



## Easy HR Pty Ltd

ABN 67 100 061 747

PO Box 1190  
Lane Cove, NSW, 1595

Phone – (02) 9412 3110

Fax – (02) 9412 3140

<http://www.easyhr.com.au>

Easy HR Newsletter  
September 2003

**Welcome to your FREE edition of the Easy HR Newsletter.**

**Please forward this newsletter to anybody that you feel may benefit or enjoy the articles.**

Please forward articles comments or suggestions to [easyhr@easyhr.com.au](mailto:easyhr@easyhr.com.au).



## NSW OHS ACT SPECIAL EDITION

This is free opt-in newsletter. You have received this newsletter because you subscribed or indicated that you wished to subscribe at one of our training courses, via a promotional flyer, or when visiting our website. If you have received this newsletter from a friend you may subscribe by sending an email to: [newsletter@easyhr.com.au](mailto:newsletter@easyhr.com.au) – put **subscribe** in the subject line.

**Disclaimer:**

This email is intended for general information purposes only and should not be taken to constitute advice. Further, as the information is extracted from external sources, and while all care is taken, Easy HR Pty Ltd cannot guarantee the accuracy of the information contained within this email. Any images or graphics used in this newsletter do not necessarily indicate a safe method of work. Images and graphics are used for illustrative purposes only. An independent risk assessment and safe work method statement should be independently developed by all organisations.

# Easy HR Training Update

## OHS Consultation

### Workcover NSW Accredited

This course is compulsory training for OHS committee members and OHS representatives.

We still have vacancies on our 4 day public courses held at Parramatta. Our Parramatta venue has plenty of free onsite parking.

September 16, 17, 23 24  
October 15, 17, 22, 24  
November 6, 7, 13, 14  
December 9, 10, 16, 17

**Course Cost: \$450.00+\$45.00 GST = \$495.00.**

## Risk Management For Line Managers & Supervisors

### Workcover NSW Accredited

We still have vacancies on our 2 day public courses held at Parramatta.

September 29, 30  
November 20, 21

**Course Cost: \$370.00+\$37.00 GST = \$407.00.**

## Manual Handling Awareness

### Workcover NSW Accredited

Understand the requirements of the Manual Handling National Code of practice, and how to identify and eliminate manual handling hazards in the workplace.

Apply now for our ½ day public course at Parramatta.

**Course Cost: \$150.00+\$15.00GST = \$165.00**

October 10  
December 15

## Accident Investigation

### There is no Workcover NSW Accredited Course

This course covers the processes involved in systematically investigating incidents, and identifying the underlying cause or real cause. Understanding and identifying the real cause of an accident is paramount in minimising workplace incidents.

Apply now for our ½ day public course at Parramatta.

**Course Cost: \$150.00+\$15.00GST = \$165.00**

November 19

### Apply for a course

To obtain a public course application form, visit our website or send a blank email to [apply@easyhr.com.au](mailto:apply@easyhr.com.au). Our automatic secretary will send you an application form.

**All our public courses can be conducted in-house, anywhere within NSW.**

Please contact us for details – [inhouse@easyhr.com.au](mailto:inhouse@easyhr.com.au)

# The NSW OHS Act – Unravelling

As of 1 September 2003, the transitional arrangements affecting the *NSW Occupational Health and Safety (OHS) Act 2000* and the *NSW Occupational Health and Safety Regulation 2001* end. When the act was introduced on 1 September 2001, a changed and more rigorous regulatory environment for occupational health and safety was introduced into New South Wales.

The *NSW Occupational Health and Safety (OHS) Act 2000* combined with the *NSW Occupational Health and Safety Regulation 2001* provides for a more systematic approach to ensuring a safe workplace. It could be argued that these two pieces of legislation represent perhaps the most radical change to workplace safety, and one that has significant implications for workers, managers, and employers. The act and the regulation are two documents that must be complied with by all workplaces within NSW. Failure to comply with either document, may result in significant penalties, or even imprisonment.

The new OHS Act and Regulation represent a consolidation of safety law in NSW. Together, these two pieces of legislation replace three former Acts and around 40 regulations. They make it far easier for employers and employees to locate and understand their rights and obligations in relation to a particular health and safety issue.

Both documents are available as a free download from the workcover website.

<http://www.workcover.nsw.gov.au>

The New South Wales Occupational Health and Safety Act, 2000 aims to secure the health, safety and welfare of people at work. It lays down general requirements which must be met at places of work in New South Wales. The provisions of the Act cover every place of work in New South Wales. The Act covers self employed people as well as employees, employers, contractors and other visitors.

A key benefit of the new OHS Act and Regulation, is that it recognises the complex nature of the modern workplace. No longer are OHS issues simply relegated to the factory or the construction site. Instead, one of the objects of the new Act is to promote a safe and healthy work environment for all workers. Notably the act requires employers to ensure the health safety and welfare of all employees. Employers are therefore responsible for ensuring that the workplace is adapted to workers' physiological and psychological needs. This could include rest breaks, toilet facilities as well as harassment.

