

Legislative Update

Is your business prepared for OHS Harmonisation?

With the introduction of new OHS Harmonisation legislation across Australia, Aon Hewitt provides advice to ensure that your business is prepared for the change.

The new legislation will be introduced across Australia by December 2011 and will become operational on 1 January, 2012. Each State and Territory will be required to implement identical laws by this time (subject to limited jurisdictional differences), defined under 'The Model Work Health and Safety Bill 2009'. These laws have been agreed to by the Commonwealth and State/Territory governments and will be supported by model Work Health and Safety Regulations and model Codes of Practice (currently subject to a public comment period closing on 4 April 2011).

How will these new laws affect you?

1. Greater exposure for Directors and Managers (Officers)

The reforms will have implications for all company directors and managers ("Officers") who will be subject to new compliance obligations. These obligations will be applicable to all 'officers' as defined under Section 9 of the Corporations Act 2001 (Cth):

"a director or secretary of the corporation; or a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation;"...

This definition also applies to Receivers, Managers, Administrators, Liquidators and Trustees.

2. Greater penalties

There will be significant change to the regulation of workplace safety in Australia, with risk of prosecution in addition to severe penalties for those that do not comply:

<p>Category 1: Breach of a general health and safety duty involving recklessness and wilfulness, resulting in serious harm, death or risk of such harm.</p>	<ul style="list-style-type: none"> • \$3,000,000 (Corporation) • \$600,000 (Individual) • \$300,000 (Workers and Others) • Five years' imprisonment
<p>Category 2: Breach of general health and safety duty resulting in serious harm, death or risk of such harm (without recklessness)</p>	<ul style="list-style-type: none"> • \$1,500,000 (Corporation) • \$300,000 (Individual) • \$150,000 (Workers and Others)
<p>Category 3: Other breaches of health and safety duties (no high risk or serious harm)</p>	<ul style="list-style-type: none"> • \$500,000 (Corporation) • \$100,000 (Individual) • \$50,000 (Workers and Others)

3. Need for formal OHS Due Diligence Frameworks

The model legislation requires that officers must exercise 'due diligence'. Under the model legislation, due diligence includes:

- Understanding the nature of operations and the associated hazards and risks
- Verifying that risks and hazards are being appropriately controlled
- Ensuring that appropriate resources and processes are available to work safely
- Ensuring that processes are in place to receive and review pertinent information (incident, hazards, risks) and respond in a timely manner
- Ensuring that knowledge of OHS laws and compliance requirements is up to date
- Verifying the implementation of those processes through regular audits and verifying legal compliance

What should you do?

As a priority activity Aon Hewitt recommends all businesses complete a review and gap analysis of their OHS Due Diligence Framework, and prepare an action plan before the legislation comes into place.

To assist your business in this project, Aon Hewitt has qualified subject matter experts who can provide solutions tailored to your needs. With a national presence, Aon Hewitt offers initial no-cost conversations, and can work in partnership with your organisation to ensure an effective transition to the new framework.

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