

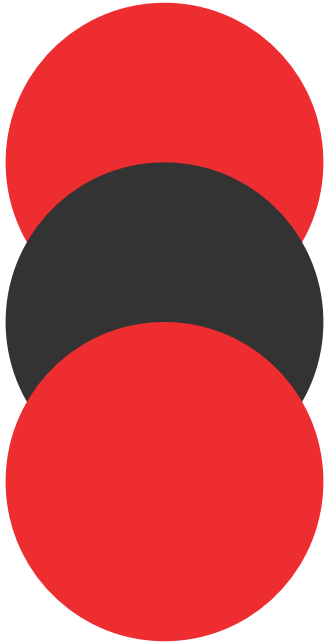


APEX
ALLIED SCIENTIFIC AND TECHNICAL

DELEGATE HANDBOOK

INFORMATION FOR APEX DELEGATES

AUGUST 2022



CONTENT

1. WELCOME	4
2. YOUR ROLE, RIGHTS AND OBLIGATIONS AS A DELEGATE	4
3. UNION MEETINGS – DELEGATES' RIGHTS	5
4. MEMBERS IN DISTRESS	7
5. PUBLIC HOLIDAYS & LIEU DAYS	9
6. ANNUAL LEAVE	10
7. SICK LEAVE	12
8. BEREAVEMENT LEAVE	13
9. OVERPAYMENTS AND WAGE DEDUCTIONS	13
10. PARENTAL LEAVE	14
11. FLEXIBLE WORKING ARRANGEMENTS	15
12. HEALTH AND SAFETY AT WORK	17
13. WORKPLACE BULLYING	19
14. STRIKES AND LOCKOUTS	21
15. ENGAGEMENT AND WORKER PARTICIPATION PRACTICES	24

1 WELCOME

Welcome to all our new delegates!

In your role as a delegate you will often be the first person members turn to when they have questions about their contract, their entitlements, and when they are in distress and need support. Your role as a delegate in the workplace is hugely important to the work we do as your union. To help you settle into this role, we've put together some information to help give you a basic understanding of how to manage questions and issues that arise in the workplace.

Keep this guide with you throughout the training as a useful reference and use it to record any notes as relevant questions and answers arise. If there is anything you **don't understand** or need further clarification on, then please do ask. Once completed you can take this guide back with you into your workplace and refer back to it when needed.

Thank you for taking up this important role and we look forward to working with you!

2 YOUR ROLE, RIGHTS AND OBLIGATIONS AS A DELEGATE

Your role as a delegate in the workplace is important to the work we do as your union.

Your role is:

- **Communication:** To provide a link between members and the union office, which includes organising union meetings and talking to new staff about the benefits of belonging to a strong collective group.
- **Support:** To provide support, guidance and advice to other union members.
- **Representation:** To represent union members' views to management, with support from the union office when needed; and to help resolve workplace issues, with support from the union office when necessary.

Rewards include the ongoing development of communication and leadership skills, the satisfaction of helping others less able to speak out, and having a positive say in your working conditions and those of your colleagues.

As a union delegate you have the right to:

- **Recognition by your employer that you are the workers' elected representative.** Members of the union elect the workplace delegate to represent them – **the employer doesn't have the right to interfere in this process.**
- Recognition by your workplace colleagues that you are the democratically elected union delegate in the workplace.
- Approach union members, or be approached by union members, about workplace issues during work hours.
- Have another union member or delegate with you when you are raising an issue with management.
- Arrange workplace meetings for members on the work premises during work hours.
- Consult with, and attend meetings of, other delegates within the region/country during work time.
- Use a workplace phone, computer and other facilities and resources needed to carry out your delegate duties and post notices on union notice boards without interference from your employer.
- Paid time to attend union education workshops and delegate meetings endorsed by the union.

3

UNION MEETINGS – DELEGATES' RIGHTS

Meetings are useful for two reasons – firstly, they are the quickest and easiest way to pass information on to the group. Secondly, they bring you together.

As a union delegate your key role is communication. You provide the two-way link between members and the office, and union meetings are an important part of this communication network. Meetings are useful for two reasons – firstly, they are the quickest and easiest way to pass information on to the group, or to get a consensus of information to pass back to the office. Secondly, meetings bring you together. Your strength comes from working in unison as a single organised group.

Your rights

- Union delegates have the right to hold meetings at work, during paid work time, as long as it does not unreasonably upset the employer's business.
- Delegates also have the right to talk to members individually about union matters during work time.
- If you have to do union work in your time off you can claim for it.