While many of the legal duties contained in the earlier NSW OHS Act 1983 are still relevant, it would be a mistake to dismiss the legislative changes as the old act in a new cover. Under the previous OHS Act the duty on employers was stated as "shall" ensure a safe workplace. Under the new Act it is stated as the employer "must" ensure a safe workplace. §8(1). The Act clearly states that this duty "is without limitation" with regard to amongst other things the system of work and the working environment. Section 8 of the OHS act clearly places the responsibility of identifying and controlling hazards on the shoulders of employers. In terms of this process, the act specifically mentions that the employer must ensure that any machinery or equipment being used is safe, that all work systems are safe, and that relevant safety information, training or supervision is provided.

This means that the employer must amongst other things, perform a risk assessment, develop safe systems of work for tasks performed at the workplace, provide training, supervision and ensure that any equipment used is used correctly, and that it receives the appropriate servicing or inspection.

Similarly, The OHS Regulation requires employers to identify hazards arising from work practices and systems, including psychological hazards and fatigue related hazards and the potential for workplace violence.

An important theme throughout the Act and the Regulation is the requirement to adopt and document a risk management approach. The employer is required to identify hazards and assess risks arising out of workplace activities, and to put in place a system which either eliminates or controls the risks. The regulations discuss the concept of *Hierarchy of Controls*, a set of standard control measures that must be considered when taking action to eliminate or control a hazard.

The new OHS laws contain provisions that require employers to consult with employees on health and safety matters. Significant penalties apply for failing to do so. It also introduces the concept of OHS Representatives and expands the opportunities for OHS Committees. The new arrangements require compulsory training for OHS committee members and representatives. An important point is that the legislation recognises that each workplace is different, and as a result it allows a high degree of flexibility as to how workplace consultation can be implemented. These options are all included in the compulsory committee member and representative training.

In addition the Act (§18) says that the functions of the OHS committee members and OHS representatives are to keep OHS systems under review, and to investigate any matter that may be a risk to health and safety at the place of work. Clearly this involvement is aimed to ensure that those working within the systems have an opportunity to comment on the safety of the system. A practical application of this requirement can be illustrated by using the example of a piece of machinery. In most cases those operating the machinery would be most familiar with the risks associated with the machinery, and should therefore have an input into the development of safe work method statements for using that equipment. Importantly, although the act says (§18) that “the views of the employees must be valued and taken into account.” this should not be interpreted as “what the employees say goes”. Ultimately responsibility for OHS remains with the employer, and as such the final decision will be theirs. However in making this decision, the employer should provide due consideration to the OHS issues raised by the OHS representative or Committee.

The new OHS Act seeks to address the issue of corporate responsibility for safety, by stating that an offence of the corporation is taken as an offence by the directors and each person concerned in the management of the corporation. (§26). It is important for any person who exercises a managerial responsibility to be aware that under this section, they could face prosecution over workplace safety. The maximum financial penalty is \$55 000 for first offenders, while the ceiling is raised to \$82 500 plus a maximum of 2 years gaol for previous offenders. It is worth noting that it is up to the director or manager concerned to satisfy the court that they were not in a position to influence the conduct of the corporation, or that they used all due diligence to prevent a breach of the Act. In effect the director or manager is guilty until proven innocent. Put simply, if you are a manager at a workplace and accident occurs, you may be prosecuted as an individual by Workcover. It would then be up to you to prove to the court that you had used all due diligence to eliminate hazards in the workplace.

One of the lesser known sections of the new Act relate to the duties and obligations of Employees. Section 20 of the OHS Act allows for a penalty of up to \$3 300 for first offenders, and \$4 950 for previous offenders. In order to avoid this penalty, an employee must “*while at work, take reasonable care for the health and safety of people who are at the employee's place of work and who may be affected by the employee's acts or omissions at work.*” In order to comply with the above, it would be expected that employees work safely, and take action to report or eliminate hazards that they may encounter in the workplace. In addition, employees would be expected to co-operate with their employer in order to ensure compliance under the OHS act. Simply stated, if an employer implements a safe operating procedure, or a safe work method statement, the employee is legally obligated to comply. If a worker fails to wear appropriate personal protective equipment (gloves, eye protection, sunscreen, high visibility clothing, etc) and the employer has requested them to wear that equipment, then they are in breach of section 20 of the OHS act, and may be fined.

The transitional arrangements for employers to comply with the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001* expired on 1 September 2003. All Employers in NSW must now have in place a formal consultation and risk management process.

All Committee members & Representatives must receive the appropriate training, so that they can “*contribute to the making of decisions affecting their health, safety and welfare at work.*” (§13). The compulsory training is not restricted to a theoretical discussion of the legislation and risk management concepts. The course includes sections on conflict resolution, effective communication, as well as a practical exercise in which participants identify and make suggestions to control hazards.

For more information, please visit our website <http://www.ohs-training.com.au> or call us on (02) 9412 3110.

# Workcover incident reporting changes

WorkCover has simplified the way work-related incidents are notified.

These changes take effect from 1 September 2003.

