



Statutory Liability Insurance

December 2015



Statutory Liability Insurance is designed to provide cover to the company and its directors, officers and employees for defence costs and fines/penalties in respect of unintentional breaches of almost all Acts of New Zealand Parliament, with the exception of the Health & Safety in Employment Act where the policy covers defence costs and reparation orders (this Act expressly prohibits insurance for fines and penalties).

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Cover

The policy covers the named insured, its subsidiary companies and its directors, officers and employees.

The policy pays:

- Defence Costs;
- Fines & Penalties (which the Insurer may lawfully pay);
- Reparation Orders under the Sentencing Act upon conviction for an offence under the Health & Safety in Employment Act 1992 (or replacement Act).

Territorial Limit

New Zealand only

Note: Australian Statutory Liability is available.

Notification

Your Insurer requires notification as soon as practicable during the Period of Insurance of:

- any allegation of breach or contravention of an Act;
- any circumstance which the Company or any insured person shall become aware which may give rise to a claim under this policy;
- the acquisition or creation of a Subsidiary after inception of the Period of Insurance.

Coverage is written on a “claims made” basis. This means that the Policy only provides indemnity in respect of claims made against the Insured and immediately notified in writing to the Insurer during the Period of Insurance.

Health & Safety Reform Bill

The Government has undertaken a significant reform of New Zealand’s workplace health and safety system. The reform package is aimed at reducing New Zealand’s workplace injury and death toll by 25 per cent by 2020. ‘Working Safer’ requires leadership and action from business, workers and Government to achieve this goal.

The Health and Safety at Work Act 2015 replaces the current health and safety legislation and will come into force on 4 April 2016.

The associated changes to the Health and Safety Reform Bill have already come into force. These changes include the commencement of the operation of WorkSafe New Zealand, a stand-alone Crown agency which has a dedicated focus on health and safety assuming the operational functions of the Health and Safety Group of the Ministry of Business, Innovation and Employment (previously the Department of Labour).

Who is responsible in a workplace for health and safety under the new law?

A Person Conducting a Business or Undertaking (PCBU) is to ensure, so far as is “reasonably practicable”, the health and safety of workers and others affected by the work.

What are directors’ and officers’ duties under the new law?

The new law creates a due diligence duty so that those in governance roles must proactively manage workplace health and safety. Directors and officers will be required to exercise due diligence to ensure that the PCBU complies with its duties.

Officers are defined as any person who occupies a position in relation to the business or undertaking that allows the person to exercise significant influence over the management of the business or undertaking (senior governance roles).

Failure to comply with a due diligence duty could result in prosecution and a fine, the maximum level of which would be determined by whether or not the director’s or officer’s failure exposed a person to a risk of death or serious injury or illness.

Points of Interest

- Businesses with fewer than 20 workers that are not “within the scope of any prescribed high-risk sector or industry” are not required to have a health and safety representative.
- Where there are multiple PCBUs, they must discharge their overlapping responsibilities to the extent they have the ability to influence and control the matter.
- Workplace is defined as a place where work is being carried out or is customarily carried out and includes any place where a worker goes or is likely to be at work. In respect of farms, the PCBUs and officers duties do not extend to the family farmhouse nor do they have any health and safety responsibilities to recreational users who come on to farmland.
- Corporate Manslaughter has not been incorporated into the new legislation.
- Limitation period for prosecutions under the legislation is 12 months.
- PCBUs’ obligations do not apply to casual volunteers participating in a fundraising activity, assisting with sports or recreation, assisting with activities for an educational institute outside the premises of that institution or providing care for another person in the volunteer’s home.

What are the penalties under the new regime?

There is a three tiered liability regime for penalties imposed on individuals and overall, a significant increase in the maximum penalty levels over the current law to sanction and deter duty holders from breaching their workplace health and safety duties.

**Category 1**

Reckless conduct;
fines up to
\$600,000 for a
director and/or five
years in jail

Category 2

Exposing a person
to serious harm;
fines up to
\$300,000

Category 3

Breach of duty;
fines up to
\$100,000.

