



Workplace Health & Safety Obligations: Tips for Franchisors

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Glenn Finnigan
Darryl King

Topics for discussion

1. Brief overview of health and safety laws
2. What does the HSWA mean for franchising
3. Examples of leaning in vs out
4. Tips for franchisors
5. Time for you to share what has worked for you or to ask questions

OVERVIEW OF LEGISLATION

Health and Safety at Work Act (HSWA)

New way of thinking:

1. Establishes a number of **duty holders** in respect of workplace safety and **specific duties** in respect of each duty holder.
2. Introduces the concept of **PCBU**, the principal duty holder under the HSWA and the entity owing the **Primary Duty of Care**. PCBUs cannot contract out of their duties.
3. Duties are also owed by **officers** of PCBUs.
4. **Workers** also owe a duty to take reasonable care for their own health and safety and to ensure that their acts do not adversely affect the health and safety of others.

Primary Duty of Care

PCBU must ensure, so far as is reasonably practicable, the health and safety of workers, and that other people are not put at risk from work carried out as part of the conduct of the business or undertaking.

Primary Duty of Care

Primary Duty of Care means ensuring so far as is reasonably practicable:

- The health and safety of **workers** who work for the PCBU (e.g. employees or contractors, including their subcontractors or workers) while they are at work in the business or undertaking
- The health and safety of **workers whose work activities are influenced or directed** by the PCBU while the workers are carrying out the work
- That **other persons** are not put at risk by the work of the business or undertaking (e.g. visitors to the workplace, members of the public who could be affected by a work activity)

What is the scope of the duty of care?

This includes, so far as is reasonably practicable:

- Providing and maintaining a work environment that is without risks to health and safety
- Providing and maintaining safe plant and structures
- Providing and maintaining safe systems of work
- Ensuring the safe use, handling and storage of plant structures and substances
- Providing adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking
- Providing any information, training, instructions, or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking

What is the scope of the duty of care?

This includes, so far as is reasonably practicable (continued):

- Monitoring the health of workers and the conditions at the workplace for the purpose of preventing injury or illness of workers arising from the conduct of the business or undertaking

Upstream duties (including supply chain)

There are separate duties of PCBUs who design, manufacture, import, supply, install plant, products, substances or structures that is to be used or reasonably expected to be used at workplaces. These duties include ensuring that these things don't create health and safety risks

Key Principles

1. A duty to ensure health and safety requires person to **eliminate** risks to health and safety so far as reasonably practicable and if it is not practicable to eliminate these risks, to minimise them so far as is reasonably practicable. **Duties qualified** by the extent person has or would reasonably be expected to have the ability to influence and control the risks.
2. Duties are **not transferable**.
3. A person can have **more than one duty** under the act and more than one person can have the same duty under the act.
4. If more than one person has a duty in relation to the same matter under the act, those people/businesses should **consult, cooperate and coordinate activities**.



WHAT DOES THE HSWA MEAN FOR FRANCHISING?

PCBU in the Franchising Context

1. The **franchisor** will be a PCBU in respect of its **own activities**.
2. The **franchisee** will be a PCBU in respect of its **own operational business**.
3. The **franchisor** as a PCBU **may** owe duties in respect of its franchisee's business activities.

While the franchisee conducts their own business separate from the business of the franchisor, the franchisor's undertaking may involve :

1. the exercise of some indirect control or influence over the work undertaken by the franchisee's workers;
2. upstream duties / supply chain duties; and
3. provision of premises (sublease or licence).

Worksafe says franchisors **may** be a PCBU for franchisee's business.

PCBU in the Franchising Context

The relevant section of HSWA (S 36) reads as follows:

“A PCBU must ensure, so far as reasonably practicable, the health and safety of –

(b) Workers whose activities in carrying out work are influenced or directed by the PCBU, while the workers are carrying out the work”

Under a lot of **business format franchise models**, the franchisor will exercise contractual control over the franchisee and will often help design the workspace/fitout and specify mandatory equipment and methods of work. However, it is fact dependent if a franchisee worker’s activities are influenced or directed by the franchisor.

Actual influence or direction is required by the PCBU for the duty to be engaged. So an actual provision in a franchise agreement enabling or establishing such influence or control is arguably required. Or the de facto exercise of influence over the activities of a franchisee worker’s activities would be covered.



