

PCBU duties for worker engagement and participation

This guidance is for PCBUs operating on a ship, a major port or the Cook Strait ferry terminals. It explains the duty to engage with workers and provide opportunities for worker participation and representation on health and safety matters.

This duty is required under 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).

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.

All types of working arrangements that we usually call 'businesses' are PCBUs. Some working arrangements that are not profit-making or commercial in nature are also PCBUs (for example, a yacht club paying one or more people to work for them).

In most cases a PCBU is an organisation rather than an individual.

Examples of types of PCBUs in the maritime sector include:

- business partners
- sole traders
- operators of commercial vessels
- businesses providing yacht charters.

Examples of types of PCBUs on major ports include:

- stevedoring companies
- log export companies
- trucking companies
- companies performing marshalling services.

1. What the law requires

Under HSWA, when you are a PCBU you must:

- engage, **so far as is reasonably practicable**, with your workers on health and safety matters, and
- have effective, ongoing ways for workers to participate in improving health and safety in your operation.



You can agree with your workers on the best way to meet these requirements, so long as you do meet the minimum legal requirements.

The law requires you to engage with your workers on health and safety matters so far as is reasonably practicable. What is reasonably practicable is different in each workplace and depends on the circumstances. For more detail about what you should consider in deciding what 'so far as is reasonably practicable' means for you, read the section 'Reasonably practicable' below.

HSWA requires you to engage with your workers and to have practices which allow workers to participate in improving health and safety, but it does not specify any particular systems to achieve this. You need to engage with your workers when you are developing procedures for engaging with workers or worker participation practices.

You only have to engage with the workers who carry out work for you. However, if there are other PCBUs on the same worksite as you, both of you share the responsibility to make sure workers on the site are safe. This is often referred to as overlapping duties. The other PCBU's workers are affected by what you do, and your workers are affected by what they do. You must work (HSWA specifically says 'consult, cooperate and coordinate') with the other PCBUs to make sure that all workers are safe everywhere on the worksite.

2. Engagement with workers

In this section we describe when you must engage with workers, and what engaging with workers means.

HSWA says that you must, so far as is reasonably practicable, engage with the workers who carry out work for you and who are likely to be affected by a work health and safety matter. If there are elected health and safety representatives (HSRs), the engagement must involve them.

When you engage with workers or their HSRs, you must take their views into account and let them know in a timely manner what will happen next.

Engagement does not mean that everyone has to agree – but everyone should have an opportunity to have a say. It is good practice to reach agreement, although it is not a legal requirement.

Reasonably practicable

HSWA requires you to engage with your workers on matters of health and safety that are likely to directly affect them. You must do this **so far as is reasonably practicable**.

We recommend that when you are considering what would be reasonably practicable in engaging with workers, you consider:

- the nature of the work that your business or undertaking carries out
- the nature and severity of a particular hazard or risk
- the ease of reaching workers who will be affected by a health and safety matter
- work arrangements, such as shift work, remote work, and temporary workers
- languages workers speak, and their literacy and numeracy (reading, writing and number) skills
- the availability of health and safety representatives or other worker representatives
- the nature of the decision or action required, including how urgent it is to make a decision or take action
- the size and structure of your business or undertaking.

Who do you have to engage with? (HSWA section 58)

You must engage with the workers who:

- carry out work for your business or undertaking, and
- are likely to be directly affected by a work health and safety matter.

You only have to engage with the workers who carry out work for you.

Example

A major port has a receiving area where trucks deliver a variety of types of cargo. The port has a duty to engage with workers that carry out work for it to the extent that it is reasonably practicable.

The port also has a duty to, so far as is reasonably practicable, keep their workers and workers whose work is influenced by their work healthy and safe.

Although the port oversees the receiving area it does not have to engage with every single person that comes onto the site. The port **has to** engage with workers that carry out work for its company – including workers from other businesses – about matters that are likely to directly affect their work health or safety.

However, the port **does not have to** engage with workers that are carrying out work for other businesses on the same site (for example, truck drivers who are delivering goods). Each business has its own duty to engage with its workers.

