

## Health and Safety

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### Negligence

Negligence arises where there is a breach of a duty of care. This breach must be something a 'reasonable person would not have done or omitted.' The damage must be a reasonably foreseeable consequence as a result of the breach. Negligent action or omission may be unintentional. However, if harm is caused, it cannot be overlooked.

There are four elements of negligence:

- There is a duty of care owed to the person
- There is a breach of this duty of care
- There must be harm suffered that was caused by the breach of the duty of care
- The harm must be a reasonably foreseeable consequence – it cannot be too remote

### Examples

Harm suffered as a result of negligence is not limited to injuries to the person. Damage to property or a failure to take reasonable care is also a form of negligence. Any of the following factors could be viewed as negligence:

- Not following proper process for the recruitment of new staff, leading to an unsuitable person being given responsibilities

- Inadequate training for staff about risks and hazards of the programme
- Poor compliance with the health and safety measures
- Breach of policy
- Lack of knowledge in handling emergency situations
- Using equipment that is unsafe or inappropriate to the abilities of people using it
- Inadequate supervision of activities at the programme, particularly those with additional specific risks or hazards involved

If a community organisation is being sued for negligence, they may assess whether these defences are applicable:

- **Illegality:** if the complainant was involved in an illegal activity, the community venue will not be liable
- **Consent:** if the complainant consented to the harm, then they will not have a claim
- **Contributory negligence:** if the complainant has contributed to the harm they suffered through their own negligence

## Remedies

A person affected by a breach of duty may seek legal remedies for the harm suffered.

- **Damages:** this is money awarded for the harm suffered by the person. This may be awarded as a form of compensation or exemplary damages. Damages place a monetary value on the harm done. This is the most common form of remedy. However, in New Zealand, the ACC scheme prevents people from suing for monetary compensation for personal injury. Instead, they may sue for exemplary/punitive damages.
- **Injunction:** a High Court order preventing a person from performing any action or making a particular omission. This is reserved for more serious cases.

## Useful Links and Resources

- [Community Law Manual: Health and Safety Protections](#)
- [Download Health and Safety quick reference guide \(ACC and Worksafe NZ\)](#)
- For more about managing employee injuries, see [ACC's website](#) Health and safety

templates can be found on the [WorkSafe website](#)

- [Worksafe: Primary duty of care](#)

## Creating a Health & Safety Policy

If you are a PCBU (person conducting a business or undertaking) you must ensure, as far as is reasonably practicable, the health and safety of workers is protected. You must also ensure that other persons are not put at risk by your work. This is called the 'primary duty of care'.

To help your organisation meet the requirements of the Health and Safety at Work Act, Worksafe New Zealand has published a [useful guide](#) for developing a comprehensive health and safety policy that will help ensure that everyone comes home from work healthy and safe.

## What does a Health and Safety Policy do?

A Health and Policy statement sets out an organisation's approach and intentions and gives guidance around practices that ensure the health and safety of staff, clients, visitors and anyone who might be working with the organisation. Documents help everybody to understand how your workplace should run. As well as providing information, they can explain who is responsible for doing what, when and why – and how to avoid accidents and exposure to health and safety risks.

Documents help to maintain good practice, aid action planning and provide corporate memory. They are useful for monitoring progress, changes, adherence to agreed ways of working, and compliance. However, documents are not the only way that you should share important information. Key health and safety control measures need to be explained and demonstrated in person. You should check that workers understand how these controls are used to eliminate or minimise work risks.

## Common Types of health and safety documents

For low-risk work, documents can be simple. For example, when working out how to manage your work risks you could note the main points about the risks you identify and how you plan to manage them. More risky work requires more complex documents. There are a range of health and safety documents to choose from, such as tables, flowcharts, policy, procedure, guidelines, forms, information and instructions.

## **Involving workers**

Everyone at your workplace can help to make it a healthy and safe place to work. If you are a PCBU you must: – engage with your workers on health and safety matters that may directly affect them, so far as is reasonably practicable – have worker participation practices that give your workers reasonable opportunities to participate effectively in improving health and safety on an ongoing basis. Worker engagement can be direct, or through representation if that is what workers prefer

Engagement includes sharing information about health and safety matters so that workers are well-informed and know what is going on. It also means giving workers reasonable opportunities to have a say about health and safety matters. You should find out how health and safety issues affect how workers organise, manage and carry out their work and listen to and consider what workers have to say. Giving workers an opportunity to contribute to decision-making about health and safety matters is important, as is ensuring workers are informed about the results of the engagement process.

