

# DRAFT FOR CONSULTATION

## Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016

Governor-General

### Order in Council

At Wellington this                      day of                      2016

Present:  
in Council

Pursuant to sections 211 and 214 of the Health and Safety at Work Act 2015, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety made after complying with section 217(1) of that Act.

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**Health and Safety at Work (Worker Engagement,  
Participation, and Representation) Regulations 2016**

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## Regulations

### 1 Title

These regulations are the Health and Safety at Work (Worker Engagement, Participation, and Representation) Regulations 2016.

### 2 Commencement

These regulations come into force on 4 April 2016.

## Part 1

### Preliminary provisions

### 3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

**Act** means the Health and Safety at Work Act 2015

**additional training** means training about work health and safety, or an aspect of work health and safety, that is within the occupational health and safety sub-field of the New Zealand Qualifications Framework

**annual training entitlement** means the training entitlement that a health and safety representative has under clause 12(1)(a)(i) of Schedule 2 of the Act

**ANZSIC classification code** means the *Australian and New Zealand Standard Industrial Classification (New Zealand Version) 2006*—

- (a) published by Statistics New Zealand in chapter 8 of the ANZSIC 2006 Manual; and
- (b) accessible at <http://www.stats.govt.nz/methods/classifications-and-standards/classification-related-stats-standards/industrial-classification.aspx>

**initial training** means the training required to be completed by health and safety representatives—

- (a) under section 70(a) of the Act (in order to issue a provisional improvement notice); and
- (b) under section 85(a) of the Act (in order to direct unsafe work to cease); and

- (c) that covers the content required to achieve the New Zealand Qualifications Authority unit standard [version number of unit standard]

**specified date** has the meaning given in regulation 26(3).

- (2) Unless the context otherwise requires, terms and expressions that are used, but not defined, in these regulations have the same meanings as in the Act.

#### **4 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

## **Part 2**

### **Worker engagement, participation, and representation**

#### Subpart 1—High-risk sectors or industries

#### **5 High-risk sectors or industries for purposes of sections 62(4)(b) and 66(3)(b) of Act**

- (1) For the purposes of sections 62(4)(b) and 66(3)(b) of the Act, the high-risk sectors or industries—
- (a) include a business or undertaking that is subject to any of the following regulations:
    - (i) Health and Safety at Work (Adventure Activities) Regulations 2016;
    - (ii) Health and Safety at Work (Major Hazard Facilities) Regulations 2016;
    - (iii) Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016;
    - (iv) Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016; and
  - (b) include a business or undertaking operating predominantly in a high-risk sector or industry specified using any of the ANZSIC industrial classification codes listed in Schedule 2; but
  - (c) exclude a business or undertaking that is carrying out work of a type or in a sector as specified in the third column of Schedule 3 (**Schedule 3 work**) if—
    - (i) the business or undertaking only carries out Schedule 3 work and no other type of work; or
    - (ii) the Schedule 3 work carried out by the business or undertaking is in conjunction with any other type of work and the Schedule 3 work is predominant, relative to all other work carried out by that business or undertaking.

- (2) This regulation and Schedules 2 and 3—
  - (a) may be reviewed by the Minister at any time; but
  - (b) must be reviewed by the Minister—
    - (i) not later than 5 years after the date of the commencement of these regulations; and
    - (ii) at least once every 5 years after the date of the first review.

### Subpart 2—Work groups

#### **6 Minimum ratio of health and safety representatives to workers in work groups**

- (1) The minimum ratio of health and safety representatives for a work group referred to in section 65(1) of the Act is 1 representative for every 19 workers.
- (2) For the purposes of applying subclause (1), if the number of workers divided by 19 does not equal a whole number, the number of health and safety representatives to be elected is increased to the next whole number.

