

Note: Delete this page and following pages (total 5 pages) once you complete tailoring the template for your own business

This policy can be used by all employers and covers general WHS obligations.

Under work health and safety (WHS) legislation, you must ensure, so far as is reasonably practicable, the health and safety of all of your workers, including volunteers. A WHS policy promotes good WHS practices generally and is the foundation of your clients' WHS program.

Are there alternative/related documents?

1. Personal Protective Equipment and Clothing Policy

This related policy outlines requirements for providing and maintaining PPE and clothing and the responsibilities of all Managers/Supervisors, employees and contractors.

2. Rehabilitation Policy and Procedure

The Rehabilitation Policy and Procedure can be used by all Australian employers and outlines steps that can be taken to assist in the effective management of injured workers. All employers are required to have a rehabilitation policy - not having such a policy is an offence under the relevant WHS legislation.

Talking points

1. Foundation of clients' WHS program

FIAA can provide members with a variety of WHS-related documents – policies, correspondence and forms – which can assist businesses to easily manage their work health and safety obligations. The WHS General Policy is the foundation document, supported by FIAA's extensive library of easy-to-use documents.

2. Employers' legal duties

All Australian businesses have a duty to ensure the health, safety and welfare of their employees, contractors (in relation to matters they can control or influence) and other persons affected by the way they conduct their business. They can be prosecuted for failing to do so and officers, managers and workers can be held personally liable for failure to comply with their duties as individuals.

3. Others' legal duties

The harmonised WHS laws also impose duties to ensure the health, safety and welfare of workplace participants on:

- A person conducting a business or undertaking (PCBU) with management or control of workplaces
- A PCBU who installs, commissions or constructs plant or structures
- A PCBU that designs, manufactures, imports or supplies plant, substances or structures
- Officers (eg directors and senior executives)
- Workers, and
- Other persons at a workplace.

The WHS laws set out the specific elements of ‘**due diligence**’ over which an officer may be expected to take reasonable steps. Setting out these elements does provide useful guidance on the steps required to exercise due diligence. However, these steps are not exhaustive. The definition of these elements provides a meaningful starting point for businesses to assess their current governance and reporting arrangement.

Anecdotally, it would seem that safety regulators have specifically and deliberately targeted company officers in investigations of serious workplace incidents.

The WA Supreme Court found that the neglect of two directors of the company had contributed to the death of an employee who was killed while using an unsafe crane rigging method. The directors were convicted on the basis that they had failed to ensure that the company had in place a safe system of work and they had failed to enforce that system of work.

The court held that ‘neglect’ concerns not only what the directors knew at the time of the breach but, also what they should have known in the circumstance.

4. Unsafe act by employee

An unsafe act by an employee may justify dismissal from employment. This falls within the definition of “serious misconduct” in Reg 1.07 of the Fair Work Regulations.

Only in extreme cases where an employee was wilfully or grossly negligent would summary dismissal (ie without notice) be justified. *See Gottwald v Downer EDI Rail Pty Ltd [2007] AIRC 969.*

In other instances, an employer should proceed through a series of warnings culminating in dismissal if the unsafe acts continue. Use the Warning Letter – WHS Compliance Failure

Getting it wrong

1. While WHS laws apply in each state and territory, it is always appropriate for employers to have workplace health, safety and training policies in the workplace. The policies should be tailored to the specific risks related to the industry in which the employer operates and relating to specific occupations within the workplace.

2. Substantial penalties apply for failure to comply with WHS legislation. For example, under the harmonised laws, the maximum penalty for a breach of the WHS laws is **\$3 million for a company**, and **\$600,000 or 5 years’ imprisonment for an individual**. Courts have indicated a willingness to impose substantial fines in extreme cases.

For example, in *Mckie v Al-Hasani and Kenoss Contractors Pty Ltd (in liq) [2015] ACTIC 1 (23 June 2015)*, a construction company was fined \$1.1 million under ACT workplace health and safety law over the death of a truck driver in 2012 who was electrocuted when his vehicle touched overhead power lines at a construction site in the ACT.

3. Working from home is also becoming more common feature in the workplace and the policy should reflect this to avert workers compensation claims. For example, an employee, who was working from home, slipped and fell down a flight of stairs. The Administrative Appeals Tribunal (AAT) accepted her claim on appeal because she had logged onto her work computer and had been working prior to the incident. *See Hargreaves and Telstra Corporation Limited [2013] AATA 579 (16 August 2013).*

4. In a recent (2016) case NSW employer has been ordered to pay nearly \$1 million in damages to a worker who tripped while unloading 66kg sheets of villaboard and injured his ankle. The employer directed him to unload the materials on an uneven surface. *See: Hutchison Construction Services Pty Ltd v Fogg; Fogg v Les Quatre Musketeers Pty Ltd (t/as Plastamasta South Coast) [2016] NSWCA 135 (21 June 2016)*

General Information

Communication

WHS policies and procedures **should be communicated to all workplace participants**, notably employees, but also contractors and volunteers. Even short term visitors should be advised of any WHS requirements relevant to them. Anyone who performs work at your business premises should be aware of the policies and procedures which exist in the interests of workplace health and safety.

Training is a means to ensure workplace participants are aware of their responsibilities and obligations with respect to health and safety in the workplace. Effective training should include testing of each participant's understanding of the relevant processes and procedures. Written records of all training sessions **should be** retained.

