

## **Improving health and safety – new law for New Zealand**

**A proposed new workplace health and safety law in New Zealand aims to improve the country's poor record in this field. The law would provide for proper employee representation, universal coverage and meaningful penalties in case of breaches. These have been sorely lacking so far. New Zealand's fatality record has, as a result, been 25 to 50 per cent worse than those of Australia and the United States.**

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New Zealand has a shocking record of work-related death, injury and illness. Despite a small population, research shows that over 500 die each year of work-related accidents and illness. Thousands more suffer non-fatal accidents and illness and the impact of stress and fatigue.

Internationally, New Zealand's record compares badly. Over a range of high-risk industries, the occupational fatality record is 25 to 50 per cent worse than those of both Australia and the United States.

The year 2002 has begun with a tragic toll of workplace deaths. New Zealand's government occupational safety and health agency, OSH, reported a "horrific start to the working year". A 29-year-old mother of three died while cleaning a newly-installed faulty piece of machinery in a meat works. The machinery had not been checked and the worker had no training in its use. A construction worker lost his life when a retaining wall collapsed on a building site, highlighting a dramatic rise in the number of deaths in the construction industry in New Zealand over the past 12 months. Media reports of the accident referred to "skipping on health and safety" in the construction industry as the cause of the death.

### **Third World accident rates**

During a visit to New Zealand in 1999, the Royal and Sun Alliance Group Chief Executive, a Mr Mendelsohn from London, commented on our occupational safety record. He said that New Zealand has Third World workplace accident rates and that this high rate could be due to

a lack of incentive for employers to improve workplace safety. He also observed that New Zealand's construction work death rate is the worst in the Western world.

The forestry sector is another where rates are unacceptably high. OSH statistics reveal that forestry workers are 70 times more likely to be killed in a work accident than the average New Zealand worker. An article in a New Zealand health and safety magazine has pointed out that the workplace death rate in New Zealand is 3.25 times higher than the United Kingdom.

Unions view New Zealand's health and safety situation as a workplace accident crisis. Workplace health and safety laws simply are not working and we have long been calling for changes to the law. Along with fatalities and accidents, occupational diseases also take a huge toll. This toll is increasing with the deferred effects of previous exposures to asbestos.

The intensification of work under New Zealand's previous labour law, the Employment Contracts Act (which substituted individual contracts for collectively-bargained conditions involving trade unions), has led to a dramatic increase in the use of toxic chemicals, and the emergence of new epidemics like Occupational Overuse Syndrome and stress resulting from the intensification of work. That anti-worker piece of industrial legislation, introduced by the previous conservative government, was in place for nine years until its repeal in the year 2000 by the Labour/Alliance coalition, currently in government. Unfortunately, other legislation, including the Health and Safety in Employment Act, not only failed to prevent accidents, but have created the conditions in many industries which have allowed them to happen.

The health and safety law has failed for very predictable reasons. The previous government could not be relied upon to enforce the Act vigorously, and thus ensure that the prospect of substantial court fines would provide an incentive for employers to comply with the safety standards required. The legislation provides no enforceable provisions for employee involvement, representation or even a clear right to refuse unsafe work.

The previous conservative government starved OSH of funds, with the result that there was a significant drop in the number of prosecutions against employers. Its conservative successor also actually siphoned off funds collected for OSH and used them for other purposes.

That there are serious cases which should have been prosecuted has been confirmed by research undertaken in the rail industry, a high-risk area. A law firm reviewed OSH files relating to four serious railway accidents where OSH had not prosecuted, two of which were fatal. Their conclusion was that there was clear evidence of breaches of the Health and Safety in Employment Act and that “it would be of great concern if they were typical of OSH decisions not to prosecute.” The result of these soft policies is reflected statistically. Research has shown that occupationally related fatality rate reductions of between 60 per cent and 70 per cent have been achieved over the past two decades in Sweden, Japan, Germany and the United States. By comparison, a New Zealand university study shows that, at best, the New Zealand fatality rate reduction over the past two decades has been 30 per cent.

### **What is the solution?**

The Council of Trade Unions strongly believes that unions should have meaningful involvement at national, industry, and enterprise levels concerning workplace health and safety. The government has a responsibility not only to ensure that minimum standards of safety are maintained as a criminal law responsibility, but also to put in place a statutory framework which encourages progress towards the safest possible environment in all workplaces.

At the national level, there should be a tripartite process to determine acceptable minimum standards of safety. Once established, the national minimum standards should be embodied in understandable legislation, regulations and codes of practice. The laws, regulations and codes of practice should be well publicized. These minimum standards should be rigorously enforced by an inspectorate, with substantial penalties for breaches.

At industry level, the legislation should encourage the development of practices and programmes which aim for best practice in health and safety. These OSH strategies should be integrated with quality management and worker participation so that work and workplace design, training and protection of the safety and health of workers can be addressed on an industry basis.

At workplace level, there should be legislative recognition of the workers’ right to know (about potential hazards they face at work), right to participate (in decisions affecting their

safety and health at work) and right to refuse dangerous work. While the critical importance of management commitment to health and safety is acknowledged, the involvement of workers is both a valuable contribution to the solution of health and safety problems and an important expression of industrial democracy. The best prevention strategies involve the people at risk, the employees, developing and maintaining their own safe systems of work.