The most serious offending by a company has a maximum penalty of \$3,000,000.

In addition, it is now an offence to indemnify a person or entity for a fine or infringement fee. A \$250,000 fine applies for breaching the rule.

Note: Insurers are prohibited from paying a fines or penalties under the Health & Safety in Employment Act and the Health and Safety at Work Act 2015.

Insurance Implications

With this increased scrutiny, it will become more important than ever to arrange appropriate insurance that will take on the responsibility for managing and funding an effective defence. Whilst these Health and Safety fines cannot be insured, insurance can still provide valuable cover for legal costs of defence and reparations. We recommend Statutory Liability policies be reviewed to ensure optimal cover and appropriate limits of indemnity.

Defence Costs

The legal costs to defend prosecutions have increased significantly since the commencement of WorkSafe. We therefore recommend that you review your Limit.

If you operate in a high-risk sector or industry, then you may wish to consider purchasing a separate legal defence costs Limit to ensure that your Insurer is able to advance legal costs due to the Steigrad Ruling.

Premium Apportionment

The general perception is also growing that there should be a premium apportionment between the company and the individuals. We recommend that you discuss this with your legal advisor.

Risk Management

There will be a new regulatory and insurance emphasis on risk identification and mitigation. Aon's engineers may be able to assist with providing physical hazard surveys.

Organisations, particularly those in higher risk environments, should ensure health and safety issues are managed professionally and accordance with official guidance documentation and standards. Demonstrating good risk management processes to underwriters will assist in ensuring competitive terms and pricing.

Aon will continue to monitor developments to determine any revised needs for protection that may arise.



IMPORTANT NOTE

The above comments are a brief summary only and do not provide a full description of the terms, conditions, extensions and exclusions of the policy. Please refer to your policy document in order to gain a full understanding of how the policy works.

Cyber Security | CRIME

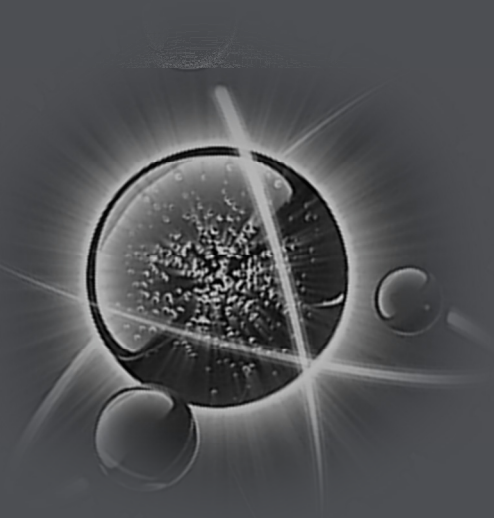
Cyber Security

Breach of systems & data continues to be a hot topic of discussion due to high profile incidents overseas (Target and Sony) but there should also be the awareness of multiple ransomware cases in New Zealand and Australia. Ransomware is a type of malware that restricts access to data, and demands a ransom paid to the creator(s) of the malware in order for the restriction to be removed. This type of security breach interrupts the running of a business and can cause loss to the organisation.

Another common cyber breach is a virus infection which can attack computers, servers and ancillary devices including printers. The virus can leave the computer systems impaired, requiring clean-up work to restore normal operation. This could include loss of data or privacy breach that can impact the organisation and will incur a financial cost for IT consultant services.

Crime

Invoice scams ("Business E-mail Compromise") are now a common occurrence in New Zealand. A Business E-mail Compromise attack usually targets the financial controller who receives what appears to be a legitimate invoice, via their business email account, from a supplier or business partner. The fraudulent invoice requests that payment be made via wire transfer to a designated bank account. Business E-mail Compromise attacks are generally preceded by some other phishing scam or other cyber-attack to assist in the information gathering process and enables the attackers to identify which individuals within an organisation to target and what protocols are used.





Aon New Zealand

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