

The New Occupational Health and Safety Act: Implications for employers

From 1 July 2005, Victorian workplaces will be covered by new Occupational Health and Safety laws. The Occupational Health and Safety Act 2004 comes into operation on this date, replacing the Occupational Health and Safety Act 1985.

Key message

The introduction of a new Victorian OH&S Act makes a number of important changes for businesses operating in Victoria, without changing any of the requirements to provide a safe work environment.

The new OH&S Act does not change the principal duty of employers and others to provide and maintain a working environment that is safe and without risks to health. However, the new OH&S Act does make a number of important changes. Employers should immediately familiarise themselves with these changes and should take steps to ensure that they will understand their responsibilities and be in a position to comply with the new OH&S Act when it is introduced on 1 July 2005.

We set out below the significant changes introduced by the new OH&S Act.

Personal liability for corporate officers

Senior personnel will come under increased scrutiny and will be more accountable for safety in the workplace.

An 'officer' of a company may now be personally liable for the company's failure to provide a safe workplace if they are not sufficiently diligent in carrying out their duties insofar as health and safety is concerned. An 'officer' includes any person who makes or participates in the making of decisions that affect the whole or a substantial part of the

company's business and a person who has the capacity to affect significantly the company's financial standing.

New offence of reckless endangerment

Any person or company that recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an offence.

This is an entirely new offence and can expose a person to up to 5 years jail.

Increased penalties

The maximum fines that a Court may impose for failing to provide a safe workplace have increased from \$255,625 to \$920,250 for companies and from \$51,125 to \$184,050 for individuals.

Sentencing Options

The Courts have been given a broader range of sentencing options in addition to or instead of penalties, including making adverse publicity orders, ordering an offender to undertake improvement projects, or requiring an undertaking from an offender in relation

to health and safety breaches. Additionally, the Victorian WorkCover Authority may now accept an undertaking from an employer as an alternative to prosecution.

Union access to workplaces

Authorised union officers with a valid permit may now enter workplaces during work hours without prior notice in order to inquire into suspected health and safety breaches.

The authorised union representative may enter the workplace to inspect, observe and consult if he or she 'reasonably suspects' that a contravention of the new OH&S Act has occurred or is occurring in relation to its members. It is an offence to refuse the union representative entry to the workplace,

or to intentionally hinder or obstruct their investigation.

Conclusion

The changes introduced by the new OH&S Act mean that employers must be vigilant in ensuring their workplaces are free of health and safety risks. This obligation now also extends to those who manage or control the business. For these reasons, employers need to be proactive, not reactive, in promoting health and safety in the workplace.

The introduction of the new Act should be a prompt for employers to review their workplace, talk to workers and make sure everyone, including the management team, is aware of their rights and responsibilities.



New Workplace Relations team for Sydney

Middletons has strengthened its Sydney workforce with the addition of a Workplace Relations team headed by new partner Damian Sloan and senior lawyer Kristine Thomas.

The new team expands Middletons' existing Sydney-based Workplace Relations team, adding further to its growing reputation in the area. Damian is an Accredited Specialist in Employment and Industrial Law and will, along with the rest of the national Workplace Relations team, broadly focus on employment law, industrial relations, occupational health & safety and anti-discrimination law.

"We are delighted to have Damian join us in Sydney," Middletons' Managing Partner, Nick Nichola said in announcing the appointment.

"He brings to us extensive experience in the Sydney market with specialist knowledge in employment law and industrial relations and

his team will add to our growing reputation in workplace relations."

Damian is formerly a Workplace Relations partner and head of practice at both Ebsworth & Ebsworth and Holding Redlich. An Accredited Specialist in Employment and Industrial Law, he boasts experience in the manufacturing, retail, energy & resources, insurance, transport and financial services industries.

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