Similarly, there is an emerging recognition in many industries that they simply cannot eject their pollutants into the surrounding environment. This is resulting in an integrated approach to the work environment and the wider environment, with sustainable and cleaner production as the objective.

### **A change of law**

At the end of 1999, a Labour/Alliance coalition government was elected. Since the election we have seen a number of major changes to industrial legislation, resulting in a fairer balance between employers and workers.

New workplace health and safety legislation currently being considered in our parliamentary system proposes to address our shocking health and safety record. The proposals include:

- extending coverage of the Act to include workers, such as rail workers and aircrew, presently excluded from the protection of the Act
- enabling any person to legally enforce the Act against employers
- introducing a system of spot fines
- clarifying that stress and fatigue are hazards under the Act
- most importantly, encouraging an inclusive partnership approach between employers and employees, with some limited rights for elected health and safety representatives to play a leadership role.

Although unions and health and safety professionals have welcomed the proposed changes, employers' representative groups and some right-wing politicians have lobbied strongly against the changes. That the main opposition spokesperson on industrial relations, for example, has described the proposed amendments as "draconian" is, though not surprising, a cause for concern.

The proposal for instant fines and increased fines has come in for strong criticism from these groups. To put the level of fines into perspective, it should be noted that the penalties in the Commerce Act and the Hazardous Substances and New Organisms Act are up to 50 times higher than under the Health and Safety in Employment Act.

The union movement and health and safety professionals are clear that if the law is to have any deterrent, then the penalties must be substantial. A commentator has pointed out that the NZ\$30,000 (approximately 13,000 US\$) fine imposed on a major construction company for serious breaches of the Act resulting in a tragic death in 1999 was “little more than a petty cash call, a paltry sum that sends no message to company management...In the UK the charge would almost certainly have been manslaughter and the penalty would have been higher by a factor of 10 or more.”

The announcement of changes has drawn protests from employer groups, and sparked a campaign of opposition. This is despite an OSH analysis of submissions on a discussion paper preceding the announcement of changes, which showed that 72 per cent of health and safety professionals thought increased fines would improve workplace health and safety, 88 per cent supported instant fines, and 67 per cent thought anyone should be able to prosecute.

The Council of Trade Unions hopes that the fines will provide the necessary incentive for the minority of employers who do not take health and safety protection at work seriously.

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Employers have made much of so-called “compliance costs” in proposed changes, when in fact increased fines are, of course, “non-compliance” costs, for those who fail to provide safe systems of work.

The true costs of non-compliance are the huge pain and anguish to the families of more than 500 dead workers, but also the huge economic burden of not preventing workplace accidents and diseases. This cost is estimated to be as high as 6-8 per cent of New Zealand’s GDP.

There has been quite a shrill reaction from employer groups to the reference in the proposed law to stress and fatigue as hazards in the modern workplace. Objections to the clarification of stress or fatigue in the law are also unfounded. In fact, stress and fatigue have been covered by the HSE Act since its inception in 1993 and, in submissions prior to the proposed changes being put together, 73 per cent of health and safety professionals, and 66 per cent of employers, supported additional measures to address stress.

In fact, common law already imposes a potential liability for large damages awards against employers who disregard workplace hazards that can cause mental stress and breakdown.

The trade union movement is fighting hard against the campaign that opposes changes to New Zealand's workplace health and safety law. Unions know these changes are necessary to address our shocking record.

### **Challenge to work together**

But the real challenge lies ahead, after the implementation of the new law. The real challenge is to move beyond minimum standards, within the government framework and the incentives it provides, to improve and achieve best practice in health and safety protection of workers.

The proposed new law provides for the type of proper employee representation, universal coverage and meaningful penalties that have been blocked until now. New Zealand society should be mature and honest enough to acknowledge that employment agreements can be a workplace framework within which employers and employees can develop injury prevention and health protection programmes. New Zealand should follow the successful models from other countries and develop best practice industry programmes which can then be applied through codes of practice in individual workplaces.

The policies of the last decade have failed New Zealand workers. Their health, their safety, and their lives have too often been sacrificed to operational exigencies and profit.

It is time for safety and health to be given the priority it deserves.

## **Health and safety representatives**

The heart of New Zealand's proposed new law is its provision for the election and training of health and safety representatives. The proposed right for employees to elect their own representative is strongly supported by New Zealand's Council of Trade Unions (CTU). Helping employees to protect themselves in this way works well in other countries and there has been no evidence to support the concerns which have been expressed in New Zealand that such powers will be abused.

It is quite clear there is a real need for the new law, both to protect the interests of thousands of employees and to signal to employers the urgent need to address this modern workplace hazard and thus avoid large common law damages awards in the courts. Unions want to use the new legislation to work co-operatively with employers on health and safety protections, but the experience of the past ten years has shown that there need to be substantial penalties before some employers take health and safety seriously.

The real focus of the Act is to provide a framework within which employers and employees, either individually or collectively as unions, can identify workplace hazards and jointly develop effective strategies to eliminate them. Unions are disappointed that the Bill does not include the power for elected and trained employee health and safety representatives to issue provisional improvement and prohibition notices in respect of unsafe work. Such systems have been shown to work overseas. However, the proposed law follows the well-established international model of employee participation, which recognizes that employees should have rights to ensure their own health and safety at work, and to work together through their union.