

Key concepts

These concepts are important in the guidance related to the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016. You might find them useful if you are reading the guidance.

This factsheet does not specifically explain your legal obligations. To find out more about your legal obligations, you can read the Health and Safety at Work Act 2015 (HSWA) and the Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016.

TERM/CONCEPT	BRIEF EXPLANATION
Business	an activity carried out with the intention of making a profit or gain
Control measure	A way of eliminating or minimising the risk of harm
Engagement	<p>A PCBU (person conducting a business or undertaking – see later key term/concept) has to engage with its workers on health and safety matters. They do this by:</p> <ul style="list-style-type: none">- sharing information about health and safety matters- giving workers reasonable opportunities to have a say about health and safety matters- giving workers opportunities to contribute to decision-making processes relating to health and safety matters- considering workers' views when they are making decisions- updating workers about what decisions they have made- involving any health and safety representatives (HSRs). <p>If workers are represented by a health and safety representative, the PCBU must include that representative in engagement</p>
Employment Relations Act 2000 (ERA)	<p>The Employment Relations Act 2000 (ERA) sets out rules about employment relations between employers and employees.</p> <p>ERA's objective is to build productive relationships between employers and their employees. It achieves this by promoting 'good faith' employment relations (see the definition of good faith below)</p>
Good faith	<p>Acting in good faith is a legal concept. In this guidance, we are using the concept from the Employment Relations Act 2000 (ERA).</p> <p>Employers, employees and unions have a duty of good faith under the ERA. This includes the need to be active and constructive in maintaining an employment relationship that is responsive and communicative</p>



TERM/CONCEPT	BRIEF EXPLANATION
Hazard	<p>A hazard is anything that can cause harm.</p> <p>HSWA specifically says that hazard ‘includes a person’s behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock, or another temporary condition that affects a person’s behaviour)’.</p> <p>Note</p> <p>Although this guidance focuses on HSWA, the Maritime Transport Act 1994 also has a definition of hazard: an activity, arrangement, circumstance, event, occurrence, phenomenon, process, situation, or substance (whether or not arising or caused on board a ship) that is an actual or potential cause or source of harm.</p> <p>For situations involving HSWA, you must use the definition given in HSWA</p>
Health and Safety at Work Act 2015 (HSWA)	<p>The work health and safety legislation in New Zealand. All work and workplaces are covered by HSWA unless it specifically excludes them. Part 3 of HSWA covers worker engagement, participation and representation</p>
Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 (the Regulations)	<p>The Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016 outline additional requirements for businesses or undertakings with health and safety committees (HSCs) and health and safety representatives (HSRs).</p> <p>The Regulations prescribe matters relating to work groups, HSRs and HSCs.</p> <p>In this guidance, when we say ‘the Regulations’, these are the regulations we are referring to</p>
Health and safety committee (HSC)	<p>A committee established under HSWA section 66 at a workplace to:</p> <ul style="list-style-type: none"> - help the PCBU and workers work together to ensure health and safety - help develop standards, rules, policies or procedures relating to health and safety - make recommendations relating to work health and safety - perform any other functions required by regulations or agreed between the PCBU and the committee
Health and safety representative (HSR)	<p>A worker elected by the members of a work group to represent them in health and safety matters, in accordance with subpart 2 of Part 3 of HSWA. In our guidance, the term HSR means an elected representatives who meet the requirements of HSWA and the Regulations. It does not include other worker representatives.</p> <p>See also ‘Worker representative’</p>

TERM/CONCEPT	BRIEF EXPLANATION
Health monitoring	Monitoring that looks at whether a worker's health is being harmed because of what they are being exposed to while they are at work
Officer	<p>A person who has the ability to significantly influence the management of a PCBU. This includes, for example, company directors and chief executives.</p> <p>Officers must exercise due diligence to ensure the PCBU meets its health and safety obligations.</p> <p>Note</p> <p>In the context of HSWA, an officer of a PCBU is different from an officer on a vessel. Someone who is the captain of a fishing vessel might or might not be an officer of the PCBU that owns or runs the vessel</p>
Person conducting a business or undertaking (PCBU)	<p>In most cases it is a business entity such as a company. However, an individual carrying out business as a sole trader or self-employed person is also a PCBU.</p> <p>It does not include workers or officers of a PCBU, volunteer associations with no employees, or home occupiers that employ or engage a tradesperson to carry out residential work.</p> <p>You can find the definition of PCBU in HSWA section 17</p>
Primary duty of care	<p>Duty of a PCBU to ensure, so far as is reasonably practicable, the health and safety of its workers, and that other persons are not put at risk by the PCBU's work.</p> <p>You can find the definition of primary duty of care in HSWA section 36.</p>
Risk	<p>Risk is not defined in HSWA. Risks arise from people being exposed to a hazard (a source of harm). A risk can be described as the likelihood certain consequences (death, injury, or illness) will occur when a person is exposed to a hazard.</p> <p>A PCBU must eliminate risks that may arise from its work so far as is reasonably practicable. If a risk cannot be eliminated, it must be minimised so far as is reasonably practicable</p>