EXAMPLES OF LEARNING IN AND OUT

Leaning in – retail food store with food cooked on premises

Franchisor provides tools and has a structured assessment program in place that measures compliance in line with policies including Food Safety, H&S, quality, service and merchandising.

1. **New franchisees** undergo 16 week training program that includes on the job training, including H&S staff inductions, completion of workplace inspections and first aid stocktakes.
2. All **franchisee employees** complete an online induction program that covers a broad range of H&S related precautionary measures. Ongoing training online enables franchisees to monitor staff completion of modules.
3. **Safety Bulletin** distributed to franchisees and their staff.
4. Three times a year an **audit** is completed at every store, including full audit of compliance with H&S program. An itemised report is provided at the end of the audit outlining areas that require attention. The report is also sent to **area manager**.

Leaning out – on site business services franchise

Franchisor not an expert but requires **franchisees to buy from a nominated supplier and keep current a H&S products and services, and undertake external audit.**

1. **New franchisees** undergo training program that includes on the job training, including H&S.
2. Franchisee required to implement **H&S plan and policies, etc** using assistance of independent expert which may be nominated by franchisor.
3. **Audits** of H&S compliance by auditor paid for by franchisee.
4. **Compulsory reporting** of incidents.
5. **Franchise agreement** contains specific provisions.

TIPS FOR FRANCHISORS

What can franchisors do? (the basics)

1. Key considerations - are you “**leaning in**” or “**leaning out**”, and what are your system’s H&S risks.
2. **Identify** who in your franchise system is a PCBU or Officer under the HSWA to understand the implications and duties for each within your franchise system.
3. Identify and create an ongoing **consultation and collaboration plan** for any PCBUs that share a duty with you (as franchisor) ie landlords, suppliers and franchisees.
4. **Training** for franchisees – Ensure you have an adequate training programme for new franchisees and an ongoing training plan for existing franchisees. Think about how you might assist franchisees to train their staff.
5. If you are leaning in, **review your H&S policies and procedures** for franchisees to ensure they are compliant with the HSWA and reference the HSWA.

What can franchisors do? (the basics)

6. **Review your Franchise Agreement** to assess the extent of your ability to control or influence in relation to your franchisees' workers and consider leaning in vs leaning out and minimising your ability to influence and control and therefore, liability. Ensure franchisees understand they have the primary duty as a PCBU.
7. **Include a detailed clause in your Franchise Agreement** which sets out the explicit steps and powers necessary to allow a franchisor to ensure compliance and reduce the risk of accidents and a potential Worksafe prosecution.
8. **Need** regular reporting, including re implementation, training, incidents.

What can franchisors do? (continued)

1. **Think differently** and look to make a difference to safety in your network.
2. **Review** where you are at currently. Consider your key health and safety risks. Involve your staff and your franchisees in identifying issues and reducing risks.
3. Implement appropriate **controls**.
4. Consider how you can **embed** health and safety into the culture of you and your franchisees.
5. **Review and update**.

What can franchisors do? (continued)

Support your franchisees. Eg:

1. Ensure safety is built into the **design** of premises, fitout and your business systems.
2. Provide franchisees with a H&S **manual**.
3. Provide **advice** to franchisees about H&S, provide updates in franchisee comms.
4. **Train** your franchisees.
5. Make **training programs** available to franchisee employees (or for them).
6. **Review/audit** and provide feedback to franchisees about their H&S compliance.

What can franchisors do? (continued)

7. Ensure that franchisees understand that H&S **compliance is compulsory** and H&S breaches are a serious breach.
8. Work with your **nominated suppliers** to improve H&S.
9. Make H&S part of your **awards**.
10. Ensure that franchisees have effective **emergency management** and first aid systems in place.
11. Regularly **review and update** your H&S management system.
12. Have a health and safety **consultant** available to assist franchisees

We would love to hear your thoughts
on what has worked for your system
and your questions

Level 13, 41 Shortland Street, PO Box 3451, Auckland 1140, New Zealand
Tel 64 9 303 3849 **Fax** 64 9 309 0902 **Web** www.jacksonrussell.co.nz

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