#### **7 Determination of work groups**

- (1) This regulation sets out the prescribed requirements referred to in sections 64(4)(b) and 65(2) of the Act.
- (2) If section 64(3) of the Act applies, the PCBU must have regard to—
  - (a) the number of workers:
  - (b) the views of workers in relation to—
    - (i) the determination or variation of work groups:
    - (ii) the number of health and safety representatives to be elected:
  - (c) the number of different places of work for the workers and the distances between those places:
  - (d) the number and grouping of workers who carry out the same or similar types of work:
  - (e) the nature of the areas or places where each type of work is carried out:
  - (f) the extent to which any worker must move from place to place while at work:
  - (g) the diversity of workers and their work:
  - (h) the nature of any hazards or risks to the health and safety of workers at the workplace or workplaces:
  - (i) the nature of the working arrangement of each worker, for example, as an employee or as a contractor:
  - (j) the pattern of work carried out by workers, for example, whether the work is full-time, part-time, casual, or fixed-term:

- (k) the times at which work is carried out:
- (l) any arrangements at the workplace or workplaces that relate to overtime or shift work.

Compare: Model Work Health and Safety Regulations r 17 (Aust)

## **8 Withdrawal from and variation of agreements concerning multiple PCBU work group arrangements**

- (1) This regulation applies in relation to a multiple PCBU work group arrangement referred to in section 64(5) of the Act.
- (2) A PCBU may withdraw from an agreement or negotiations for an agreement concerning a work group at any time by giving reasonable notice to the other parties.
- (3) If a PCBU withdraws from an agreement or negotiations for an agreement concerning a work group, the withdrawal does not affect the validity of any agreement reached between the original or remaining parties.

Compare: Model Work Health and Safety Act s 58 (Aust)

### Subpart 3—Health and safety representatives

#### *Eligibility*

## **9 Eligibility to nominate candidates**

- (1) A member (**person A**) of a work group may nominate a candidate (**person B**) for election as a health and safety representative for the work group if person B is eligible to stand for election under regulation 10.
- (2) A worker may nominate himself or herself as a candidate for election as a health and safety representative.

## **10 Eligibility to stand for election**

A person is eligible for election as a health and safety representative for a work group if the person—

- (a) is a worker who is a member of that work group; and
- (b) is willing to act as a health and safety representative; and
- (c) works sufficiently regularly and for a sufficient amount of time to be able to carry out the functions and to exercise the powers of a health and safety representative effectively.

Compare: Model Work Health and Safety Act s 60 (Aust)

## **11 Eligibility to vote at election**

A person is eligible to vote at an election for a health and safety representative if the person—

- (a) is a worker; and

- (b) is a member of the work group in respect of which the election is conducted.

Compare: Model Work Health and Safety Act s 62 (Aust)

### *Election procedures*

#### **12 Timing of election requested by worker**

- (1) If a PCBU is required to initiate an election under section 62(1) of the Act, the prescribed time referred to in section 62(2) of the Act is within 3 months of the date on which the notification is received by the PCBU.
- (2) A PCBU must carry out the duties described in regulation 16(1)(b) to (e) within the time prescribed in subclause (1).

#### **13 Elections**

- (1) An election for a health and safety representative—
  - (a) may be undertaken in any form; and
  - (b) may be conducted by—
    - (i) the PCBU or PCBUs concerned;
    - (ii) a worker or workers in the business or undertaking;
    - (iii) a representative (within the meaning of section 16 of the Act);
    - (iv) any combination of persons referred to in subparagraphs (i) to (iii), acting together.
- (2) However, a candidate for election may not be involved in the conduct of the election.
- (3) Subclause (1)(a) is subject to regulation 14.

#### **14 Secret ballots**

An election of 1 or more health and safety representatives must be conducted by secret ballot if a secret ballot is requested by—

- (a) a member of the work group; or
- (b) a candidate for election; or
- (c) the PCBU or PCBUs.

#### **15 Candidates elected if nominations fewer than or equal to vacancies**

- (1) If the number of candidates for election as a health and safety representative for a work group is fewer than or equal to the number of vacancies, the election need not be conducted and each candidate is treated as having been elected as a health and safety representative for the work group.
- (2) If there are no candidates for election as a health and safety representative for a work group, the election need not be conducted.

