

# Employer Duties under SHaW 2005

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This week as we continue to look at the pending Safety and Health at Work Act (SHaW) 2005 we will take a closer look at the responsibilities of Employers under the Act. With that said, it is prudent to first highlight three (3) definitions to which special attention should be paid: Owner, Occupier and Employer. An **Employer** is defined as a person who employs persons for the purpose of carrying out a trade, business, profession, office, vocation or apprenticeship. The **Occupier** is defined as the person who has control over a workplace and the work that is done there, while the **Owner** is the person receiving rent for the premises in connection with which the work is carried on.

It is possible for all three (3) of these; Owner, Occupier and Employer to be the same, however this is not always the case. There are many situations where the Employer and Occupier is the same person while the Owner is a separate entity, which is typical when a rental arrangement exists. However, it is also possible for the Employer and the Occupier to be different entities. These distinctions can become important depending on the operations of the business and bears further relevance in the Act as the duties of the different parties are explicitly stated. For example, it is the Owner who is responsible for maintaining the safety of the workplace where civil works are being undertaken by subcontractors.

The duties of the Occupier and Employer as identified in the Act are similar, however they are not completely new. In fact many of these can be traced to the Common Law Duty of Care and are now explicitly and clearly stated under Section 6 of the Act. The Employer/occupier duties can be summarised as follows:

- **To ensure so far as reasonably practicable the health, safety and welfare at work of all employees.** What is the difference between safety, health and welfare? Safety is the prevention of damage or injury, while health is the absence of illness and welfare seeks to meet the basic physical needs of persons through the provision of adequate facilities.

- **To provide a safe place of work to ensure the health and safety of the employees.** In providing a safe and healthy place of work there are areas which will require attention, such as adequate ventilation, lighting, overcrowding, temperature, noise and cleanliness. These are addressed under Part IV of the Act.
- **To provide safe equipment and tools for doing the work.** Part II of the Act, Section 11-48, looks at safety provisions which include regulations on operating different types of machinery, provisions to warn of fire and means of escape. Additionally the Act specifically states that every thing in the workplace shall be constructed of sound material and properly maintained.
- **To provide competent and safety-conscious fellow workers.** It is a generally duty of employees to take reasonable care for their health and safety as well as that of their coworkers. Therefore they are required to comply with all safety instructions issued by the employer.
- **To provide safe systems of work.** More often people will establish procedures for activities such as the storage and removal of dangerous chemicals however ensuring that workspaces and procedures meet ergonomic standards is also vital.
- **To provide the necessary information, instruction, training and supervision.** This means that persons should only utilize equipment which they are trained to operate and the training and certification should be documented. Additionally the SHaW 2005 specifically states that persons with special needs are to be given instruction and training in a method that allows them to understand.

As highlighted above, the SHaW Act 2005 speaks to the Safety, Health and Welfare within all workplaces and each of these areas is addressed within the Act. Therefore it is incumbent upon employers to assess their methods of work to ensure the elimination or minimisation of risk to employees. Additionally, besides having responsibilities to the employees, occupiers are to ensure that others visiting their premises are not exposed to risks.

It is often easy for employers to focus on the cost of compliance when reviewing health and safety needs; there are risk assessments to be done, training for committee members to be coordinated and signage to be erected. However the BEC always encourages companies to look at occupational health and safety from both sides of the coin. Yes, there will be upfront costs however this should be balanced against the cost of not being proactive in Health & Safety which include higher employers' liability claims, increased lost days due to sickness and a loss of reputation. As businesses prepare for the expected proclamation of this piece of legislation, the BEC stands ready to assist in whatever way possible.