (EG AN ORGANISATION THAT IS A PCBU)
Section 58 (duty to engage with workers)	\$20,000 fine	\$100,000 fine
Section 61 (duty to have worker participation practices)	\$20,000 fine	\$100,000 fine

Table 5: Maximum penalties for worker engagement and participation offences

OFFENCES IN RELATION TO HEALTH AND SAFETY REPRESENTATIVES (HSRs)

A PCBU who receives notification seeking election of one or more HSRs, and does not initiate an election (where no exception applies) commits an offence. A PCBU also commits an offence if it fails to give notice that an exception applies (section 62 of HSWA).

If there is an HSR in the workplace the PCBU must:

- > consult the HSR so far as reasonably practicable, about health and safety matters
- > confer with an HSR when requested, for the purpose of ensuring the health and safety of the workers in the work group
- > give the HSR a reasonable amount of time to carry out their HSR role
- > give the HSR information they need to carry out their HSR role

- > allow the HSR to attend interviews about health and safety matters between workers and the PCBU or an Inspector
- > give the HSR reasonable resources and assistance to carry out their HSR role
- > allow someone assisting the HSR access to the workplace
- > allow the HSR to join an Inspector when inspecting the workplace
- > if the HSR makes a recommendation about health and safety, either adopt the recommendation or provide a written statement setting out the reasons for not adopting it.

It is an offence to fail in these duties (clause 10, Schedule 2 of HSWA). It is an offence to provide an HSR with a worker’s personal information without the worker’s consent (clause 11, Schedule 2 of HSWA).

A PCBU must allow an HSR paid leave to attend health and safety training, and comply with any prescribed requirements around access to training (including payment). It is an offence to fail to do this (clause 12, Schedule 2 of HSWA). The maximum penalties are shown in Table 6.

OFFENCE	INDIVIDUAL PCBU (EG A SELF-EMPLOYED PCBU)	OTHER PCBU (EG AN ORGANISATION THAT IS A PCBU)
Section 62 (election of HSR)	\$5,000 fine	\$25,000 fine
Clause 10, Schedule 2 (obligations of PCBU to HSR)	\$10,000 fine	\$50,000 fine
Clause 11, Schedule 2 (exceptions to clauses 4(1) and 10(1))	\$10,000 fine	\$50,000 fine
Clause 12, Schedule 2 (requirements to allow HSR to attend certain training)	\$10,000 fine	\$50,000 fine

Table 6: Maximum penalties for health and safety representative offences

OFFENCES IN RELATION TO PROVISIONAL IMPROVEMENT NOTICES (PINs)

Trained HSRs can issue PINs. A PIN requires the person to whom it is issued to fix a health and safety problem by a certain date.

If a PIN is issued, it is an offence if:

- > the person does not display it in a prominent place where the work affected by the notice is done (section 76 of HSWA)
- > any person removes, destroys, damages or defaces a PIN that is displayed while the PIN is in force (section 76 of HSWA)
- > the person does not comply with it in the time required (section 78 of HSWA).

The maximum penalties are shown in Table 7.

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU OR WORKER)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 76 (display of PIN)	\$5,000 fine	\$25,000 fine
Section 78 (offence relating to breach of PIN)	\$50,000 fine	\$250,000 fine

Table 7: Maximum penalties for provisional improvement notice offences

OFFENCES IN RELATION TO HEALTH AND SAFETY COMMITTEES (HSCs)

HSCs help PCBUs and workers to co-operate to improve workers' health and safety. PCBUs must decide whether to establish an HSC if requested by an HSR or 5 or more workers, unless an exception applies (section 66 of HSWA).

PCBUs must:

- > consult with an HSC, so far as is reasonably practicable, about health and safety matters
- > allow its members reasonable time to carry out their role
- > provide the HSC with information they need to carry out their role
- > if the HSC makes a recommendation about health and safety, either adopt the recommendation or provide a written statement setting out the reasons for not adopting it
- > provide the HSC with a worker's personal information only with the worker's consent (clause 21, Schedule 2 of HSWA).

It is an offence to fail to comply with these duties. The maximum penalties are shown in Table 8.

OFFENCE	INDIVIDUAL PCBU (EG A SELF-EMPLOYED PCBU)	OTHER PCBU (EG AN ORGANISATION THAT IS A PCBU)
Section 66 (request for an HSC)	\$5,000 fine	\$25,000 fine
Clause 21, Schedule 2 (obligations in relation to an HSC)	\$10,000 fine	\$50,000 fine

Table 8: Health and safety committee offences

OFFENCES IN RELATION TO ADVERSE, COERCIVE OR MISLEADING CONDUCT

Engaging in adverse conduct for a prohibited health and safety reason means treating a worker or another person badly because of a prohibited health and safety reason. It includes behaviour such as:

- > ending an HSR's employment because they are an HSR
- > demoting a worker who raises a health and safety issue with an HSR
- > refusing to employ someone who wishes to be an HSR.

It is an offence to engage in adverse conduct for a prohibited health and safety reason (section 90 of HSWA) or request, instruct, encourage or assist someone else to do so (section 91 of HSWA).