Holding a meeting

- Meetings tend to work better if they are "issues based" rather than "regular" –that is, holding a monthly meeting even if there is nothing new to discuss. However, regular meetings can be really useful when building up to negotiations or other "industrial" situations like a restructuring or contracting out, or if you are working on a specific issue like changing the roster, or making a case for more staff.
- During negotiations you sometimes need to hold meetings at short notice, however, at other times, inform the boss in plenty of time.
- Plan meeting times to cause the least disruption to work flow. It is polite to ask rather than tell, and if possible give them a couple of preferred options for the meeting time before putting up posters. Depending on the boss, this isn't always possible. If a request for a union meeting is refused this needs to be referred to the union office immediately.
- Your boss has no say in the content of your meeting. Even if the boss is a union member, it is the delegate's decision as to what is discussed and who runs the meeting.
- Have an agenda. It may be useful to put this on a white board just before the meeting. It helps to keep everyone on track.
- It is worth reminding members at

the start of the meeting that what is discussed is confidential, for union members only. Of course this is most important during negotiations when strategy needs to be agreed on.

- Keep the meeting short and to the point. Keep a record of what is discussed for your file.

Stop Work meetings

- The Employment Relations Act 2000 allows for two 2-hour stop work meetings per year for employees to meet with their union representatives.
- Notice of stop work meetings need to be generated from the national office, so the delegate's role here is to sort out time and place and inform colleagues. The employer is sent an official letter giving them 14 days' notice and the employer and national office representatives must work reasonably together to ensure as many members as possible can attend. It is up to the employer to re-organise work flow to allow for this.
- A list of members attending the meeting is kept, and given to the employer if requested.
- All members attending must receive their normal rate of pay for the full two hours. Part time workers receive their normal rate of pay for the period they would normally work.

4

MEMBERS IN DISTRESS

Members may approach you with all kinds of workplace issues. Here are some basic steps in providing support:

Get the facts straight

Don't feel pressured into responding or attending meetings until you have all the facts and have identified the central issue. Take the time needed to get it in writing.

Obtain the relevant documentation, and always get a copy of the complaint. If the complaint is about an individual member, ensure they get a copy of their personal file. Identify the real issues

Separate the event from the emotions – separate the facts from personality differences, prejudices and ill feelings etc. What evidence is there in the documentation as to the real issues?

Keep to specifics; don't allow the issue to become general.

Don't rely on verbal statements. Keep copies of all documentation, conversations and correspondence. Get into the habit of clarifying and confirming through the written word.

This gives you an audit trail of events which can be used in a formal process.

What kind of support is needed?

Different issues require a different level of support. You will need to consider whether a colleague, delegate, office advocate, legal advice or health advice is appropriate. Is there a need for stress leave?

You need to advise the member of the issues you have identified, the nature of the complaint and the strength or weakness of the evidence. It is better to prepare them for bad news rather than to be overly optimistic.

What next?

There are a number of things an employer may do following an event, such as holding interviews with others, giving a written response, and/or holding a meeting with parties involved. Whatever is decided, you need to ensure the employer clearly sets out their intention to you.

If the issue is disciplinary in nature, even if minor, ensure an APEX Advocate is aware of the matter.

Meetings

Before a meeting you are entitled to have-

- The agenda, in writing
- Who will be present
- Whether the meeting will be recorded and whether you will have access to the records.
- An appropriate amount of time to consider, or get advice, beforehand.

During the meeting-

- Bring it back to specifics.
- Ask for facts to support any assertions

made by the employer.

- Object if new issues are raised, and then decide whether to let the meeting continue.
- Call an adjournment if you want to discuss something with your member, or if you feel that things are getting out of control. You do not have to respond immediately.

Keep your own record of events

Don't rely on the employer's version. Follow up on information you expected to receive, check for accuracy and inform them of any alterations you want to make.

Don't rely on verbal statements. Keep copies of all documentation, conversations and correspondence relating to the event. Get into the habit of clarifying and confirming through the written word. This gives you an audit trail of events which can be used in a formal process.

Audio/Video Recordings

All parties must agree (so you cannot make secret recordings). If the employer has requested this, they need to provide details of who will have access to the recordings or transcripts. Be aware that transcripts often have errors or omissions which can change the context of what was actually said.

If you have any questions, or you yourself need support or advice throughout this process about what to do next, then we're here to help. You may also at the initial stages of the case feel that it's just too big to handle. That's OK, too. If that happens, call us or encourage the member to call us. We're always available to take over and help.

