

Methodist Church of New Zealand

Te Hahi Weteriana O Aotearoa

Administration Division

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CHRISTCHURCH

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HEALTH AND SAFETY IN EMPLOYMENT

Our Obligations Towards Volunteers and Others



The Health and Safety in Employment Amendment Act 2002 (“the HSE Amendment Act”) extended the provisions of the original 1992 Health and Safety in Employment Act (“the HSE Act”) to cover volunteers and to, in some cases, treat them as if they were employees.

It is important for Church and Parish leaders to understand the implications and requirements of the Act as significant penalties can be imposed on those found not to have followed the Law. The Board of Administration has sought legal advice on the probable implications of the amended HSE Act as it applies to the Church and its various activities.

Definitions.

Relationships we understand in Church terms are not always similarly viewed in secular law. The amended HSE Act contains several important definitions.

Place of Work – a place where any person does, or is to, work for gain or reward including vehicles if travel is a necessary part of the job.

Employer – someone who employs another person for hire or reward.

Employee – a person employed by someone to do work (except residential work) for hire or reward – includes someone receiving on the job training or work experience even if unpaid.

Controller of a Place of Work – means someone who is the owner, occupier or person in possession of the place.

Volunteer – a person who neither receives nor expects to receive any reward for the work done.

Hazard – is any potential or actual source of harm.

Significant Hazard – includes a hazard that is an actual or potential cause of serious harm.

All Practical Steps – means doing everything that is reasonable in the circumstances, having regard to the harm that might occur. The possibilities of removing or reducing the hazard and the costs of such work compared to the likelihood of harm that could occur.

A Church building would most likely be “a place of work” and presbyters considered “employees” for the purposes of this legislation.

OBLIGATIONS

(a) Employers,

An employer is obliged to

- provide and maintain a safe working environment and facilities for employee’s safety and health
- ensure plant and equipment used by employees is safe to use and employees have sufficient knowledge to use it
- develop systems to deal with emergencies
- identify and manage hazards and identify, eliminate or mitigate significant hazards
- ensure appropriate supervision to others by someone with appropriate knowledge or experience
- ensure employees can be involved in developing health and safety policy and procedures
- take all practicable steps to ensure any action or inaction of an employee does not harm any other person

(b) **Controller of a place of work,**

- must ensure that people in the vicinity and visitors are not harmed by hazards that are in, or arise in that place
- must warn authorised visitors of known significant hazards which exist or are likely to arise in that place

(c) **Employees,**

- have a duty to take all practicable steps to ensure their own safety while at work

(d) **Contractors,**

- A person who engages a contractor must take all practicable steps to protect the contractor and sub contractors.

Level of Care Test. (Adapted from Test for general voluntary organisations).

Volunteers are now **treated as employees** if you answer “yes” to all of the following three questions:

- ❖ Does the Church **know** or has it **consented** even if only by implication to the volunteer doing work for it?
- ❖ Does the volunteer do the work on an ongoing **regular** basis for the voluntary organisation / Church group?
- ❖ Is the work an **integral** part of the business of the Church?

AND “no” to either of the following 2 questions:

- ❖ Is the volunteer participating in a fundraising activity?
- ❖ Are they providing care for another person in their own home?

If volunteers fail this test they are not treated as employees for HSE purposes. (Other tests apply for non Church voluntary organisations.)

However, for those whose engagement fails this test the Act says the organisation should take all **practicable steps** (as defined by the HSE Act) to ensure the health and safety of volunteers while they are doing a work activity for the organisation by, in particular, taking hazards into account when planning the work activity. There are no enforcement provisions in the HSE Act if this duty is breached. However an inspector may contact you if there is a significant breach.

Identification of Hazards.

Organisations are required to take “all practicable steps” to prevent harm to employees, volunteers, visitors and passers-by.

Examples of Potential Hazards include

- ❖ a work process
- ❖ the physical environment, including substances in that environment
- ❖ the equipment used
- ❖ an external factor (eg, is door-to-door fundraising occurring late in the evening and/or involving young persons who may be exposed to risks to personal safety.)
- ❖ an input to the work process (eg, are cleaning materials toxic in some circumstances?)
- ❖ the way the work is organised
- ❖ access to critical information (eg, are instructions available at an appropriate literacy or language level?)
- ❖ the construction of the premises
- ❖ the impairment of an individual (eg, where a diabetic misses meals due to work pressures.)

Compliance.

It is well worth remembering that questions of compliance are often reviewed following an accident or event and what could seem a minor “technicality” before may well assume huge implications after the event. Cost alone is not an excuse for failing to take action. Fines under the Act are significant. However, the Act makes it clear that you are required only to manage hazards that you know about, or that it is reasonable to expect you to know about, or that you should have known about. Those who have duties under the Act must actively attempt to identify, eliminate or minimise hazards.

The Law applies equally to secular and religious groups. It is important to consider the nature of work performed in and around the parish and Church.

Further information can be obtained from the Connexional Office or the OSH website www.workinfo.govt.nz.