It is also an offence to take any action (or threaten to take any action) intended to coerce or induce a person to perform, or not perform a function or power under HSWA or to undertake a role under HSWA (section 92 of HSWA). This includes trying to stop someone from acting as an HSR.

It is an offence to knowingly or recklessly mislead another person about their rights or obligations under the Act (section 93 of HSWA).

The maximum penalties are shown in Table 9.

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU OR WORKER)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 90 (prohibition on adverse conduct)	\$100,000 fine	\$500,000 fine
Section 91 (prohibition on requesting, instructing, inducing, encouraging, authorising, or assisting adverse conduct)	\$100,000 fine	\$500,000 fine
Section 92 (prohibition on coercion or inducement)	\$100,000 fine	\$500,000 fine
Section 93 (misrepresentation)	\$100,000 fine	\$500,000 fine

Table 9: Maximum penalties for adverse, coercive or misleading conduct offences

ENFORCEMENT AND COMPLIANCE TOOLS AND OFFENCES

Inspectors can issue the following notices:

- > *Improvement notices (sections 101-103 of HSWA)* – require actions to fix a breach, or likely breach, of HSWA or regulations. It includes a description of the breach and a deadline to make the improvement
- > *Prohibition notices (sections 105-107 of HSWA)* – require an activity to be stopped, until a specified serious health and safety problem is fixed
- > *Non-disturbance notices (sections 108-111 of HSWA)* – require an area to be left undisturbed whilst an Inspector carries out their functions.

It is an offence not to comply with these notices. It is also an offence not to display a notice where the work it relates to is carried out (section 117 of HSWA), or remove, destroy, deface or damage a notice that an Inspector or the person to whom it is issued has displayed and is still in force (section 118 of HSWA).

The maximum penalties are shown in Table 10.

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU OR WORKER)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 103 (compliance with improvement notice)	\$50,000 fine	\$250,000 fine
Section 107 (compliance with prohibition notice)	\$100,000 fine	\$500,000 fine
Section 110 (compliance with non-disturbance notice)	\$50,000 fine	\$250,000 fine
Section 117 (display of notice at workplace by person issued with notice)	\$5,000 fine	\$25,000 fine
Section 118 (Inspector may display notice)	\$5,000 fine	\$25,000 fine

Table 10: Maximum penalties for offences relating to inspector notices

COURT ORDERS

It is an offence not to comply with any of the following court orders that may be made as part of sentencing for an offence (section 159 of HSWA):

- > order for payment of the regulator's court costs (section 152 of HSWA)
- > adverse publicity order (section 153 of HSWA)
- > restoration order (section 154 of HSWA)
- > work health and safety project order (section 155 of HSWA)
- > training order (section 158 of HSWA).

The maximum penalties are shown in Table 11.

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 159 (offence to fail to comply with order)	\$50,000 fine	\$250,000 fine

Table 11: Maximum penalties for offences relating to court orders

OFFENCES IN RELATION TO WORKING WITH INSPECTORS AND HEALTH AND SAFETY PRACTITIONERS

It is an offence to:

- > fail to reasonably assist Inspectors when carrying out their functions, when that person owes a health and safety duty (section 176 of HSWA)
- > refuse or fail to give name and address details to an Inspector without reasonable excuse (section 178 of HSWA)
- > hinder or obstruct an Inspector without reasonable cause when the Inspector is exercising their compliance powers (section 179 of HSWA)

- > impersonate an Inspector (section 180 of HSWA)
- > hinder or obstruct a health and safety medical practitioner without reasonable cause when the practitioner is exercising their compliance powers (section 187 of HSWA)
- > impersonate a health and safety medical practitioner (section 188 of HSWA)
- > in complying, or purporting to comply, with HSWA, give false or misleading information (including in a document) (section 209 of HSWA).

The maximum penalties are shown in Table 12.

OFFENCE	INDIVIDUAL (EG A SELF-EMPLOYED PCBU OR WORKER)	OTHER (EG AN ORGANISATION THAT IS A PCBU)
Section 176 (duty to assist Inspectors)	\$10,000 fine	\$50,000 fine
Section 178 (offence for failing to provide Inspector with correct name and residential address)	\$10,000 fine	not applicable
Section 179 (offence to hinder or obstruct Inspector)	\$10,000 fine	\$50,000 fine
Section 180 (offence to impersonate Inspector)	\$10,000 fine	not applicable
Section 187 (offence to hinder or obstruct health and safety medical practitioner)	\$10,000 fine	\$50,000 fine
Section 188 (offence to impersonate health and safety medical practitioner)	\$10,000 fine	not applicable
Section 209 (offence to give false or misleading information)	\$10,000 fine	\$50,000 fine

Table 12: Maximum penalties for offences relating to working with Inspectors and health and safety medical practitioners

FURTHER INFORMATION

For more information about HSWA, and answers to common questions about prosecutions, see the Special Guide *Introduction to the Health and Safety at Work Act 2015*.

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