



Setting Up An Employee Participation System

With Elected Health and Safety Representatives

**HANDBOOK FOR EDUCATION SECTOR
UNION REPRESENTATIVES**



June 2003

Introduction

Health and safety legislation has changed. The Health and Safety in Employment Act 1992 now says that

“Every employer must provide reasonable opportunities for the employer’s employees to participate effectively in ongoing processes for improvement of health and safety in the employee’s place of work.”

In plain language, that means that everyone now has a right to have a real say in how their health and safety is being protected at work.

Does your employer have 30 or more employees? They *must* set up an effective employee participation system. Participation starts right at the beginning – the employer must reach agreement with you and your colleagues on the system. This is not automatically required if there are less than 30 employees – but the employer must do so if any employee requires them to.

This kit has been put together by NZEI, PPTA and SFWU¹, to help members work with their employer to agree on and set up effective employee participation systems.

The Act also requires that the employees’ unions agree to the system. Each of the unions will be indicating their agreement to proposed systems in different ways – this kit explains what is required for each union.

Included in this kit are:

- Pages 2-5** A step-by-step guide/checklist to setting up an effective employee participation system that includes elected health and safety representatives.
- Pages 6-9** Important background information on employee participation systems and health and safety representatives
- Page 10** A model letter to the employer notifying initiation of the process of developing an effective system of worker participation.
- Pages 11-14** A model Employee Participation Agreement.
- Page 15** A model letter to the employer confirming the election of any/all health and safety representative(s).
- Page 16** A form for registering the elected representatives with the unions in your workplace. *It is important to register the representatives with the union they belong to, so that we can organise training for them in their new role.*

These model documents can be downloaded (with the rest of this kit) from the following websites: www.nzei.org.nz or www.ppta.org.nz

¹ This kit is based on *Setting up Worker Participation Systems with Health and Safety Reps*, published by the Council of Trade Unions, Wellington 2003.

Step-By-Step Guide and Checklist:

Setting Up an Employee Participation System with Elected Health and Safety Representatives

All unions need to be involved and their members will need to work together in the process of setting up a system for effective employee participation in Health and Safety in the workplace.

NZEI, PPTA and SFWU believe that it is important that members have direct involvement in the process right from the beginning. It is up to members to decide how they want to be involved in decisions about health and safety in your workplace. For that reason, the process of reviewing existing processes (and making changes if needed) is a task that has been delegated to you as the representative of your union.

You will need to meet with representatives of the other unions that have members in your workplace, to agree on a common approach; on roles; and on any division of the tasks set out below.

Step 1 *If there is an existing H & S system:*

Assess existing system in conjunction with delegates from all unions, existing health and safety reps, committee members, members, anyone with an interest.

Make sure you have copies of your employer's existing OSH policy, and any OSH manual. Make sure you understand how hazards are identified, and how decisions are made about what gets done about hazards and emergencies. Is there an OSH strategy or plan, and if so, is it regularly updated? What role (if any) do employees have in those decisions?

Is the existing system appropriate because it demonstrates employer commitment to on-going and effective worker participation?

- The system was negotiated with, and agreed to by, **all** employees
- Employees are represented by **elected** health and safety representatives
- Elected health and safety representatives represent **each** group of employees: all employees are grouped in a sensible and appropriate way, including those who work in remote sites and/or at different times of the day. *See page 6 for more information on "designated work areas".*
- Health and safety representatives have a real say in decisions about health and safety issues in the workplace
- Elected Health and Safety Representatives get at least 2 days annual training **in their role as representatives.**

Tick/ cross
<input type="checkbox"/>

(Note - pages 6 and 7 have more information.)

If the group can tick all of the above boxes, you can decide to endorse the existing system, without making any changes. You should still follow steps 4 and 5 to formally “agree” on the current system with your employer, and to re-elect your existing representatives (they need to be elected under the new law to qualify for the training leave).

Of course if the group decides it would like to see changes, follow the rest of the steps below.

If the group cannot tick all the boxes above, your employer’s existing system does not provide you with opportunities to effectively participate in the management of your own health and safety.

