

Working from home

The Kaikoura emergency situation this week closed businesses in the South Island and Wellington, most for only a day or two but some for the longer term.

Over the last week as businesses assessed and addressed their damages, many employees worked from home.

Having employees working remotely was a new for some businesses.

It came as a surprise to some employers that health and safety responsibilities to employees apply when they are working remotely - the same strict liability that applies when they are working in the workplace.

Media reports implied that this is a new responsibility on employers, resulting from the new Health and Safety at Work Act - more evidence of crazy, over-the-top health and safety law.

In fact, employers have always been responsible for the safety of their employees while they are working, regardless of where they are working.

Under the previous legislation, this duty of care regardless of location was well defined and well developed in case law.

Under the new legislation that duty of care is still there.

Now it is defined as the duty to 'do everything reasonably practicable' to ensure no harm comes to their employees.

'Doing everything reasonably practicable' is a new standard that will get developed further through new case law. (Legal commentators view this standard as more practical and achievable than the previous 'doing everything practicable' definition of the duty of care under the old law.)

In the meantime, businesses need to get on with the task of ensuring employees are working in a safe environment when working from home.

What does that mean in the context of the Kaikoura earthquakes?

Given the emergency nature of the last week, the duty of care to ensure a safe working environment would not include for example conducting inspections of employees' homes to ascertain that they were in fact safe.

However employers do need to assess whether an employee is safe and sufficiently resourced to work remotely.

It need not be complicated. For example it could be achieved by asking the employee to conduct a self-assessment against a checklist, covering the same types of issues the employee confronts in their normal work. Obviously this would be easier for office-type

work - for more complicated situations an employer would probably want to see the situation themselves.

This is the kind of behaviour that the new health and safety law seeks to encourage – joint conversations and straightforward joint planning by employer and employee to minimise risks to employees wherever they may be working.

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