QUICK CHECKLIST

BEFORE ATTENDING MEETINGS

Do you:

- ✓ Have a clear agenda
- ✓ Know who is attending the meeting
- ✓ Have a copy of the complaint
- ✓ Have a clear understanding of the facts
- ✓ Have all relevant documents that the employer is relying on
- ✓ Have a clear understanding of the potential outcomes of the meeting (i.e. how serious the meeting is)
- ✓ Need to seek advice from APEX – informed APEX if potential disciplinary situation.

DURING THE MEETING

Make sure you:

- ✓ Clarify the purpose of the meeting & the issues
- ✓ Keep it confined to those issues, object to new ones being raised & do not respond to them
- ✓ Clarify the facts
- ✓ Ask for facts to back up the employer's assertions
- ✓ Adjourn the meeting if necessary (you have a right to do this if you or the member feels ambushed or blind-sided & need advice from APEX)
- ✓ Always take notes.

5

PUBLIC HOLIDAYS & LIEU DAYS

For each public holiday worked (on call or on duty) you will earn a day in lieu. This "leave", a statutory lieu day ("STIL"), must be taken at a time agreed between you and the employer. **However**, if you and the employer cannot agree, a STIL day may be taken on a day as determined by the Employer, on a reasonable basis.

You must be given 14 days' notice of taking a STIL day.

The best rule is to take any STIL as the first leave after it was earned or keep a close eye on your STIL and ensure you take it before moving on to a new employer and within the 12 months of it being earned.

STIL days, or any other leave for that matter, cannot be deducted without your consent. Any unused STIL days at the time of termination of your employment are to be paid out to you.

What should I be paid?

Employees working on public holidays are entitled to at least T1.5 payment for the hours actually worked on any such day. Please look at the relevant public holidays clause in your collective

agreement as in some cases it may be more.

Public Holiday Entitlements

Every employee is entitled to 12 public holidays per annum should these days fall on an employee's otherwise working day. A common issue faced regarding public holidays is how an employer's payroll system determines what is or is not an otherwise working day – employees that work fixed hours do not usually face issues with this. For those that work variable/irregular hours, several factors should be taken into consideration:

- The employee's employment agreement;
- The employee's work patterns; and
- Any other relevant factors including:
 - Whether the employee works for the employer only when work is available;
 - The employer's rosters or other similar systems;
 - The reasonable expectations of the employer and employee that the employee would work on the day concerned.
- Whether the employee would have worked on the day had it not been a public holiday.

Another alternative calculation as advised by the Employment Authority would be if the employee had worked 50% of the same day of the week in the preceding three to six months

Casual employees and pay as you go.

Casual employees often have

agreements not to receive public holidays and instead have their holidays paid on in addition to their wages at the amount of 8%. This is known as pay as you go. However, under the Holidays Act an employee who is paid the 8% could still be entitled to annual holidays if they are not a genuine casual. Employees are not a genuine casual if they work the same days regularly, are on the roster, or even if they worked 10 hours per week for more than 6 weeks (the calculation of receiving a sick leave entitlement). As a result of the Holidays Act rectification and employees getting paid their holidays as pay as you go (8%) and then still being owed annual holidays of 4 weeks per year.

Should a union member feel they have been paid incorrectly for any type of leave or have not received any other entitlements relating to the Holidays Act 2003, we suggest first clarifying with the employer how the calculations were made and check your collective employment agreement. If you still have trouble after that, then you can contact us for further advice.

STIL days or any other leave for that matter cannot be deducted without your consent.

6 ANNUAL LEAVE

The Holidays Act 2003 provides for no less than 4 weeks' annual leave per year of service. As always with statutory entitlements, they are the minimum and agreements can always contain enhanced entitlements. Please review your respective agreement to become familiar with your specific annual leave entitlements.

The Holidays Act 2003 requires an employer to allow an employee to take annual leave within 12 months after the date on which the employee's entitlement to the holiday arose.

If an employee elects to do so, the employer must allow the employee to take at least 2 weeks of his or her annual holidays entitlement in a continuous period. When the holidays are to be taken by the employee is to be agreed by the employer and employee.

The Payment of Annual Leave

The Holidays Act 2003 has several sections relating to the calculation of annual leave owing to an employee, which is dependent on a number of factors. If an employee works variable hours, then the employer will need to ensure the most accurate method of calculation is implemented. When seeking to know what the employee should be paid for n weeks, the greater of

Ordinary Weekly Pay (OWP) and Average Weekly Earnings (AWE) must be paid.

- Calculation of the greater of
- Average weekly earnings (AWE) – section 5(1) describes AWE as 1/52 of an employee's gross earnings, and is used when determining annual pay when leave is taken, or when employment ends. To calculate this, the employee's gross earnings over 12 months is divided by 52.

