

Your rights as a worker around health and safety engagement, participation and representation

This guidance is for people working on ships, on major ports or on Cook Strait ferry terminals who want to know more about their right to have a voice in the health and safety matters that affect them at work.

This factsheet does not specifically explain your legal obligations. You can find out more about those by reading the Health and Safety at Work Act 2015 (HSWA) and the Health and Safety at Work (Worker Engagement, Participation and Representation) regulations 2016.

1. Persons conducting a business or undertaking

The Health and Safety at Work Act 2015 (HSWA) and the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 (the Regulations) refer to persons conducting a business or undertaking (PCBUs). All types of working arrangements that we usually call 'businesses' are PCBUs. PCBU could also mean employer or (if you are a contractor) the PCBU who contracted you.

If you do any kind of work for a PCBU, you are a worker. A stevedore is a worker. A deck hand is a worker. Someone who manages stevedores or deck hands is a worker. A master or skipper is also a worker.

Sometimes a worker can also be a PCBU. For example, a person who is self-employed as a sole trader is both a worker and a PCBU.

This guidance uses the word 'employer' to mean the PCBU you do work for. The information in it applies to workers in all kinds of relationships with their PCBU, including employees, contractors and sharefishers.

Your employer must take account of your opinions about health and safety matters. This document tells you more about what they have to do to involve you in health and safety matters.

The key things required of your employer are:

- They must engage with you about health and safety matters.
- They must have practices that give all their workers reasonable opportunities to participate (take part) in improving work health and safety.
- If a worker asks them to, they must have an election for one or more health and safety representatives (HSRs) to represent workers.



This factsheet outlines what your employer is required to do when they engage with you about health and safety matters, including what to expect if your employer has health and safety representatives (HSRs) and committees (HSCs).

2. Worker engagement

Your employer must engage with you and your co-workers **so far as is reasonably practicable** about health and safety in the workplace. This means that they must consider what is **possible** to do to engage with you and your co-workers in their individual circumstances. Once they know what is possible, they must consider what is **reasonable** to do in their circumstances.

2.1 How your employer must engage with you

When they engage with you, they must give you all the relevant information about the matter they want you to think about in a timely manner. They must also give you a chance to express your views and raise work health and safety issues in relation to the matter, and contribute to making the final decision about the matter. This means they need to give you the relevant information with enough time for you to properly consider it and your response. They must take account of your views, and tell you what they decide to do in a timely manner.

3. What your employer has to engage with you about

HSWA includes a specific list of situations when your employer must engage with you about health and safety matters. If they talk to you about any of these things, they are likely to be engaging with workers as the law requires.

HSWA requires employers to engage with you when they are:

- identifying hazards and assessing risks to work health and safety caused by the work the business carries out – for example, when they are doing a risk assessment for a hazard that is part of everyday work
- making decisions about ways to eliminate or minimise risks to work health and safety – for example, when they are deciding what kind of guarding would be best on a machine
- making decisions about whether welfare facilities such as handwashing facilities, toilet facilities and access to drinking water are good enough for your needs (this includes a variety of facilities, including workplace layout, amount of space in work areas, lighting, ventilation, toilets, handwashing facilities and access to drinking water)
- proposing changes that may affect your health or safety, such as working with a new substance on site
- making decisions about procedures for:
 - engaging with you (for example, when they are developing a form for you to use to report a near miss)
 - monitoring your health (for example, when they are deciding whether you need to have regular hearing checks because of the level of noise in the workplace)
 - monitoring the conditions at any workplace under their management or control (for example, when they are deciding how to check noise levels in the workplace)
 - providing information and training for you (for example, when they are deciding how to train you to use new hearing protection)

- making decisions about any procedures for resolving work health or safety issues at the workplace
- developing worker participation practices, including deciding how to organise work groups.

This list includes the situations where HSWA requires your employer to engage with you. There might be other times your employer engages with you about health and safety matters as well.

4. Participation

Your employer must have practices in place to give you reasonable opportunities to take part in improving health and safety in their operation. These must be effective and ongoing.