Compare: Model Work Health and Safety Act s 63 (Aust)

**16 Duties of PCBU in relation to election**

- (1) A PCBU to whom a work group relates must—
  - (a) provide the resources, facilities, and assistance that are reasonably necessary to conduct an election of 1 or more health and safety representatives, including the payment of any costs associated with—
    - (i) providing information about candidates to workers; and
    - (ii) determining the method, date, times, and location of the election; and
    - (iii) the calculation of results; and
    - (iv) the communication of the results to relevant parties; and
  - (b) inform the workers in the business or undertaking—
    - (i) of the work group they are in; and
    - (ii) of the number of health and safety representatives to be elected for that work group; and
  - (c) provide the representatives of those workers, if any, with a copy of the information provided under paragraph (b); and
  - (d) call for nominations from workers for candidates, specifying a reasonable time frame in which workers must respond; and
  - (e) based on the number of nominations received, determine whether an election needs to be held and notify workers of that decision.
- (2) If the work group relates to more than 1 PCBU, those PCBUs must—
  - (a) comply with the requirements of subclause (1); and
  - (b) consult each other about the way in which they will comply with those requirements.
- (3) A PCBU who fails to comply with subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Act s 61(4) (Aust); Model Work Health and Safety Regulations r 18 (Aust)

**17 Prohibition on unreasonable delay of election**

- (1) No person may unreasonably delay the progress of an election for a health and safety representative.
- (2) A person who fails to comply with subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$6,000;

(b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations r 19 (Aust)

*Office of health and safety representatives*

**18 Term of office for health and safety representatives**

- (1) A health and safety representative—
- (a) holds office for—
    - (i) a term not exceeding 3 years; or
    - (ii) a lesser period agreed between the PCBU and the members of the relevant work group; and
  - (b) may be re-elected for any number of terms; and
  - (c) if the PCBU agrees, remains in office after the expiry of his or her term until a successor to that representative is elected under this Part.
- (2) This regulation is subject to regulation 19.

Compare: Model Work Health and Safety Act s 64 (Aust)

**19 Resignation and removal from office of health and safety representatives**

- (1) A health and safety representative of a work group may resign from office at any time by giving notice to the relevant PCBU for that work group.
- (2) A health and safety representative ceases to hold office if—
- (a) that representative ceases to be a member of the work group that he or she was elected to represent; or
  - (b) that representative is removed from office under clause 17 of Schedule 2 of the Act; or
  - (c) a simple majority of the members of the work group resolve that the representative should no longer represent the work group.

Compare: Model Work Health and Safety Regulations r 20 (Aust)

**20 List of health and safety representatives to be displayed**

- (1) A PCBU to which 1 or more work groups relate must ensure that a list of the names and contact details of health and safety representatives for each work group—
- (a) is displayed prominently in the workplace and in such a manner that it is readily accessible; and
  - (b) is updated whenever there is a change in health and safety representatives for that work group.
- (2) A PCBU who contravenes subclause (1) is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$2,000:

(b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Act s 74 (Aust)

### *Training*

#### **21 Types of health and safety representative training**

A health and safety representative may use his or her annual training entitlement to attend either initial training or additional training.

#### **22 Meaning of completed initial training**

For the purposes of sections 70(a) and 85(a) of the Act, a health and safety representative has **completed initial training** when he or she is assessed as having achieved the New Zealand Qualifications Authority unit standard [version number of unit standard].

#### **23 Choice of training course**

A health and safety representative may choose a training course (whether initial or additional training) in consultation with the PCBU about the time, date, and location of the training.

#### **24 PCBU to allow access to and provide funding for training**

- (1) A PCBU must allow a health and safety representative to use his or her annual training entitlement to attend initial or additional training—
  - (a) as soon as practicable; and
  - (b) in any event, no later than 3 months after receiving a request for training from the health and safety representative.
- (2) Subclause (1) is subject to the maximum total number of days' paid leave specified in regulation 26.
- (3) The PCBU must—
  - (a) pay the health and safety representative's training fees; and
  - (b) pay the health and safety representative, in advance, for any other reasonable expenses that he or she may incur in attending training (including the cost of travel and accommodation); and
  - (c) reimburse the health and safety representative for any other reasonable expenses that he or she actually incurs in attending the training that are not covered by the payment made under paragraph (b).
- (4) A PCBU who fails to comply with subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

- (5) A PCBU who fails to comply with subclause (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act s 72 (Aust)

**25 Sharing of costs for training in multiple PCBU arrangements**

If the work group for a health and safety representative relates to more than 1 PCBU, the PCBUs concerned must pay and equally share the costs referred to in regulation 24(3), unless they agree otherwise.