Or

- Ordinary weekly pay (OWP) – The default approach to calculate the OWP is to work out the pay that an employee would otherwise receive for an ordinary working week. Sometimes, this is difficult to do though (if for example an employee works irregular hours), so an alternative method is to deduct any irregular payments from the gross earnings of the four weeks prior to the leave and divide this total by four.

My leave has been declined – what now?

The Holidays Act 2003 also sets out a provision that prevents employers from unreasonably withholding consent to an employee's request to take annual leave. What this means is that every case will depend on its own facts.

Factors that should be taken into account are:

1. Whether anyone else is on leave at the time

2. Whether there's cover available
3. How long it has been since you last had a holiday
4. How much annual leave you have accrued (if you have accrued in excess of your entitlement it weighs in your favour)
5. Reasons for your leave, if applicable (please note that you **do not** have to tell your employer why you want leave or what you're going to do with it. However, if your leave has been declined it might be helpful for you to tell your employer why you want the leave e.g. you need the leave to attend your own wedding. It is more likely to be unreasonable for an employer to decline leave for you to attend your own wedding!)

If you think your leave has been unreasonably declined, we suggest that you write to your employer and set out the reasons as to why you think so.

If you still have trouble after that, then you can contact us for further advice. Please do be aware that it is a grey area and each case will depend on its own facts.

7

SICK LEAVE

It's likely that you or your colleagues will get sick at some point in the year. Fortunately you will have sick leave to cover any absences from work as a result of illness. Your respective collective agreements will detail what the entitlements are; however the Holidays Act 2003 requires that you receive no less than 10 days' sick leave per year of service.

You are only required to produce a medical certificate after 3 days' sick leave if your employer requests it. If the employer requests a medical certificate for anything less than 3 days' sick leave, then the employer is required to pay for the cost of obtaining the medical certificate.

If someone in your household becomes ill and through that illness depends on you for their care, then you are also entitled to take sick leave. That sick leave will be debited from your sick leave entitlement.

If you fall sick during annual leave or long service leave, your employer will permit the period of sickness to be debited against your sick leave entitlement.

If you find you have used all your sick leave entitlements, we recommend checking your collective agreement to see if there is an entitlement to discretionary sick leave. Depending on the clause, you may

be eligible for 5-10 days discretionary sick leave, to be taken before your next sick leave anniversary date.

The Payment of Bereavement Leave, Alternative Holiday, Public Holiday & Sick leave (BAPS)

This is done according to Relevant Daily Pay (RDP) or if this cannot be calculated, Average Daily Pay (ADP) is used.

- Relevant daily pay – this is used in determining payment for a public holiday, an alternative holiday, sick leave and bereavement leave. The calculation of RDP is based on what the employee would have received had the employee worked on the day concerned, and any overtime performed by employees that worked on this day should be taken into consideration. Average daily pay (ADP) can also be calculated if the RDP is undeterminable, however the greater of the two figures should be used.
- Average daily pay (ADP) – As stated above, ADP is only used when calculating the RDP is not possible or practicable, or the employee's daily pay varies within the pay period when the holiday or leave falls. The calculation is made up of the gross earnings for the previous 52 calendar weeks divided by the number of whole or part days during which the employee earned those gross earnings.

8

BEREAVEMENT LEAVE

The Holidays Act 2003 provides for paid time off for an employee in respect of a bereavement. If the employee suffers a bereavement on the death of the employee's: spouse or partner; parent; child; brother or sister; grandparent; grandchild; or spouse's or partner's parent, they will be entitled to three days' paid bereavement leave.

The Act also covers bereavement leave if the employee experiences the miscarriage of either their own child, or the child of the employee's partner who was the named primary carer.

An employee will also be entitled to one day's bereavement leave on the death of any other person if the employer accepts that the employee has suffered a bereavement. The employer must take into account relevant factors such as the closeness of the association between the employee and deceased person; whether the employee has significant responsibility for the arrangements; or any cultural responsibilities of the employee in relation to the death.

9

OVERPAYMENTS AND WAGE DEDUCTIONS

It is not uncommon for employers to make erroneous overpayments to wages and salaries. In most cases an overpayment can be reclaimed by the employer and it is very rarely that an employee can claim a legitimate defence against paying it back. Before any money is paid back, however, there are a few things that an employee should do:

- Ask the employer to identify and show the exact amount of the overpayment, their calculations and when it was paid;
- Double check that the amount and dates are correct.