There are a range of helpful resources to assist organisations in developing a health and safety policy, including case studies that can help identify hazards and what measures can be taken to prevent workplace accidents. See:

## **Other considerations for your H&S Policy**

### **Training**

As a PCBU, you also have a duty to provide information, supervision, training and instruction to your workers. Training includes providing information or instruction and must be easy for workers to understand.

### **Management of hazards**

Some general actions an employer can take to manage hazards:

- Engage employees in the development of health and safety procedure
- Have an information system to make sure that employees are well informed
- Implement an accident reporting system and an investigation system
- Have an adequate training programme and supervision for staff

- Implement a sound emergency procedure
- Take regular surveys of the workplace
- Display notices in areas where a hazard may occur
- Keep an accident and incidentals register

## **Reporting Hazards**

When an employee encounters a hazard and is unable to remedy it, they should first report to their supervisor or manager. There should be sound policy in place for when a hazard is discovered. Any hazards should be promptly reduced or eliminated. A significant hazard is one that causes serious harm either at the time or at a later date. Serious harm must be reported to WorkSafe New Zealand as soon as possible and in writing within seven days of occurrence.

## **Useful Links and Resources**

- [Practical guide to writing health and safety documents \(Worksafe\)](#)
- [Workplace wellbeing policy builder \(Ministry of Business, Employment and Innovation\)](#)
- [CommunityNet Aoteroa: Developing policies](#)
- [CommunityNet Aotearoa: Health and Safety](#) (includes policy example)
- [Community Networks Aotearoa: Health and Safety Policy Templates](#)

## **When injuries happen: About ACC**

The ACC scheme is run by the Accident Compensation Corporation. It provides a no-fault insurance policy for everyone who is in New Zealand. This includes visitors from outside New Zealand. This replaces the right to sue for compensation when a personal injury occurs in New Zealand.

Those wishing to make a claim with ACC to cover their injuries must apply to an ACC branch. Each claim is investigated and assessed by ACC. Not everyone is entitled to everything that is offered by ACC (a visitor to New Zealand is entitled to some benefit but not all that is offered by ACC). Approval of a claim and any entitlements are given accordingly. ACC also reserve the right to decline claims.

## **The purpose of ACC is to:**

- prevent injuries, both in numbers and severity
- collect injury-related information for the claimants
- provide rehabilitation to restore a claimant's health, independence and participation
- provide fair compensation for injuries
- uphold the Code of ACC Claimants' Rights

## **ACC does not cover**

- Illnesses
- Stress, hurt feelings (unless they are a direct result from a physical injury or sexual abuse)
- Injuries that come on gradually and are not due to a work task

See also [ACC: For business](#)

## **ACC Entitlements**

### **ACC entitlements are listed in Schedule 1 of the ACC Act 2001:**

- medical treatment
- weekly compensation (up to 80% of lost pre-injury earnings)
- lump sum compensation for permanent impairment
- funeral grants
- attendant care
- equipment for the home
- child care
- home help
- modifications to the home
- transport for independence
- vocational independence

When assessing entitlements, ACC's primary goal is to aid the claimant to return to work through rehabilitation.

## **Work-related personal injuries**

ACC covers workplace accidents of all employees through ACC Workplace Cover. Employers pay for ACC Workplace Cover through premiums.

**A work-related personal injury is an injury that occurs when the person is either:**

- at a place for the purpose of working
- having a break from work for a meal or a rest
- travelling to or from treatment for a previous work-related personal injury
- in a vehicle provided by an employer to transport staff to and from work

The personal injury can be due to an accident, or a gradual process disease due to the risk nature of work.

**For a work-related gradual process personal injury, the employee must show that:**

- the work task or the work environment has a particular property or characteristic
- the particular property or characteristic that caused the personal injury is not found to any material extent outside the person's work task or environment, and may or may not be present throughout the whole of the person's employment
- the risk of suffering the injury is significantly greater for persons doing the task or working in that particular working environment, than for persons who do not

ACC is allowed to adjust levies up or down, with the number of claims accepted for each individual employer's current or former employees. Industry risk groups are also taken into account. Discounts are available after completing the ACC Workplace Safety Management Practices.

