



Courtenell

Work Health & Safety Training and Consulting

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How to Comply with WHS Consultation Requirements

We often get questions from clients who are looking for answers to what do they have to do to comply with consultation requirements in the WHS Act and WHS Regulation. Questions such as;

Do we have to have a Health & Safety Committee?

How do we handle workgroups?

How can we consult our workers and be WHS compliant?

If we appoint and train a person as HSR for our workplace will that be enough to satisfy legal requirements?

We are happy to help clients with answers that will help them to comply with the mandatory requirements of consultation. And to back that up we decided to publish this article.

What Consultation Arrangements Can PCBU's use?

The, *Work Health & Safety Consultation, Co-operation and Co-ordination Code of Practice*, page 12, tells us that:

"Consultation with workers can be undertaken in various ways." It can "be undertaken through health and safety representatives and health and safety committees.

However, the WHS Act does not require the establishment of these consultation mechanisms, unless:

- *in relation to a health and safety representative – a request is made by a worker*
- *in relation to a health and safety committee – a request is made by 5 or more workers or a health and safety representative."*

A PCBU "*.. may establish any arrangements for consultation to suit your workers and workplace situations, including agreed consultation procedures, as long as those arrangements are consistent with the requirements of the WHS Act."*

In NSW workplace consultation is carried out using;

- HSR's
- A Health & Safety Committee
- A Health & Safety Committee including HSR's as members
- Only Other Agreed Arrangements
- Other Agreed Arrangements together with one or more of the above items.

Now that all sounds simple enough but that is not sufficient to be fully compliant with WHS consultation law.

The PCBU's Consultation Duties

A PCBU has a duty to consult with Workers so far as is reasonably practicable, about health & safety matters, and to consult, co-operate, and co-ordinate activities with other duty holders who have a duty about the same matter – WHS Act Sections 46 - 47.

Regardless of what system the PCBU uses to consult with Workers, a PCBU must satisfy the requirements set out in the WHS Act Sections 48 and 49. The Code of Practice tells us that Section 48 of the WHS Act sets out the nature of that consultation. It requires that:

- “relevant work health and safety information is shared with workers
- workers are given a reasonable opportunity to express their views and to raise health or safety issues
- workers are given a reasonable opportunity to contribute to the decision-making process relating to the health and safety matter
- the views of workers are taken into account, and
- workers are advised of the outcome of any consultation in a timely manner”

And the Code of Practice tells us that Section 49 requires that “A person conducting a business or undertaking must consult with workers when:

- *identifying hazards and assessing risks arising from the work carried out or to be carried out*
- *making decisions about ways to eliminate or minimise those risks*
- *making decisions about the adequacy of facilities for the welfare of workers*
- *proposing changes that may affect the health or safety of your workers, and*
- *making decisions about procedures for consulting with workers; resolving health or safety issues; monitoring health of your workers; monitoring the conditions at the workplace and providing information and training for your workers.”*

The Role of Managers, Supervisors and Team Leaders

The PCBU has a duty to consult but it is the Managers, Supervisors and Team Leaders who must carry out the necessary actions that will make that a consistent reality. And that will require a system and agreed procedures that ensure that consultation compliance is achieved for your workplace.

Recommendation

This article is too short to be able to cover all the consultation requirements but we do recommend the *Work Health & Safety Consultation, Co-operation and Co-ordination* Code of Practice, (28 pages), as an excellent resource for guidance on workplace consultation.

Note

Courtenell has 2 courses to help clients achieve compliance with WHS consultation requirements;

1. Consultation Compliance in NSW – click [HERE](#) for the course outline.
2. Understanding the Role of Your HSR's – click [HERE](#) for the course outline.

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