If the employer has made an overpayment, the Wages Protection Act 1983 section 6 provides further details under which the employer can deduct these overpayments from an employee's wages. Employers must give the appropriate notice to the employee that they seek to recover overpayments, within five days of the payroll error. If explicit agreement is given by the employee, the employer must follow through with the overpayment recovery within two months of having given the notice.

The employee should not consent to any deductions from his or her wages until they are satisfied that an overpayment has occurred and that the amount is correct. An employee can determine how he or she pays the amount back. Any deductions to your pay, with the exception of PAYE, student loan, child support, or court order, must be made only with your consent.

10

PARENTAL LEAVE

The Parental Leave and Employment Protection Act 1987 currently provides for **government funded** employment protected **paid** parental leave for **26 weeks** to employees with at least **six months** of continuous service with same employer.

Employees with at least **12 months** of continuous service are **also** entitled to up to 52 weeks of employment protected **unpaid** parental leave, less any paid parental leave taken.

Paid parental leave payments increased from 1 July 2022 to a maximum of \$661.12 per week before tax, or your salary, whichever is less (calculated on the basis of average weekly earnings). This payment is administered by the Inland Revenue Department and is a non-employer related payment.

Prior to the birth of a child, a female employee is entitled to up to 10 days' unpaid special leave for reasons relating to the pregnancy. Examples include needing extended time off for ultrasound scans and antenatal classes. We recommend first checking with your employer if appointments are less than two hours, as these can often be attended without the deduction of leave.

Please see this link for further information:

<https://www.employment.govt.nz/leave-and-holidays/parental-leave/types-of-parental-leave/>

Your MECA entitlements:

Your respective collective agreement will explain these entitlements in some detail.

You can take up to 12 months' leave if you have had at least one year's service at the time of commencing the leave, or leave of up to six months with less than one year's service.

Parental leave is leave without pay and not sick leave. You will need to make an application for parental leave at least one month before you intend to commence your leave. An application should be supported by a certificate signed by a registered medical practitioner or midwife.

When you return from parental leave you are entitled to resume work in the same or similar position that you had at the time you commenced parental leave. This means equivalent salary and designation in the same or close locality comparable with those of the position previously occupied. Annual increments up the salary scale continue to apply.

Having been granted parental leave you will need to notify the employer in writing of your intention to return to work (or to resign) at least one month prior to your parental leave expiring.

Please review your collective agreement's parental leave clause for any additional entitlements, such as a lump sum payment. Some collectives will contain variations of a lump sum entitlement and you should be familiar with yours.

11

FLEXIBLE WORKING ARRANGEMENTS

The Flexible Working Arrangements part of the Employment Relations Act gives all employees a statutory right to request flexible work.

The Act will change the way some employees and employers make and respond to requests for flexible working arrangements.

Employers must consider and respond to a request within 1 month of receiving it.

Unless you specify that your request for a new working arrangement will be for a set period of time, your request will be a permanent change to your terms and conditions of employment. Neither the employee nor the employer has a right to revert back to the previous working arrangement unless otherwise agreed.

Eligible employees can make a request to vary their:

- Hours of work

- Days of work
- Place of work.

The options available are entirely up to you and your employer. A request for flexible working arrangements under Part 6AA must:

- Be in writing.
- State the employee's name.
- Be dated.
- State that the request is being made under Part 6AA of the Employment Relations Act 2000.
- Explain the desired working arrangement and whether the new working arrangement will be permanent or for a period of time.
- Specify the date on which the employee proposes the new working arrangement will take effect and, if the new working arrangement is for a period of time, the date on which the new working arrangement will end.
- Explain, in the employee's view, what changes (if any) the employer may need to make to the employer's arrangements if the request is approved, e.g. changes to the way the team works together, changes to the physical set up of the workplace, etc.

Employees' rights

- To request a variation to their hours of work, days of work or place of work at any time.
- To have their request considered properly in accordance with the set process and refused only where there is a specified ground for doing so.
- Where a request is refused, to have an explanation for the ground for refusal.
- To seek assistance from the Department of Labour.
- In certain circumstances, take a complaint to mediation and the Employment Relations Authority. Employees, however, have no right to make a complaint where they simply disagree with the grounds provided by the employer for refusing a request. The Authority does not have the power to question the employer's reasons for declining a request nor can it consider whether or not the employer acted fairly or reasonably.

Employees' responsibilities:

- To provide enough information to enable their employer to give their request proper consideration and to give as much notice as possible.
- To be prepared to discuss their request in an open and constructive manner.

- If necessary, be prepared to be flexible themselves in order to reach an agreement with the employer.