Step 2 *If there is no existing H & S system or the existing system is inadequate, change is needed:*

Decide as a group what sort of system you want (use the points in step 1 as a guide). Make sure that every employee has the opportunity for input into the discussion – both those in the workplace and those who work “off-site”.

Make sure the group makes clear decisions on:

- How many health and safety representatives you want
- How the workplace should be divided up by work area, to elect the representatives
- What functions the elected representatives should have *(see pages 6 and 7)*
- How the representatives should work with your employer to ensure that employees effectively participate in decisions about health and safety *(see pp 7 about participation)*
- How you will review the system *(the new law requires agreement on review processes)*
- How employees will endorse whatever is actually agreed with your employer

Tick

Step 3 *When you have a proposed system that members of all unions are happy with:*

- Notify the employer that you wish to seek the implementation of an employee participation system *(sample letter attached – use the draft agreement in this kit to set your proposals out on paper)*
- Notify non-union employees that union members are seeking the implementation of a system
- Representatives of each union to meet with employer to put the unions' proposals, discuss any issues the employer raises and reach agreement *(what compromises are needed on each side to reach agreement, will they be acceptable to the other members?)*

Tick

Step 4 *When agreement has been reached with the employer on a system:*

Document the system that has been agreed (a draft agreement is attached). The agreement should be signed by the employer and each of the unions, as set out below.

- All employees should vote on what has been agreed
- **Unions to formally agree to the system, subject to:**
- **For PPTA branches** – If the agreed system varies from the draft agreement attached, have the agreement approved by your PPTA Field Officer before signing off
- **For NZEI** – worksite representative to sign agreement if a majority of NZEI members endorse what has been agreed
- **For SFWU** – check with your local organiser/office

Tick

Step 5 *Elect your health and safety representatives:*

The new legislation gives unions the authority to organise and run the elections for health and safety representatives.

- Call for nominations for each of the elected health and safety representatives agreed on with your employer
- Hold elections if there are multiple nominations for any representative position
- Notify the employer of those elected as health and safety representatives (*sample letter attached p15*)
- Register elected health and safety representatives with unions (*form attached p16*)

Tick

Registering your representatives is important –only registered representatives will be eligible for annual paid training leave

Page 16 of this kit is the registration form. Complete a copy of this form for each elected representative, and send it to the union to which the representative belongs:

NZEI Te Riu Roa PO Box 466 Wellington
PPTA Your local Field Office
SFWU Your local organiser/office

Step 6 *Monitoring*

- There is on-going monitoring by union members to ensure the system is effective
- Records are being kept of any failings so that these can be improved upon when the system is reviewed

Tick

Background Information

Health and Safety Representatives

Elected health and safety representatives should be the basis of any system you establish for employee participation in health and safety management.

It is important to ensure all employees are represented by a health and safety representative, taking into account factors such as different work environments and any employees on remote sites. Divide your workplace up into “designated work areas” – each area should have its own health and safety representative.

Employees will have the best insight into how best to define the designated work areas. They may for example be defined by location within the workplace, the sort of work done in different parts of the workplace, separate occupational groups, or a combination of all three. Where different occupational groups are represented by separate unions, we recommend that each group has its own representative.

Some examples of possible designated work areas are:

- ⇒ Administration
 - ⇒ Distinct areas in the office
 - ⇒ Different shifts if appropriate

- ⇒ Classroom areas
 - ⇒ Distinct areas as appropriate
 - ⇒ General teaching blocks, specialist teaching blocks
 - ⇒ Different occupational groups eg teachers, teachers aides
 - ⇒ Different shifts if appropriate (Community Education staff?)

- ⇒ Maintenance staff
 - ⇒ Distinct areas amongst these staff
 - ⇒ Different shifts if appropriate

- ⇒ Off site workers

- ⇒ Other categories
 - ⇒ appropriate categories

Functions of a Health and Safety Representative

The new legislation sets out the minimum functions of elected health and safety representatives:

- To foster positive health and safety management practices
- To advise the employer of any hazards in the workplace and to discuss with the employer ways to deal with hazards
- To consult with OSH inspectors on health and safety issues
- To promote the interests of employees on all health and safety issues
- To promote the interests of employees who have been harmed at work, including in relation to their rehabilitation and return to work

Your workplace may decide to add additional functions. Additional functions could for example include

- To be advised of any inspection, visit or audit undertaken in relation to health and safety, and
- To meet with the person undertaking the inspection, visit or audit.
- To meet with any new employees, temporary employees or contractors who will be working in the relevant designated work area.