Hazard identification, elimination and control

Anything in the workplace which could potentially harm a person's health or safety is a hazard. This means that hazard identification is crucial to good WHS practice. This can be achieved in a wide variety of ways. For example: an inspection checklist; encouraging people to report hazards to you; reviewing your injury records to identify causes; and conducting random audits of work processes.

After hazards have been identified, they must be assessed for risk. That is, hazards should be assessed for the potential harm they could cause. Ideally risk should be eliminated. If this is not possible, risks should be controlled or minimised.

Hazard identification, elimination and risk control is only part of the process of implementing a safe workplace. You should be aware of occupational health and safety legislation and regulations in the State or Territory in which your business operates.

WHS regulations typically set out specific details regarding matters such as first aid, manual handling, hazardous substances, confined spaces, noise, certificates of competency for operators of industrial machinery (eg forklifts), consultation and many other relevant WHS issues. There are also various standards and codes of practice that you may need to know about.

Plan your attack

Once you have scoped the size of the safety requirements in your workplace, it is a good idea to have a plan of attack. Start by listing the issues you want to address. This could be a list of a few pages, but don't be overwhelmed. It is common for businesses to become overwhelmed by the amount and detail of the requirements that need to be addressed.

Following the scoping exercise, set the order of priority which you want to follow to make changes and improvements. This order can be determined by looking at the most common type of injury, the most dangerous to the people at the workplace, and the most probable to cause an injury.

Seek help

When matters become complex, professional help should be called in. If you feel that you are not addressing the requirements of the legislation, you should seek guidance from WHS professionals. Even if you decide to call on professionals, the work you do in relation to gathering details about WHS issues in your own workplace, will be of assistance, produce better results, and save time and money.

Action plan and implementation

Once you have set priorities, look at who can be involved in getting the work done. If you have a team or WHS committee which can work together, it may be easier to address the issues compared to one person doing it. Using a team approach also builds commitment to safety and helps to spread the word to others.

Preparing a plan of action is the next step and this should be covered from two angles. One is the ad-hoc or 'fire-fighting' of daily safety issues, whereby the supervisor would address a hazard which is raised from time to time. The other is the WHS program for the business, which will address the WHS legislative requirements and other elements of your safety system including training, supervision, maintenance, inspection, information, record keeping, reporting of hazards and injuries and documentation of these processes.

Setting dates in your action plan will help you to keep track of the achievements made in the business and is useful in reviewing whether you have been too ambitious or not ambitious enough in your objectives. In addition, good WHS can be enhanced by having dedicated WHS representatives to whom employees can address their concerns and who can actively monitor and implement WHS action plans.

WHS committees

Note that some jurisdictions do not require a committee or require it only for businesses of a certain size (eg more than 20 employees) or at the request of employees. Even though not required by law in some businesses, a committee can be very useful in promoting WHS.

Seek advice if you are not sure whether there is a requirement for your business to have a WHS committee.

Review your progress

It is a worthwhile exercise to chart your progress over the months and years. This will help to consolidate what you have achieved, what worked and did not work and to demonstrate the implementation process in your business.

How to complete this template

Designed to be customised

It is completely customisable based on your specific requirements.

Include what you must and can comply with

This document should be used in conjunction with your contract of employment, and any specific company procedures and processes. Only include the commitments you are confident you can comply with, make sure you update and review the document regularly.

Important: You may have legal obligations to your employees under an employment or industrial agreement such as an award, workplace agreement or employment contract. Make absolutely certain what's written in this document is consistent with these. If you're unsure what covers your employees, ACFA Members can contact ACFA's workplace advice team on 1300 342 248 or on 02 4340 2000 for further advice/assistance.

To complete the template:

1. Using Word's Replace function, search for (INSERT COMPANY NAME) and replace with your company name.
2. Replace (items in brackets) with your own wording.
3. Once you have finished work on the template, delete the first TWO pages of the document.

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Work Health and Safety Policy

1. Purpose

- 1.1 (Insert company name) is committed to providing a safe and healthy working environment for all workers, and other persons, so far as reasonably practicable. This will be achieved by management and employees working together, following a program of health and safety activities and procedures which are monitored, reviewed and audited to achieve best practice.
- 1.2 (Insert company name) undertakes to regularly review this policy to take account of changes in legislation, activities, services and products. As a result of this review, changes may be made to this policy from time to time and all employees and contractors are required to comply with those changes.

2. Scope

- 2.1 This policy applies to:
- a) all employees of (insert company name) (whether full-time, part-time or casual) and all persons performing work at the direction of, or on behalf of (insert company name) (for example contractors, subcontractors, agents, consultants, temporary staff and 'workers' as otherwise defined under relevant occupational/work health and safety (OHS/WHS) legislation) (collectively referred to as 'workplace participants'); and
 - b) all of (insert company name)'s workplaces and to other places where workplace participants may be working or representing (insert company name), for example, when visiting a customer, client or supplier (collectively referred to as 'workplace').

3. Commencement of the Policy

- 3.1 This policy will commence from XX/XX/XXXX. It replaces all other work health and safety policies (whether written or not).
- 3.2 This policy does not form part of any workplace participant's contract of employment or contract for services.

*** THIS IS ONLY A PREVIEW OF THE DOCUMENT, YOU WILL NEED TO PURCHASE THE DOCUMENT TO SEE ALL THE CONTENT.**

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