TERM/CONCEPT	BRIEF EXPLANATION
So far as is reasonably practicable	<p>When considering what is ‘reasonably practicable’ for worker engagement, participation and representation duties, consider the:</p> <ul style="list-style-type: none"> – nature of the work that is carried out – nature and severity of a particular hazard or risk – ease of reaching workers who will be affected by a health and safety matter – work arrangements, such as shift work and remote work, temporary workers – languages workers speak, and their literacy and numeracy (reading, writing and number) skills – availability of HSRs or other worker representatives – nature of the decision or action required, including how urgent it is to make a decision or take action – size and structure of the business or undertaking. <p>Note</p> <p>In relation to worker engagement, participation and representation duties in this document ‘reasonably practicable’ has the meaning outlined above, rather than the meaning in section 22 of HSWA.</p>
The Regulations	<p>Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016</p>
Undertaking	<p>An activity that is non-commercial in nature (for example, certain activities of a local authority)</p>
Union	<p>A union is an organisation that supports its membership by advocating on their behalf. The Employment Relations Act 2000 gives employees the freedom to join unions and bargain collectively without discrimination. Workers can choose whether or not to join a union.</p> <p>A union is entitled to represent members’ employment interests, including health and safety matters.</p> <p>Unions can access a workplace to deal with matters concerning the health and safety of workers who request their help. Union representatives must seek permission beforehand, which an employer cannot unreasonably withhold</p>
Volunteer	<p>A person who does work for an organisation but receives no payment. Volunteers may receive out-of-pocket expenses such as petrol or meals when travelling away from home. Payment beyond out-of-pocket expenses may indicate that person is an employee</p>
Volunteer workers	<p>A volunteer is a ‘volunteer worker’ when:</p> <ul style="list-style-type: none"> - they work for a PCBU who knows they are doing that work or has given consent for it to be done - the volunteer does the work on an ongoing and regular basis

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- the work is an integral part of the business or undertaking and the work is not:
 - o participating in fundraising
 - o assisting with sports or recreation for an educational institute, sports club or recreation club
 - o assisting with activities for an educational institute outside its premises, or
 - o providing care for another person in the volunteer's home (for example, foster care).

A PCBU must work to keep a volunteer worker safe in the same way it does other workers. However, it does not owe volunteer workers worker engagement, representation and participation duties. Volunteer workers can still raise health and safety concerns with the PCBU

Work group

PCBUs form work groups so that workers can elect health and safety representatives who represent them effectively on health and safety matters.

HSWA says that the standard work group includes all the workers in a business or undertaking, unless the PCBU determines otherwise.

For example, a port that has both land-based and sea-based workers might choose to have a work group for the land-based workers and a work group for the sea-based workers. This means that each group has one or more health and safety representatives who understands their situation and can support them effectively.

A PCBU determining work groups must do so under HSWA section 64

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Worker	<p>A worker is an individual who carries out work in any capacity for a PCBU. A worker may be an employee, a contractor or sub-contractor, an employee of a contractor or sub-contractor, an employee of a labour hire company, an outworker (including a homeworker), an apprentice or a trainee, a person gaining work experience or on a work trial, or a volunteer worker. Workers can be at any level (for example, managers are workers too).</p>
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You can find the definition of worker in HSWA section 19.

Notes:

1. The worker engagement, participation and representation part of HSWA does not apply to:
 - a. a volunteer worker
 - b. a worker who is a prisoner carrying out work inside a prison.
2. Certain sections of the worker engagement, participation and representation part of HSWA do not apply to members of the Armed Forces. These are:
 - a. Section 62(1), relating to requests for the election of health and safety representatives
 - b. Section 66(1)(b), relating to the establishment of a health and safety committee
 - c. Sections 83 and 84, relating to the worker's right to cease unsafe work or for a health and safety representative to direct unsafe work to cease

Worker participation practices	<p>Worker participation practices are what the PCBU puts in place so that workers can help to improve work health and safety on an ongoing basis. These practices make it possible for workers to share ideas and information, raise issues, and contribute to decision-making on an ongoing basis</p>
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Worker representative	<p>Worker representative means:</p> <ul style="list-style-type: none"> • the health and safety representative for the worker; or • a union representing the worker; or • any other person the worker authorises to represent them (for example, community leaders, iwi leaders, church leaders, lawyers, occupational physicians, nurses, respected members of ethnic communities). <p>Workers can ask a worker representative to raise health and safety issues with a PCBU on their behalf</p>
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TERM/CONCEPT	BRIEF EXPLANATION
Workplace	<p>A workplace is any place where a worker goes or is likely to be while at work, or where work is being carried out or is customarily carried out.</p> <p>Most duties under HSWA relate to the conduct of work. However, some duties are linked to workplaces.</p> <p>When a New Zealand PCBU carries out work on a foreign-flagged vessel, it will be a workplace for workers of that PCBU</p>