Employers' rights:

- To reject a request where there are grounds for doing so under Section 69AAF.
- Note Section 69 AAF(3)-Employer must refuse a request if the employee's working arrangements would be inconsistent with the collective agreement if the employer were to approve the request.
- To seek assistance from the Department of Labour.

Employers' responsibilities:

- To consider requests properly in accordance with the set process.
- To adhere to the time limits contained within the process.
- To provide the employee with appropriate support and information during the course of the request.
- To refuse a request only where there is a specified ground for doing so (Section 69AAF) and to explain to the employee why it applies.
- To ensure that any variation is agreed in advance with the employee and recorded.

12

HEALTH AND SAFETY AT WORK

The Health & Safety at Work Act 2015 (HSWA) is the overarching legislation for workplace health and safety.

HSWA requires work related health and safety risks to be managed. This means taking in to consideration the potential for work-related health conditions as well as injuries that could occur.

Health conditions can include both physical and psychological, acute or long term illness.

HSWA shifts the focus from monitoring and recording health and safety incidents to proactively identifying and managing risks.

Employees must take all practicable steps to ensure their own safety while at work. This includes the use of suitable protective clothing and equipment provided by the employer.

responsibility for the health and safety of their workers and any other workers that they influence or direct. They are also responsible for the health and safety of people at risk from the work of their business. Multiple businesses at the same location have overlapping duties and must work together to fulfil their duties of care under the HSWA.

(b) OFFICERS (company directors, partners, board members, chief executives) must do due diligence to make sure the business understands and is meeting its health and safety responsibilities

(c) WORKERS must take reasonable care for their own health and safety and that their actions do not adversely affect the health and safety of others. They must also follow any reasonable health and safety instruction given to them by the business and cooperate with any reasonable business policy or procedure relating to health and safety in the workplace.

(d) OTHER PEOPLE who come into the workplace such as visitors, customers, and suppliers also have some health and safety duties to ensure that their actions do not adversely affect the health and safety of others.

EVERYONE IS RESPONSIBLE

(a) BUSINESSES have the primary

PCBU and the Primary Duty of Care

A person conducting a business

or undertaking (PCBU) is a person conducting a business or undertaking. It is a broad concept used throughout the HSWA to describe all types of modern working arrangements which we commonly refer to as businesses.

A business or undertaking must ensure so far as is reasonably practicable the health and safety of its workers and any other workers who are influenced or directed by the business. This is called the primary duty of care.

DUTIES OF WORKERS

A worker is an individual who carries out work in any capacity for a business or undertaking. This includes: employees; contractors/sub-contractors; employees of labour hire companies; apprentices or trainees; people doing work experience or work trials; and volunteer workers (as defined in the Act).

While at work a worker must-

- Take all reasonable care for his or her own safety; and
- Take reasonable care that his or her

acts or omissions do not adversely affect the health and safety of other persons; and

- Comply as far as the worker is reasonably able with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act and regulations; and
- Co-operate with any reasonable procedure or policy of the PCBU relating to health or safety at the workplace that has been notified to workers.

DUTIES OF OTHER PERSONS AT WORKPLACE

A person at a workplace (whether or not the person has another duty under the Act) must-

- Take all reasonable care for his or her own safety; and
- Take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- Comply as far as he or she is reasonably able with any reasonable instruction that is given by the PCBU to allow the PCBU to comply with the Act and regulations.

DUTY OF OFFICERS OF PCBU-DUE DILIGENCE

An officer of a PCBU must exercise

the care, diligence and skill that a reasonable officer would exercise in the same circumstances taking into account the nature of the business and undertaking and the position of the officer and the nature of the responsibilities undertaken by the officer.

Due diligence includes taking reasonable steps-

- To acquire, and keep up to date, knowledge of work health and safety matters; and
- To gain an understanding of the nature of the operations of the business or undertaking of the PCBU and generally of the hazards and risks associated with those operations; and
- To ensure that the PCBU has available for use appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- To ensure that the PCBU has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information; and
- To ensure that the PCBU has, implements, and can verify processes for complying with any duty or obligation of the PCBU.

13

WORKPLACE BULLYING

Workplace bullying has been defined in case law as:

Unwanted and unwarranted behaviour that a person finds offensive, intimidating, humiliating and is repeated so as to have a detrimental effect upon a person's dignity, safety, and well being.

A person's behaviour can be an actual or potential source of harm in the workplace under the Health & Safety at Work Act 2015.