Compare: Model Work Health and Safety Act s 73 (Aust)

**26 Maximum total number of days’ paid leave PCBU must allow for training**

- (1) For the purposes of clause 12(2) of Schedule 2 of the Act, the maximum total number of days’ paid leave that a PCBU is required to allow for training is determined by applying subclauses (2) and (3).
- (2) The maximum total number of days’ paid leave that a PCBU is required to allow in a year is based on the number of workers who work for the business or undertaking as at the specified date in the year, and is determined in accordance with the following table:

<b>Workers as at specified date in year</b>	<b>Maximum total number of days’ paid leave that PCBU is required to allow to be taken</b>
1–5	2
6–50	6
51–280	1 day for every 8 workers or part of that number
281 or more	35 days plus 5 days for every 100 workers or part of that number

- (3) In this regulation, **specified date** means 1 April.

Compare: 1992 No 96 s 19F

**Subpart 4—Health and safety committees**

**27 Notice of decision on health and safety committee**

For the purposes of section 66(6)(b) of the Act, the time within which a PCBU must give written notice of its decision under section 66(2) of the Act as to whether to establish a health and safety committee is 14 days after the date of the decision.

**28 Membership of health and safety committees**

- (1) The PCBU who establishes a health and safety committee for a workplace (or part of a workplace) and the workers at that workplace (or their representatives) must agree on the membership of the health and safety committee.

- (2) However,—
- (a) one of the members appointed by the PCBU to the committee must be authorised by the PCBU to make decisions on behalf of the PCBU on health and safety issues; and
  - (b) at least half of the members on the committee—
    - (i) must be workers and must represent the workers at the workplace; and
    - (ii) must not have been nominated by the PCBU; and
  - (c) each health and safety representative who consents to be a member of the committee is eligible to be a member of the committee.

Compare: Model Work Health and Safety Act s 76 (Aust)

## **29 Meeting requirements for health and safety committees**

A health and safety committee must meet—

- (a) regularly at the times agreed by the members of the committee, but at least once every 3 months; and
- (b) at any other reasonable time on the request of a simple majority of members of the committee.

Compare: Model Work Health and Safety Act s 78 (Aust)

## **Subpart 5—Specified issues for purposes of section 99(3) of Act**

### **30 Issues that inspectors may decide under section 99(3) of Act**

- (1) For the purposes of section 99(3) of the Act, the issues are as follows:
- (a) the time, date, and place of training for a health and safety representative referred to in regulation 23;
  - (b) the amount or nature of the reasonable expenses referred to in regulation 24(3)(b) and (c);
  - (c) the membership of a health and safety committee referred to in regulation 28.
- (2) A PCBU who fails to comply with a decision of the inspector about any matter referred to in subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Act ss 72, 76 (Aust)

## Schedule 1

### Transitional, savings, and related provisions

r 4

#### 1 Transitional, savings, and related provisions

A person must be treated as having completed initial training if,—

- (a) immediately before the commencement of these regulations, he or she was a trained health and safety representative (within the meaning of section 46A(1) of the Health and Safety in Employment Act 1992); and
- (b) before, on, or after the commencement of these regulations, he or she completes transitional training.

#### 2 Meaning of transitional training

In clause 1, **transitional training** means training of a kind that is notified in the *Gazette* by the chief executive of the department for the time being responsible for the administration of these regulations.