## Overview of changes

The new notification system introduces some changes to how notifications are made and to what is notified:

- A workplace injury is notified to the workers compensation insurer within 48 hours. Previously only significant injuries were notified within 48 hours.
- A workplace injury that is notified to the workers compensation insurer does not have to be notified to WorkCover, except when a worker is injured in a serious incident. This serious incident is notified to WorkCover immediately and also to the workers compensation insurer within 48 hours
- Notifications are made to WorkCover about certain work-related incidents.
- The Incident Report Form (IRF) is no longer used to notify WorkCover.
- Notifications to WorkCover are now made by completing an online form or by phoning.
- There are changes to records kept by the notifier. There are now records kept about the notifiable incident, the notification and any acknowledgement
- *Serious Incidents* is the new term for non disturbance occurrences under sections 86 and 87 of the *OHS Act 2000* and clause 344 of the *OHS Regulation 2001*
- *Incidents* is the new term for accidents and other matters under sections 86 and 87 of the *OHS Act 2000* and clause 341 of the *OHS Regulation 2001*
- There are changes to the list of workplace incidents to be notified under clause 341 of the *OHS Regulation 2001*, regarding incidents involving violence.

# How to notify Workcover of an incident

## *Incidents involving injury or illness to workers*

### **Serious incident**

Involving a fatality or a serious injury or illness:

- notify WorkCover immediately on **13 10 50 plus** notify your workers compensation insurer **within 48 hours**

### **Incident**

Involving an injury or illness to workers, where workers compensation is or may be payable:

- notify your workers compensation insurer **within 48 hours**

## *Incidents involving injury or illness to non-workers at your workplace*

### **Serious incident**

Involving a fatality or serious injury or illness:

- notify WorkCover immediately on **13 10 50 plus** notify WorkCover **within seven days** to make a full report using the online form or phone **13 10 50**

### **Incident**

Involving a non-worker where the injury or illness results in the person being off work or unable to perform their normal activities for seven or more days:

- notify WorkCover **within seven days** using the online form or phone **13 10 50**

## *Incidents without injury or illness (both workers and non-workers)*

### **Serious incident**

With no injury or illness, but is immediately life threatening:

- notify WorkCover immediately on **13 10 50 plus** notify WorkCover **within seven days** to make full report using the online form or phone **13 10 50**

### **Incident**

With no injury or illness, and is not immediately life threatening:

- notify WorkCover **within seven days** using the online form or phone **13 10 50**

The Workcover Online form can be found at:

<http://www.workcover.nsw.gov.au/Employers/General/IncidentNotificationForm.htm>

**Note:** The A3 size Incident Report Form is no longer to be used to notify WorkCover.

# Penalties for failure to notify workcover

The penalties are listed under section 86 of the OHS Act 2000.

The maximum penalty for not notifying workcover of a reportable incident:

- 750 penalty units (\$82,500) in the case of a corporation (being a previous offender)
- 500 penalty units (\$55,000) in the case of a corporation (not a previous offender)
- 375 penalty units (\$41,250) in the case of an individual (being a previous offender)
- 250 penalty units (\$22,000) in the case of an individual (not a previous offender).

## Do incidents that occur while travelling to or from work need to be reported to WorkCover?

No. Incidents that occur while travelling to or from work do not fit into any of the definitions of a notifiable incident under the *OHS Act 2000* or the *OHS Regulation 2001*.

While they are covered under workers compensation legislation for the purposes of obtaining compensation, they are not considered work-related for the purpose of the Act and Regulation.

## What records do I keep about the incident notification and for how long do I keep them?

Occupiers of workplaces/employers must keep the following records about the notification for at least five years after the notification is given:

- a record of the date, time, place and nature of the incident/injury
- a record of the date of notification and the way in which the notification was given
- a record of any acknowledgement given by the insurer or WorkCover.

These records must be made available for inspection by a WorkCover inspector or an authorised representative of the worker.

Note: An entry in the Register of Injuries kept under section 63 of the *Workplace Injury Management and Workers Compensation Act 1998* is a sufficient record of an injury to a worker for notification purposes. The record of any acknowledgement of the notice can also be kept as part of the Register of Injuries.

# Changes to Clause 341 Of The Regulation

From 1 September 2003, work-related incidents under clause 341 are called incidents.

Previously, these incidents were called accidents and other matters.

The list of incidents to be notified has also changed from 1 September 2003. This list now includes changes to incidents involving violence and the inclusion of electric shock incidents, such as:

- the use or threatened use of a weapon that involves a risk of serious injury to, or illness of, a person
- a robbery that involves a risk of serious injury to, or illness of, a person
- an electric shock that involves the risk of serious injury to a person.

# Changes to Clause 344 Of The Regulation

From 1 September 2003, incidents under clause 344 are termed serious incidents.

Previously, these incidents were termed non disturbance occurrences.

Non-disturbance provisions apply to the scene of a serious incident. Refer to section 87 of the *OHS Act 2000*.

## Acknowledgement

Information in this newsletter relating to incident reporting was sourced from Workcover NSW.  
<http://www.workcover.nsw.gov.au>