Bullying can be overt:

- Threats
- Coercion
- Verbal abuse
- Degrading or belittling comments
- Shouting or yelling
- Unexplained rages
- Unjust criticism or fault finding
- Humiliation
- Unjustified punishment
- Non-verbal communication (i.e. eye rolling; looking out the window)

And bullying can be covert:

- Deliberate overloading with work or impossible deadlines
- Constant alteration of work targets
- Sabotaging an employees work (i.e. deliberate withholding of required information)
- Hiding documents or equipment
- Not providing appropriate resources or training (by an individual)
- Isolating or ignoring an employee (i.e. using a third party to communicate)
- Undermining another's authority or standing
- Circulating negative rumour

What bullying is not:

Just because you don't like it, doesn't mean it must be bullying. Bullying (or harassment) does not include:

- Friendly banter or mutually accepted jokes
- Consensual relationships
- The issuing of reasonable instructions
- The insistence of high standards, especially in respect to safety and team cooperation
- Legitimate criticism of work

performance

Health and Safety at Work Act 2015

Businesses, Officers, Workers and other people have rights and responsibilities under the Health and Safety at Work Act 2015.

Every employee has the right to a safe and healthy workplace and every employment agreement also contains certain fundamental terms that are implied into an employment relationship. One of those implied terms is that your employer has a duty to provide a safe and secure working environment for you.

In order to do that, your employer is required to take reasonable steps to prevent you from suffering physical or mental harm while at work.

A person's behaviour can be an actual or potential source of harm in the workplace, and an employer's duties under the Health & Safety at Work Act 2015 extend to the investigation and resolution of workplace bullying.

What to do if you're being bullied:

- One of the first things you should do is document all incidents of bullying behaviour. Record such information

as the date, time, place, witnesses, how you felt, and a detailed description of the behaviour and what was said. Detailed accounts of bullying incidents become crucial in any ensuing investigation, especially where there are no witnesses. Try to make your records as contemporaneous as possible.

- Only if it is safe to do so, confront the bully and ask him or her to stop the behaviour. Politely but clearly make it clear that the behaviour is unwanted. Make sure you continue to keep contemporaneous records of any such attempts.
- If it is not appropriate to do this, the bullying behaviour must be brought to the attention of your employer. An employer cannot, after all, fix what it doesn't know about.
- We encourage our members to also contact APEX for assistance, support, and/or representation before making a complaint. APEX can provide support to the member throughout the investigation process.
- Obtain a copy of the employer's bullying policy to see what the employer's process is and to whom the complaint may be forwarded. There may be instances where it is not appropriate to forward a complaint to the suggested person, and we encourage our members to seek APEX advice in that instance.

14

STRIKES AND LOCKOUTS

Strikes may occur when employees and employers fail to reach agreement when bargaining for a collective agreement. Note a collective agreement continues after its expiry date if bargaining to replace the agreement commences before the expiry date. For Te Whatu Ora employees at least 14 days' notice of a strike must be given, which may be given before expiry of the collective agreement.

If you are not on strike, you cannot be made to cover for anyone on strike and you should not do so; management is responsible for getting the work done, not you. Contact APEX if you have any queries.

What is a strike?

This is when employees stop working as normal, either by stopping work completely, or partially, or by reducing normal performance. An 'act' not just an intention is necessary. There must be more than one person involved. It is **NOT** a strike if you hold a meeting authorised by your employer or by your employment agreement or by law, such as stop work meetings.

What is a lockout?

Lockouts are mirror images of strikes and vice versa. A lockout is an employer strike in that they do not provide work as usual by suspending or discontinuing all or part of the business. A lockout is an attempt to compel employees to accept their employer's collective agreement claims. Intention is an essential element of a lockout.

Striking employees and suspension.

When locked out or on strike you do NOT get paid. Technically this is because you are suspended. The suspension continues until the end of the strike. Suspension does not end the strike nor do you cease to be a part of the strike.

On resumption of work, your service must be treated as continuous and your pay will recommence. You cannot be dismissed for participating in a lawful strike. Strikes are a legal right of employees. If you are suspended, your employer must state if you are being treated as striking or non-striking.

If you are not on strike, you cannot be made to cover for anyone on strike. Management is responsible for getting the work done, not you. Contact APEX if you have any problems.

Partial Strikes

A partial strike is defined as any strike where the employees are nevertheless continuing to perform some work and would include: refusing or failing to accept particular tasks that would normally form part of their duties; reducing their normal performance (working to rule); reducing their normal output or rate of work (go-slow); and breaking some aspect of their employment agreement (e.g. uniform requirement).

