

Officers' due diligence duties

HEALTH AND SAFETY AT WORK ACT (2015) | GUIDANCE

What this guidance document contains

This guidance is aimed at maritime operators and explains the duty for company officers to exercise due diligence under the new Health and Safety at Work Act 2015 (HSWA). It explains who should be considered an officer, and focuses on how this duty applies to officers in the maritime sector.

What is a PCBU?

Under the HSWA, a PCBU is a 'person conducting a business or undertaking'. The word 'person' should not be taken literally. Normally the PCBU is an organisation – e.g. a company – but it can also be a self-employed person or a government agency.

A maritime operator is a PCBU. A business that works on a ship, but doesn't operate that ship, is also a PCBU.

Due diligence duty

Under the HSWA, 'officers' of a PCBU must exercise due diligence to ensure that their operation fulfills its health and safety duties. 'Due diligence' includes taking reasonable steps to:

- > keep up-to-date with knowledge of workplace health and safety matters
- > understand the work of the PCBU, and the hazards and risks associated with this work
- > ensure that the PCBU has appropriate processes and resources to minimise risks
- > ensure the PCBU has appropriate processes for receiving and considering information about incidents, hazards and risks
- > ensure the PCBU has processes for complying with the HSWA, and applies them.

Who is an officer in a maritime setting?

An 'officer' is a company director, a partner in a business partnership or a chief executive. Other people can also have duties as an officer. If anyone has significant influence over the management of the business, they are an officer. This will depend on the extent of their involvement in the management of the business.

'Responsible people' named in a Maritime Transport Operator Certificate (MTOC) who have had fit and proper person assessments will, in many cases, be considered officers under the HSWA. People managing a maritime operation and the resourcing of the operation are very senior people and are likely to be officers.

However, some large operations have multiple MTOCs covering groups of vessels within their fleet. The responsible person in the MTOC may be a 'middle manager' who is responsible for a group of vessels but not for the whole operation. These managers are not considered officers because they don't exercise significant influence over the management of the business.

Directors and senior managers (e.g. the chief executive) of a business that works on or around a ship, but doesn't operate that ship, (for example a marine surveying company, a stevedoring company, dive school, engineering firm or fish processor) are officers.

Owner-operators are officers because they own and run their businesses.

Who is not an officer?

Line managers, supervisors or health and safety advisors are not officers because they don't exercise significant influence over the management of the business.

A ship's officers are not officers under the HSWA unless they also own the operation or hold a senior role (such as chief executive) within it.

Under s19 of the Maritime Transport Act 1994 (MTA), the master of a ship has final authority on board, with significant duties to ensure the safety and wellbeing of passengers and crew. However, masters normally work for a ship operation as employees or contractors. This makes them a 'worker' under the HSWA.

How do officers exercise their due diligence duty?

How officers exercise their due diligence duty depends on the size of their operation, how it is run and the level of risk involved.

Owner operators can exercise due diligence by being directly involved in health and safety within the maritime operation.

Land-based directors and chief executives who have limited involvement in the day-to-day activities on ships may need to rely on information from others. For a maritime operator, this information may come from the master. For a business working on the ship, it could be the person in charge.

Land-based directors and chief executives don't have to be experts in health and safety, but they do need to make a reasonable effort to understand what questions they need to ask. Directors and chief executives may need to put in place structured processes to ensure that they meet their due diligence duty. They need to obtain credible information and follow up and challenge the information they are given where necessary. This is similar to the role that directors already play in tracking the financial performance of their companies – and they should place health and safety on an equal footing.

More information from Maritime NZ

This guidance is part of a series of guidance documents produced by Maritime NZ to assist operators and other businesses working on ships to understand their duties under the HSWA. This suite of guidance documents includes:

- > How MOSS and the HSWA work together
- > The roles of the ship operator and ship's master
- > Overlapping and upstream health and safety duties
- > Worker engagement, participation and representation
- > Duty to provide adequate facilities
- > Duty to safely manage asbestos
- > Officers' due diligence duties

For general information on the Health and Safety at Work Act

Visit the WorkSafe New Zealand website: <http://www.business.govt.nz/worksafe/hswa/legislation>