## **What to do when an employee gets injured at work**

### **If you are an employee, you should:**

- Inform the employer of the injury or the incident or make an early report of discomfort or difficulty
- Receive treatment as soon as possible

### **If you are an employer and you are advised that an injury or incident has occurred in your workplace:**

- ensure that the injured employee receives treatment as soon as possible
- the incident is recorded in the accident register
- address any health and safety issues that may have arisen
- discuss a 'return to work' process with the injured employee, if it is possible

### **If an employee is able to stay at work, an employer has some duties to allow them to be comfortable at work – consulting a physiotherapist or occupational therapist could help. Some easy suggestions include:**

- Providing a more comfortable work station
- Flexible work hours
- More breaks
- It is also best to speak to the health professional about the best ways to accommodate the employee's needs

### **If the employee needs time off work, an employer must:**

- Pay them for the first week; the rate of payment is 80% of their pre-injury wages
- Provide ACC with an ACC3 Employee Earnings Certificate to enable them to pay the employee the compensation
- Consider suitable duties that could allow the employee to stay at work

## **What to do when an employee gets injured outside work**



## **If you are an employee:**

- You may have to fill out an ACC claim sheet on your own
- If you see a doctor or any other health professional, they can help you fill one out

If you are an employer and your employee needs time off work to recover:

- Check the employee's employment agreement to see if you are allowed to pay their first week of absence as sick leave. If this is not possible then check this availability under annual leave. This will need to be discussed with the employee. Consider granting them a limited amount of paid leave in good faith, without using up their annual leave entitlements
- Provide ACC with an ACC3 Employee Earnings Certificate to enable them to pay the employee the compensation
- If an employee is able to stay at work, an employer has some duties which could allow them to be comfortable at work. Consulting a physiotherapist or occupational therapist could help
- Discuss with the injured employee about a 'return to work' process if it is possible

See [ACC's website](#) for a Return to Work Plan template.

## **Legal responsibilities when hosting**

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## Food hygiene

Food hygiene is regulated by the Food Act 2014 and the Food Regulations 2015 (the parts of the Health Act 1956 that deal with outbreaks of disease are also relevant). The Local Government Act 2002 allows City Councils to manage food hygiene and safety through bylaws so if you have specific questions you should direct them to your local council.

Generally speaking, community food provision (including marae) and fundraiser sales like sausage sizzles and bake sales don't have to comply with the Food Act's key requirements, (such as having a food hygiene plan.) They therefore don't need to be registered or have regular check-ups under the Act.

## Do I need a food hygiene plan?

Your organisation must ensure that any food you provide or sell is prepared in hygienic and

sanitary conditions.

The Food Act 2014 has set out a list of food businesses that require a food hygiene plan. The kind of plan you need is determined by the relevant regulatory authority and is categorized as follows:

- Those involved in 'high risk' food preparation, such as dairy and meat products, must have a food control plan (FCP) in place
- Those involved in 'lower risk' food preparation, such as bread products, are subject to a national programme

If your community organisation does not primarily deal with the trade of food, you will not need any of the comprehensive food hygiene plans (i.e. FCPs or national programmes) set out in the Food Act 2014. If your organisation deals with catering, however, you may be required to have an FCP.

However, even if your organisation does not require an FCP or national programme, anyone who sells or provides food must make sure that the food is safe and suitable to eat. This means that the food must not cause illness, and is suitably and accurately labelled.

The Ministry of Primary Industries has set out a [guide](#) that helps you determine what kind of plan (if any) your organisation needs.

## **Fundraising and food**

Your organisation is permitted to host up to 20 food sale fundraising events per year without needing an FCP or national programme.

If you host more than 20 fundraising events per year, your organisation's primary mode of activity will be deemed to be food preparation. Depending on what kind of food product is being made and sold, you may be subject to an FCP or national programme.

## **Donor immunity**

For charitable acts, the Food Act 2014 also covers donor immunity. A person who donates food in good faith is protected from civil and criminal liability, provided that the food was safe when it left them, and gave the organisation the information needed to keep the food safe.

## **Marae catering**

As long as the kai is being prepared and served for charitable, benevolent or cultural purposes, your organisation falls outside the scope of the Food Act 2014. As mentioned above, your marae is permitted 20 fundraising events per year.

If, however, your organisation is a food business operating in or from a marae, you may be subject to an FCP or national programme.

## **Catered events**

If your organisation is hosting an event that is catered by a commercial catering company, you fall within the scope of the Food Act 2014 and will therefore require a FCP. If this is the case, your organised event falls under a 'food service sector' under Schedule 1 of the Act. This includes commercial catering at a marae.

## **Forms and templates**

Your community organisation may fall within the scope of the Food Act 2014. If this is the case, the MPI website has a [templates and forms](#) for FCPs and national programmes.

## **Useful Links and Resources**

- [Ministry for Primary Industries: Fundraising and community events](#)
- [Ministry for Primary Industries: New Zealand Food Safety](#)
- [Ministry for Primary Industries: Community Food](#)
- [Ministry for Primary Industries: Fundraising and community events](#)
- MPI has a [guideline for marae food safety](#).