Non-striking employees and suspension

If others are on strike and as a consequence your employer cannot provide you with your normal work, you may be suspended until the end of the strike. You will NOT get paid while suspended but your service must be treated as continuous when you start work again. This type of suspension may be challenged under a variety of provisions in law; talk to us if it happens.

What must be done to ensure action taken is lawful?

Where there is an existing collective agreement in force strike action in relation to bargaining for all or part of a collective agreement may not occur until after the expiry date.

Where there is no collective agreement in force, strike action may not occur until 40 days after notice of initiation is given to the employer.

A strike may also be called if there

are reasonable grounds for believing it is justified on issues of health and safety (imminent & significant danger) regardless of whether or not the collective agreement has expired.

Participation in a strike is lawful if it relates to bargaining for a collective agreement that will bind each of the employees who strike. Workers who are not directly affected by the collective agreement or the bargaining cannot lawfully strike 'in sympathy' in support of their colleagues.

Strike Ballots

Unions must conduct secret ballots before taking strike action for a strike to be lawful. A strike cannot proceed unless it gains the support of a simple majority of the members of the union who would be parties to the action (who are entitled to vote and who do vote).

The question to be voted on in a secret ballot is whether the member of the union is in favour of the strike.

As soon as reasonably practicable after the conclusion of the secret ballot the union must notify the result of the ballot to the members of the union who were entitled to vote.

Union rules must now include a provision to this effect.

The requirement for a secret ballot does not apply if the proposed strike relates to lawful strikes on the grounds of safety or health.

When is action unlawful?

A strike is unlawful:

- If taken while a collective agreement is in force or during bargaining for a collective agreement unless more than 40 days have passed since bargaining was initiated, or if the previous agreement had expired before bargaining began.
- If it relates to a personal grievance.
- If it relates to a dispute about the interpretation, application or operation of an employment agreement.
- If it relates to freedom of association (i.e voluntary unionism)
- If taken in contravention of an order of the Authority or a Court order.
- If it is in an essential service and the notice requirements are not followed.
- If requisite secret ballot not held.

Essential Services

Hospitals and medicines are essential services. Your employer and MBIE must be told by your union in writing of the intention to strike within 28 days but no less than 14 days before the planned strike date, and the strike may not start earlier than the date given. The notice must state the nature of the proposed strike including if the strike is continuous,

where it will take place and when it will begin. Your union representative (Official not a delegate) must sign it.

The notice need not specify the names of the employees if it is expressed to be given on behalf of all employees who are members of the union that is a party to the bargaining; and on behalf of all employees who are covered by the bargaining.

Note that in relation to an essential service MBIE must ensure that mediation services are provided as soon as possible to the parties to avoid the need for the strike or lockout.

Performance of work during a strike

Your employer may ask but cannot force you to carry out the work of those on strike. They can employ someone not already employed to carry out the work but only if there are reasonable grounds for considering it a health and safety issue and only for that work. Once the strike has ended, anyone doing the work of those on strike must stop.

Annual leave during strike action

If on annual leave during a period of industrial action, the employer will normally not pay you. However, if this occurs, they must credit all days of annual leave so affected back to your annual leave balance. Annual leave that has been properly authorised cannot be cancelled as a result of strike action.

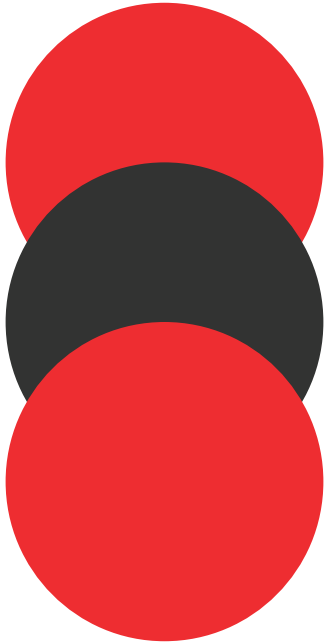
15

ENGAGEMENT AND WORKER PARTICIPATION PRACTICES

Businesses have a duty to-

- To engage with workers on health and safety matters that may directly affect them
- To have practices that give their workers reasonable opportunities to participate effectively in improving health and safety on an ongoing basis.
- Health and Safety representatives (HSRs) and Safety Committees (HSCs) are two well-established methods of representation.
- Health and Safety representatives must be elected.







APEX
ALLIED SCIENTIFIC AND TECHNICAL

CONTACT APEX - WE'RE HERE TO HELP!

Phone: (09) 526 0280

Fax: (09) 579 6213

Email: ask@apex.org.nz

Address: PO Box 11 369, Ellerslie, Auckland 1542