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Does Your Workplace Have Gaps in WHS Compliance?

Despite their good intentions and actions, PCBUs and Officers may sometimes find that one or more of their workers are injured. The PCBU and/ Officers then discover they were not compliant with all WHS duties, and perhaps SafeWork NSW is now investigating the workplace incident.

When SafeWork NSW completes their investigation they will consider if they will prosecute and who they will prosecute. They use the guidelines set out in *SafeWork NSW Prosecution Guidelines Jan 2018*. Section 3.20 of those Guidelines tells us that;

“When making decisions concerning prosecution of officers of corporations under the WHS Act, particular regard will be paid to the steps taken by such persons to ensure compliance by the corporation with the Act.

Officers of a PCBU must exercise due diligence to ensure that the PCBU complies with its WHS duties and obligations. To meet this obligation, officers are required to take reasonable steps to exercise due diligence including, for example, keeping up to date with WHS matters, and having appropriate processes and systems in place.”

An effective way of dealing with this is for a PCBU or Officer to undertake a review of the state of WHS compliance in their workplace at regular intervals.

The importance of reviews and the standard of due diligence was covered in a NSW case, WorkCover Authority (NSW) (Inspector Mansell) v Daly Smith Corporation (Aust) Pty Ltd and Smith, where it was observed that due diligence:

“..is not done by merely hoping others would or could do what they were told, but also ensuring they have the skills to execute the job they are required to do and then ensuring compliance with that in accordance with the safe standards established.

Compliance requires a process of review and auditing, both formal and random, in order to ensure that the safe standards established are in fact being adhered to and under ongoing review”.

Compliance with WHS laws is particularly important for a PCBU and its officers because under the WHS Act:

- A PCBU has the primary duty of care for workers and others, and must eliminate, or minimise so far as reasonably practicable, risks to health and safety (Section 19 WHS Act)
- An Officer must exercise due diligence to ensure that the PCBU complies with any duty or obligation they have under the WHS Act (Section 27 WHS Act).

A review such as a WHS Legislative Compliance Gap Analysis is a valuable tool that you could use to help identify gaps in WHS compliance in your workplace so that you can take appropriate actions in time to safeguard health and safety.

You could review your WHS policy and associated documentation against the mandatory and applicable sections of the WHS Act 2011 and clauses of the WHS Regulation 2017 that your company is required to be in compliance with. Then provide that report including your recommendations to the PCBU and the Officers of the PCBU.

Note:

1. You can download a copy of SafeWork NSW Prosecution Guidelines Jan 2018 by copy/pasting this link
https://www.safework.nsw.gov.au/__data/assets/pdf_file/0012/50160/SW08683-0318-402497.pdf
2. Download WHS Legislative Compliance Analysis outline [HERE](#)
3. Download Officer WHS Due Diligence Audit outline [HERE](#)

4th June 2019