Who is a worker?

A worker is an individual who carries out work for you in any capacity. Workers might be:

- employees
- contractors or sub-contractors
- employees of contractors or sub-contractors
- employees of a labour hire company who have been assigned to work in the business or undertaking
- outworkers
- apprentices or trainees
- a person on work experience or a work trial.

Note

The worker engagement, participation and representation part of HSWA does not apply to:

- a volunteer or a volunteer worker
- a worker who is a prisoner carrying out work inside a prison.

Some HSWA provisions related to worker engagement, participation and representation do not apply to members of the armed forces in some circumstances. You can find more information on this in sections 7 and 13 of HSWA.

When you must engage with workers (HSWA section 60)

In addition to your general duty to engage with workers, HSWA specifies that you must engage when you are:

- identifying hazards and assessing risks to health and safety

- proposing changes that may affect workers' health or safety (see examples below)
- making decisions about:
 - ways to eliminate or minimise health and safety risks
 - procedures for resolving health or safety issues
 - whether facilities for workers' welfare (such as tearooms or toilets) are adequate
 - procedures for engaging with workers
 - procedures for monitoring workers' health
 - procedures for monitoring workplace conditions
 - procedures for providing information and training for workers
- developing worker participation practices, including when you are determining work groups for the election of health and safety representatives
- carrying out any other activity specified in the Regulations.

Examples of things to engage with your workers about

There are many issues, business decisions or actions that could affect workers' health and safety. You might consult with your workers about:

- a new or emerging risk to health and safety
- a new system, process or procedure
- changes to hours of work, shift work rosters, timing or completion deadlines
- plans for a new project
- a new approach to controlling risk
- changes to personal protective equipment (PPE) or other equipment
- a proposal to begin monitoring workers' health
- working with new substances onsite
- reduction of staff
- a review of control measures
- emergency planning.

There are also factors external to the company that can affect workers' health and safety. You might engage with your workers about such factors as:

- daylight saving
- seasons
- weather (extreme cold or heat)
- government policy
- new legislation
- changes to maritime rules.

How you must engage (HSWA section 59)

When you engage with workers, you must:

- provide relevant information about health and safety matters to workers in a timely manner
- give workers a reasonable opportunity to:

- express their views
- raise health or safety issues in relation to the matter
- contribute to the decision-making process relating to the matter
- take workers' views into account, and
- inform workers of the outcome of the engagement in a timely manner.

Examples of good practice

There are many different ways you can engage well with your workers. This section includes some examples of approaches you can take to engagement that are good practice.

- Take an active approach to engagement.
- You can engage with workers directly or through representatives.
- Use a mix of formal and informal approaches to encourage workers to respond.
- Engage with your workers regularly. Engaging is not a one-time activity but an ongoing part of work culture, so engage often and continue to engage.
- Remember that health and safety can be affected by how work is organised as well as changes in production, technologies, equipment or working methods.
- Engaging with workers at the start of a project or activity can help you to make better decisions about how to proceed with that project.

3. Prohibition of adverse, coercive or misleading conduct (HSWA sections 90, 92 and 93)

HSWA says you must not engage in **adverse**, **coercive** or **misleading** conduct towards workers for carrying out health and safety-related activities or functions, or induce (influence) another person to engage in this type of conduct. You can find information about what adverse, coercive and misleading mean below.

If you do act in any of these ways towards someone for carrying out health and safety-related activities, it may be an offence under HSWA, and you can be prosecuted.

Adverse conduct includes discriminating against a worker or other person, or taking other negative steps against them, including dismissing them.

Coercing someone includes using force or threats to make them do something. For example, if a supervisor tells a worker that they will be disciplined or fired if they report a particular hazard, the supervisor is trying to coerce the worker not to report the hazard.

Misleading means knowingly or recklessly doing or saying something to give another person the wrong idea or impression about their rights or obligations under HSWA. For example, if someone tells a worker that their employer/PCBU doesn't have to engage with them when they are looking at risk management on their worksite, they are misleading them.