Health and Safety Representatives - Participation

The legislation does not dictate how you and your elected representatives are to participate in the management of health and safety in your workplace. That is something that you need to negotiate with your employer. The purpose of the legislation is to provide employees with a real say in the protection of their own health and safety - what will best do that in your workplace?

Health and safety committees are often used as a way for representatives to work with employers. Committees can have various functions, such as considering policies and annual plans, and making recommendations on improvements after accidents, or suggestions made by staff. They often consider and respond to proposals from management on issues that impact on health and safety. They can be the group that considers and makes decisions on safety equipment, how hazards should be dealt with, and return to work procedures for employees who have been hurt.

Health and safety committees are just one way for representatives to work with employers. You may prefer that your representatives raise and work through health and safety issues in some other way. However if you decide that the representatives should form part of a committee, make sure that the committee has a clear purpose and place in decisions about health and safety issues.

The Act says that management shall have no more than an equal number of representatives on the committee or each committee if there is more than one.

If there is No Agreement – The “Default” System

Employers cannot avoid the legislation by refusing to reach agreement. If there is no system agreed and implemented by 5 November 2003, the legislation will impose a

system. The system will have representatives, who will have the minimum functions set out above.

While you will still have some choices (how many representatives, how they are elected, and whether they are to form part of a health and safety committee), what is missing from this “default” system is the chance to agree on how your representatives will have a real say in health and safety decisions. The unions believe that reaching agreement on a system is much better than having to rely on this “default” arrangement.

Health and Safety Representative Training

Employers (and your representatives) will need to be informed about training for health and safety representatives.

Elected health and safety representatives have the right to two days paid training leave every year, to get training in their role. The leave is available for training programmes that are approved by the Minister of Labour. There is currently one course that has Ministerial approval. It is funded by ACC and run by the Council of Trade Unions (the CTU). The CTU will be organising training sessions around the country, according to demand.

It is important for you to register your elected representatives with your union, so the CTU can organise training for them. Make sure you complete the registration form attached to this kit, and send it to every union whose members have been elected as a health and safety representative.

Your system can have as many representatives as you decide on. However the Act sets out the maximum total number of days paid leave an employer is required to allow, based on the total number of employees:

Number of employees	Maximum days leave
1-5	2
6-50	6
51-280	1 day per 8 employees or part thereof (e.g. $275/8 = 34.4$ i.e. 35 days)
281+	35 + 5 per 100 employees or part thereof (e.g. $295 = 35 + 15$ i.e. 50 days)

If your system has more representatives than this, not all of them may be able to access the paid training leave every year. You and your employer can agree to increase this training entitlement – make sure you include that in your written agreement.

Hazard Notices

The new legislation enables ***trained*** health and safety representatives to issue “hazard notices”, where a hazard has been brought to an employer’s attention, and the representative does not believe the employer is dealing effectively with the hazard. Ignoring such a notice can ultimately lead to the employer being fined up to \$4,000.

Issuing hazard notices is a serious matter – health and safety representatives will be fully trained in their appropriate use.

The draft agreement includes a provision about hazard notices. It simply reflects the legislative provision about hazard notices, and trained health and safety representatives will have the power to issue the notices whether or not the agreement refers to them.

More information is available from www.worksafereps.org.nz : a website set up by the New Zealand Council of Trade Unions to help health and safety representatives.

Dear **[Employer]**

Re: Development of an Effective System for Worker Participation in Health and Safety

This is formal notification, on behalf of the members of the following unions **[amend as appropriate – what is listed depends on unions that cover employees in each workplace]**

- *New Zealand Post-Primary Teachers' Association Te Wehengarua*
- *New Zealand Educational Institute Te Riu Roa*
- *Service and Food Workers' Union*

that we wish to initiate the process of developing an employee participation system pursuant to section 19C of the Health and Safety in Employment Act 1992.

