

RISKY BUSINESS – ADDRESSING PSYCHOSOCIAL HAZARDS IN THE WORKPLACE

Following recent changes in work, health and safety laws, employers are now required to take a proactive approach in managing psychosocial risks in the workplace. In this briefing, we unpack these changes and identify the implications for employers when they are not followed.

As of 2024, nearly every Australian State and Territory has adopted the changes to Safe Work Australia's (**Safe Work**) model WHS Regulations 2023 (Cth) (**WHS Regulations**), requiring employers to proactively manage psychosocial risks. The exception is Victoria, which has introduced but not yet passed amendments to the Occupational Health and Safety Act 2004 (VIC) on this issue.

What is a psychosocial hazard?

A psychosocial hazard can arise from aspects of work design, the work environment, or workplace interactions which can increase the risk of work-related stress and lead to psychological or physical harm.¹ For example, a psychosocial hazard may arise from fly-in/fly-out workers having lengthy periods of isolation away from other employees, supervisors, or their social and family contacts.

What has changed?

The psychosocial health of employees was previously covered by the model Work Health and Safety Act (**WHS Act**) through its broad definition of 'health'.² The meaning of this term ensures that the primary duty of care for employers extends to both their physical and mental health and safety.

Changes have been made via the Work Health and Safety Amendment (Managing Psychosocial Risk and Other Measures) Regulations 2022 which required employers to **proactively identify and control psychosocial risks** which arise in the workplace. This has imposed a positive duty on persons conducting a business or undertaking (**PCBU**), making it paramount that psychosocial hazards are treated as a safety matter, and not just a one-off issue affecting an employee/s.

Unlike the other States and Territories, **Victoria has not adopted the model WHS laws**. Nonetheless, failure by an employer to identify and control psychosocial risks in Victoria may still incur a substantial penalty, as employers must so far as is reasonably practicable, provide and maintain a working environment for their employees which is safe and without risks to health. For example, in late 2023 a Victorian employer was fined close to A\$380,000 for failing to take adequate steps to identify or assess psychosocial risk and address the workplace's toxic culture.

How can I comply with these new requirements?

Shortly after implementing these changes to the WHS Regulations, Safe Work introduced the model Code of Practice for Managing Psychosocial Hazards at Work (**Code of Practice**). This provides employers with guidance on how to achieve the standards which have been set for managing psychosocial risks under the WHS Regulations.

The Code of Practice sets out a four-step risk management process to assist in the management of psychosocial hazard, and includes:

- 1. Identifying psychosocial hazards** – Take a proactive approach in identifying any reasonably foreseeable psychosocial hazards which could arise within the workplace.
- 2. Manage psychosocial risks** – Regularly conduct risk assessments and identify whether the hazards alone, or combined, could pose a psychosocial risk to individuals, groups, or the workplace. Appropriate control measures should then be considered and implemented in line with regulation 55D(2) of the WHS Regulations.

¹ See Model Work Health and Safety Regulations, r 55A.

² See Model Work Health and Safety Act, s 5

3. **Maintain control measures** – Maintain any control measures which have been implemented to ensure that they remain effective. The control measures which are implemented must remain fit for purpose, suitable for the work and be installed, set up and used correctly.
4. **Review and revise control measures** – Implement a review process for the control measures in line with the requirements set out in regulation 38 of the WHS Regulations. Revise the control measures as necessary and record these processes as they occur.

What are the consequences for failing to manage psychosocial risks?

The requirement in the WHS Regulations to manage psychosocial risk feeds into an employer's overarching health and safety duty under the WHS Act.³ Failure by an employer to identify and manage psychosocial risks may result in an employer breaching its duty of care, and subsequently being exposed to an offence and penalty.

Under the model WHS Act, an employer will have committed a **Category 3 offence** if they hold a health and safety duty but have failed to comply with it.⁴ The penalty for this offence varies depending on the employer's State or Territory. If an employer's failure to address psychosocial risk results in, or exposes an employee to injury or death, the employer's conduct may constitute a more serious Category 1 or 2 offence which would incur increased penalties.

A clear disregard for psychosocial risk resulting in the death of an individual may result in a PCBU being charged under the criminal offence of industrial manslaughter. The penalties for this offence include a lengthy term of imprisonment and fine for individuals, or a more substantive fine for corporations.

Suggested action points

Managing Psychosocial Risks
<ul style="list-style-type: none">• Adopt or implement your State or Territory's Code of Practice for managing psychosocial hazards at work.• Employ various strategies in identifying psychosocial hazards:<ul style="list-style-type: none">◦ TALK with your workers about what psychophysical hazards.◦ REVIEW any data which may suggest there are psychosocial hazards present.◦ OBSERVE work behaviours and interactions between staff.◦ USE tools and questionnaires to identify psychosocial hazards.• Actively seek to engage employees in the identification and management of psychosocial risks.• Conduct training with Supervisors and Management on how to identify psychosocial hazards. Develop comprehensive risk management systems for psychosocial hazards throughout the workplace.
Minimising Psychosocial Risks
<ul style="list-style-type: none">• Develop and foster a positive and supportive organisational culture.• Encourage a healthy work life balance through offering flexible work arrangements.• Implement a zero-tolerance policy for bullying, discrimination, or harassment.

Key takeaways

Employers must take psychosocial risks seriously to avoid facing criminal sanctions. This requires employers to be proactive in identifying reasonably foreseeable hazards that could give rise to risks to an employee's psychosocial health in the workplace.

It is vital that employers adopt their State or Territory's Code of Practice for managing psychosocial risk and implement comprehensive risk management systems.

Get in touch

This briefing provides a detailed analysis of the recent changes to psychosocial risks within Australia. For more information, or if you would like advice about how your business can comply with the changes to the WHS Regulations, please contact the authors of this briefing or your usual HFW contact(s).

³ See Model Work Health and Safety Regulations, r 55C.

⁴ See Model Work Health and Safety Act, s 33.

You can read our previous updates on recent amendments to the Fair Work Act 2009 here:

- [Fair Work Legislation Amendment \(Closing Loopholes\) Bill 2023](#)
- [Regulated Labour Hire Reforms](#)
- [New Delegates' Rights Provisions](#)
- [An Employee's Right to Disconnect](#)

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