What 'reasonable opportunities' means depends on the circumstances, including:

- the nature and size of the operation
- the risks involved
- the approach that suits those involved (for example, in some situations everyone prefers face-to-face meetings, while in others they prefer written information).

Examples of participation practices that are common include:

- health and safety representatives and committees (see below)
- toolbox talks where you can mention health and safety problems you have noticed
- open door policies where you can talk to your manager about any health and safety problems or questions.

5. Representation

There are two parts to representation of workers in health and safety matters: health and safety representatives (HSRs) and health and safety committees (HSCs).

5.1 Health and safety representatives

No matter what the situation at a workplace is, you always have a right to engage directly with your employer about health and safety matters.

You also have a right to engage with your employer through a HSR if HSRs have been elected where you work. There might be such an election of HSRs because either:

- your employer chooses to have HSRs, or
- a worker has requested it.

Any worker can ask for an election of HSRs at any time, and the employer has to arrange an election and provide the resources and help that are necessary to run the election (or, if there are not enough candidates for an election, has to arrange for all the candidates to become HSRs).

When your or another workers asks for HSRs or your employer decides to have HSRs, each worker becomes part of a **work group**. When you are dealing with health and safety issues, you will talk to the HSRs for your work group.

There might be only one work group in a business, and all the HSRs represent all the workers. If your employer does not set up a different arrangement, this is the default (that is, what will happen automatically).

HSWA says that normally a work group includes all workers in a business. However, the employer can divide workers into separate work groups if they feel that it is inappropriate for all workers to be in a single group, for example because they feel the HSRs can represent workers better if they work with a specific type of worker.

When they are dividing workers into work groups, they must divide them in a way that:

- follows the specific requirements that are laid out in HSWA and the Regulations
- is most effective at setting up representation of the workers' health and safety interests (for example, land-based port workers and sea-based port workers work with different health and safety issues, so an employer who has both might choose to set up two work groups)
- takes account of the need for HSRs to be accessible to the workers they represent (for example, an employer who has two different worksites might set up a work group for each site).

When a worker asks to have HSRs, the employer only has to have an election for HSRs for the work group that worker belongs to.

If there is only one work group at the employer, there must be at least one representative for every 19 workers in a work group. If the number of workers does not divide evenly by 19, the number of HSRs must be rounded up. So if there are, for example, 25 workers in a work group, there must be two HSRs. If there are multiple work groups, then an employer must follow the process in the Regulations to determine how many HSRs there should be.

Example

Smith's is a log exporter. The company includes a sales and marketing team, on-port logistics, and export documentation and trade services. The health and safety needs of the on-port logistics team are very different from the sales and marketing team, which works almost entirely in an office. The export documentation and trade services team works in both environments. Smith's management decided to set up health and safety representative elections. They understand that the health and safety needs of office workers are very different from the health and safety needs of port workers, so they set up two work groups to reflect that. Because the export documentation and trade services team spends time in both types of location, they set up a third work group for them.

If two or more employers are working together, they can set up work groups as a multiple employer work group arrangement to make sure all their workers are represented.

Example

Any port has many examples of employers working together. Smith's, a log export company, works with Postlethwaite Distribution, which does log cartage. The two employers choose to have their HSRs work together to make sure that everyone is safe when Postlethwaite brings logs onto the port for Smith's.

5.2 Health and safety committees

Your workplace might have a HSC.

An employer might set up a HSC because:

- they want to have a HSC
- a HSR has asked to have a HSC
- five or more workers have asked to have a HSC.

A HSC works to make sure your employer cooperates with you to make sure your health and safety is protected at work. They:

- help develop standards, rules, policies and procedures for work health and safety
- make recommendations on work health and safety issues
- carry out other tasks that they agree to do with the employer, or that the Regulations require.

Your employer must have worker agreement (from workers or HSRs) on the membership of the HSC.

There must be one member of the HSC who has the authority to make decisions on health and safety issues on the employer's behalf.

Each HSR is eligible to be a member of the HSC. At least half of the members must be workers not nominated by the employer, and must represent the workers at the workplace.