Please note that section 19C of the Act requires that before an employee participation system can be adopted agreement must be reached between you the employer, the employees and any union or unions representing the employees. For **PPTA** the local Field Officer has sole authority to agree on behalf of the Association, so any agreement reached without the Field Officer's consent will be invalid. **[name]** has delegated authority to agree on behalf of **NZEI**. **[name]** has delegated authority to agree on behalf of **SFWU**.

To ensure the prompt implementation of an effective employee participation system we propose the adoption of the attached system.

We further propose that the system be reviewed in 12 months from the date of agreement to assess its effectiveness and consider any amendments that might be needed.

In the event that agreement cannot be reached the default system contained in the Act shall automatically be adopted pursuant to section 19D of the Act.

We look forward to meeting with you at your earliest possible convenience to begin the process of developing an effective worker participation system that will ensure all the employees of **[your employer]** are safe and healthy while at work.

We look forward to hearing from you.

Yours faithfully

[Jointly signed by branch officer/representative of each union]



Employee Participation System Agreement

The purpose of this agreement is to improve health and safety in the workplace by promoting cooperation between the employer, employees and the union or unions representing the employees, and by ensuring all employees are provided with a reasonable opportunity to be actively involved in the ongoing management of health and safety.

This agreement is to be read in conjunction with all other health and safety provisions contained in collective or individual employment agreements that cover employees employed at **[your employer]**.

The parties to this agreement agree that the following matters shall be the employee participation system for the purpose of complying with section 19C of the Health and Safety in Employment Act 1992.

1. Health and Safety Representatives

1.1 Number of Health and Safety representatives

There shall be one health and safety representative for each designated work area. See Schedule 1 of this agreement for all designated work areas.

1.2 Election of Health and Safety Representatives

The union/s shall hold elections for health and safety representatives after this agreement comes into force. Nominations shall be sought for candidates who wish to stand for election for the position of health and safety representative in each designated work area.

Each health and safety representative is to be elected by secret ballot by those employees in the designated work area the health and safety representative will represent.

If there is only one candidate for the position of health and safety representative there is no need to hold an election and that person shall automatically fill the position.

Elections shall be held annually. When casual vacancies arise another election shall be held in the relevant designated work area following the same procedure as set out above, for the balance of the time until the next annual election.

1.3 Functions of Health and Safety Representative

The functions of the health and safety representatives are described in Schedule 2 of this agreement. *(See pp 6-7 of this guide.)*

The parties to this agreement may agree from time to time to include additional functions of the health and safety representatives.

The employer shall ensure the health and safety representatives have sufficient time and resources to undertake the role effectively.

1.4 Health and Safety Representative training

Each elected health and safety representative shall, on giving at least 14 days notice, be entitled to two days paid leave per year to attend a training course approved under section 19G of the Act.

Health and safety representatives who are members of unions shall attend the joint New Zealand Council of Trade Unions/Accident Compensation Corporation training.

Health and safety representatives who are not members of a union may also, on giving at least 14 days notice, attend the CTU/ACC training at no cost to themselves or the employer.

In the event that a health and safety representative is unable to attend a selected training course an alternative training course of the health and safety representative's choice must be arranged as soon as possible.

2. Health and Safety Committee

The parties agree to establish [**or retain**] a health and safety committee. The parties agree that the functions of the health and safety committee are separate and distinct from those of the health and safety representatives.

To avoid any doubt, an employee may be a member of the health and safety committee and a health and safety representative.

2.1 Membership of Committee

See Schedule 3 for the membership of the Health and Safety Committee.

2.3 Functions of Committee

The functions of the Health and Safety Committee are contained in Schedule 4 of this agreement.

2.4 Frequency of Committee meetings

The committee or committees shall meet quarterly or at more regular intervals by agreement.

2.5 Notification of Committee meetings

All employees will be notified of upcoming committee meetings and will be given a reasonable opportunity to provide input.

2.6 Outcomes of Committee meetings

All employees will have an opportunity to assess the outcomes of committee meetings.

Include this shaded section if your system is to include a Health and Safety Committee. Otherwise replace with alternative provisions that set out how your representatives will effectively participate in the management of health and safety in your workplace.

3. Review of System

This employee participation system shall be reviewed every 12 months or more regularly by agreement.