## Schedule 2

### High-risk sectors or industries

r 5(1)(b)

ANZSIC classification code	High-risk sectors or industries
A02	Aquaculture
A03	Forestry and logging
A04	Fishing, hunting, and trapping
B06	Coal mining
C11	Food product manufacturing
D28	Water supply, sewerage, and drainage services
D29	Waste collection, treatment, and disposal services
E30	Building construction
E31	Heavy and civil engineering construction
E32	Construction services

### Schedule 3

#### Types of work or sectors excluded from high-risk sectors or industries

r 5(1)(c)

ANZSIC classification code	Sector or industry	Work type/sector excluded
A02	Aquaculture	
A0203		Onshore aquaculture
A03	Forestry and logging	Forest product gathering, which comprises— Kauri gum digging Native orchid gathering Pine cone gathering Resin gathering Mushroom gathering
A04	Fishing, hunting, and trapping	Hunting or trapping of certain non-New Zealand species which comprises— Turtle hunting Buffalo hunting Crocodile hunting Dingo hunting or trapping Kangaroo hunting Snake catching
C11	Food product manufacturing	
C117		Bakery product manufacturing when carried out in the home
C1174		Bakery product manufacturing (Non-factory based)
E32	Construction services	Curtain installation Fly wire screen installation

Clerk of the Executive Council.

#### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 4 April 2016,—

- prescribe matters relating to work groups, health and safety representatives, and health and safety committees; and

- specify the health and safety issues that an inspector, appointed by the regulator, may assist the parties in resolving.

*Part 1* (preliminary provisions)—

- defines or refers to the terms that are used or defined in these regulations:
- refers to *Schedule 1*, which deals with transitional, savings, and related provisions.

*Part 2* (worker engagement, participation, and representation) is divided into 5 subparts.

*Subpart 1* (high-risk sectors or industries), in *regulation 5*,—

- specifies the high-risk sectors or industries for the purposes of sections 62(4)(b) and 66(3)(b) of the Health and Safety at Work Act 2015 (the **Act**):
- refers to *Schedule 2* where those sectors or industries are further specified:
- excludes some businesses or undertakings that are exclusively or predominantly carrying out work of a type, or in a sector, as specified in *Schedule 3*.

*Regulation 5* and the associated *Schedules 2 and 3* are subject to review by the Minister at any time, but before 4 April 2021, and then once every 5 years.

The ANZSIC classification codes referred to in *regulation 5(1)(b)* are accessible at <https://www.businessdescription.co.nz/#/home>

*Subpart 2* (work groups)—

- prescribes the minimum ratio of health and safety representatives to workers to be maintained in a default work group comprising all the workers in the business or undertaking:
- prescribes the requirements for determining work groups, if the PCBU considers that the default work group comprising all the workers in the business or undertaking would be inappropriate for the business or undertaking:
- prescribes the requirements for withdrawal from, and variation of, agreements concerning multiple PCBU work group arrangements.

*Subpart 3* (health and safety representatives)—

- specifies, in relation to elections for health and safety representatives, who is eligible to—
  - nominate candidates for elections; and
  - stand for elections; and
  - vote at elections:
- prescribes election procedures, including duties of a PCBU in relation to an election of 1 or more health and safety representatives:
- prescribes the term of office of health and safety representatives:
- provides for the resignation of health and safety representatives and the procedure for removing a health and safety representative:

- requires a PCBU to display a list of the names and contact details of health and safety representatives for each work group:
- provides for the training of health and safety representatives, including—
  - types of training for health and safety representatives:
  - requiring PCBUs to allow health and safety representatives access to training, pay the costs of, and reasonable expenses for, training, and sharing the costs of training in multiple PCBU arrangements:
  - prescribing the maximum total number of days' paid leave a PCBU must allow for health and safety representative training.

*Subpart 4* (health and safety committees)—

- prescribes the time within which a PCBU must give written notice of its decision whether to establish a health and safety committee for the business or undertaking, or part of the business or undertaking:
- provides for the membership of health and safety committees:
- provides the meeting requirements for health and safety committees.

*Subpart 5* (issues that inspectors may decide under section 99(3) of the Act) specifies the health and safety issues that an inspector, appointed by the regulator, may assist the parties in resolving.

### **Regulatory impact statement**

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 10 March 2015 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-adi-mar15.pdf/view>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation, and Employment.