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WORKPLACE RELATIONS UPDATE: Changes to ACT Workplace Health and Safety Laws

Changes to ACT Workplace Health and Safety Laws

On 23 November 2022, a range of changes to workplace health and safety (WHS) laws were passed in the Australian Capital Territory (ACT) in respect of:

- reporting workplace sexual assault,
- a prohibition of insuring against liability for penalties, and
- consulting with employee health and safety representatives about training.

Sexual Assault Reporting

Workplace sexual assault incidents **must be reported to WorkSafe ACT**.

Under the previous legislation, reporting of sexual assault was only required where the sexual assault caused hospital admission or medical treatment. It is **now required as soon as employers become aware of sexual assault**.

Prohibition of insuring against liability

Employers **must not** insure against their liability for WHS fines and penalties.

Consultation with employee representatives

Employee health and safety representatives will be provided with improved support to attend required WHS training.

What must employers do?

- Employers **must formally notify WorkSafe ACT** as soon as they **become aware of a sexual assault incident or a suspected sexual assault incident** in the workplace.
 - Medical treatment or hospital admission is not required to make the sexual assault a notifiable incident.
 - An employer is not required to preserve the site following a sexual assault incident, unlike some other notifiable incident
- Employers should **review insurance contracts** to ensure that there is no contravention of the **prohibition of insuring against liability** for WHS fines or penalties.

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about which training course they attend.

What is a reportable sexual assault incident?

A sexual assault must be reported to Worksafe ACT when it meets the following definition of a sexual assault:

- “Sexual activity inflicted upon a person without their consent and in some jurisdictions a statutory crime replacing rape, divided into categories according to the degree of violence accompanying the sexual intercourse”.

Employers must also report a suspected sexual assault.

- The duty to report is not limited or impeded by lack of certainty surrounding the reported incident.
- Sexual harassment is not intended to be captured by the new legislation.
- However, sometimes sexual harassment will become a reportable incident in its own right (i.e. severe bullying or harassment that causes a psychological hospital admission.)

What are the penalties for breaching the laws?

Maximum penalties apply as follows:

- WHS fines and penalties for non-reporting of workplace sexual assault incidents are \$10,000 for individuals and \$50,000 for body corporate organisations.
- Contracting to insure against WHS fines and penalties are \$50,000 for individuals and \$250,000 for body corporate organisations.
- Contravention of the laws relating to training health and safety representative are \$10,000 for individuals and \$50,000 for body corporate organisations.

When do the changes take effect?

The above changes will take effect from **6 months after the notification day** (yet to be announced).

For More Information Please Contact



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