4. Right to refuse dangerous work

The parties to this agreement recognise that every employee has the right to refuse work that he or she believes is dangerous.

In the event that an employee refuses to perform work he or she believes to be dangerous the following steps shall be taken:

- (a) The employee will advise their health and safety representative immediately.
- (b) If the health and safety representative is unavailable the worker will advise the employer.
- (c) The employee, health and safety representative and employer will attempt to resolve the matter as soon as practicable.
- (d) The employee will continue to refuse to perform the work until they are satisfied it is no longer dangerous.
- (e) If the matter cannot be resolved an OSH inspector will be contacted.
- (f) The employee will perform any other work within the scope of his or her employment agreement that the employer reasonably requests.

5. Hazard Notices

A trained health and safety representative in the following circumstances may issue a hazard notice:

- (a) When there are reasonable grounds to believe a hazard exists; and
- (b) The hazard has been brought to the attention of the employer; and
- (c) An attempt has been made to discuss the hazard with the employer; and
- (d) The employer refuses to discuss or take steps to deal with the hazard, or
- (e) Agreement cannot be reached on how to deal with the hazard; or
- (f) The health and safety representative believes on reasonable grounds that the employer is in breach of Section 6 of the Act in relation to the hazard.

When a trained health and safety representative issues a hazard notice an OSH inspector will be notified immediately.

6. General agreement in relation to employee participation

Notwithstanding the terms of this agreement, all employees will be provided with a reasonable opportunity to participate effectively in ongoing processes for improvement of health and safety in the place of work in accordance with Section 19B of the Act.

7. Application of the Health and Safety in Employment Act 1992

To avoid doubt the parties to this agreement understand and acknowledge that all relevant rights and obligations contained in the Health and Safety in Employment Act 1992 apply to the parties.

8. Parties to this agreement

The following are party to this agreement and undertake to co-operate in good faith to ensure the effective ongoing improvement of health and safety.

[Employer]

[Employees]

[Union/s - Jointly signed by branch officer/representative of each union]

Schedule 1. Designated work areas

Schedule 2. Functions of Health and Safety Representative

Schedule 3. Membership of [any agreed] Health and Safety Committee

Schedule 4. Functions of Health and Safety Committee



Health and Safety Representative Training

This letter is confirmation that

- **name of rep**
- **name of rep**
- **name of rep**

has/have been elected as Health and Safety representative(s) for **[your employer]**. As elected health and safety representatives, they are entitled to two days' paid training leave each year, during which they are entitled to attend training courses on their role as representatives.

This person/these people will now be registered for the "WorkSafe Reps" Health and Safety Representative training course, which is being jointly run by the New Zealand Council of Trade Unions and the Accident Compensation Corporation.

You will be advised of the specific dates and venue and will receive at least 14 days notice.

This training has Ministerial approved under section 19G of the Health and Safety in Employment Act 1992.

If you have any concerns or wish to discuss this matter further please contact the undersigned.

Yours faithfully

[Jointly signed by branch officer/representative of each union]



Elected Health & Safety Representative Registration Form

• = required fields

PERSONAL DETAILS (PLEASE PRINT)	
• Surname	
• First name(s)	
• Street No. & Street	
• Suburb / City	
• Phone (Home)	
• Phone (Work)	
E-mail address	
• Male or Female?	
Ethnicity (Maori, Pakeha, or....)	
Date of Birth	

EMPLOYMENT DETAILS (PLEASE PRINT)	
• Union	
• Employer	
• Postal address	
• Manager who approves Training Leave Name E-Mail address	
• Date Elected	

Signature

This information is collected by your union to pass on to the NZ Council of Trade Unions, (L7, Education House, Willis St, Wellington. The CTU (and its agent Xacta Group, 94 Dixon St, Wellington) will use this information to manage the Worksafe Representative training programme, including contacting your employer to arrange training for you, and the provision of statistical reports to the Accident Compensation Corporation which is funding the training programme. Statistical reports will not identify you as an individual in any way. Your union may also use this information to better respond to the needs of its diverse membership. Please note: the Privacy Act 1993 provides rights of access to, and correction of, information held about you.

Please forward the completed form to your union office