

OBLIGATIONS OF AN EMPLOYER IN RELATION TO ELECTED HEALTH AND SAFETY REPRESENTATIVES AND APPROVED TRAINING

Introduction

Health and Safety Representatives (HSRs) are the elected representatives of employees in a Designated Work Group (DWG). The HSR has the dual role of performing the work for which they were employed as well as representing the health and safety interests of the employees in the DWG. To do this effectively, it is essential that HSRs (and their deputies) receive training that provides them with the appropriate skills and knowledge.

Health and safety courses for Health and Safety Representatives must be approved by WorkSafe Victoria. The course you are attending is approved by WorkSafe Victoria. In addition to the legal obligations for providing training for HSRs, there are also benefits for Managers and Supervisors to attend training in relation to health and safety. The Initial Level 5-Day OHS Course has also been approved by WorkSafe Victoria for delivery to Managers and Supervisors.

In order to promote the principles under the *Occupational Health and Safety Act 2004*, ERGOSH encourages the joint training of Health and Safety Representatives, Managers and Supervisors. This approach enables employers and employees to exchange information and ideas about risks to health and safety and measures that can be taken to reduce those risks.

To assist you to understand the employers obligations in relation to approved health and safety representative training, the following questions are provided. These questions and answers have been taken from the WorkSafe Victoria Publication – “Employee Representation, 1st Edition, September 2006” and cover a number of issues related to the employers obligations under the *Occupational Health and Safety Act 2004*.

Is an employer required to allow HSRs to attend training?

An employer must, if requested by an HSR, allow that HSR time off work, with pay to: **s.67(4)**

- attend an initial course of training in OHS after being elected; **s.67(1)**
- undertake refresher training at least once in each year that they hold office after completing the initial training course; and
- attend other approved training. **s.69(1)**

Is an employer required to allow deputy HSRs to attend training?

Yes. **s.57(3)**

Deputy HSRs are entitled to time off work with pay to attend initial and refresher training. However, they are not entitled to time off work with pay to attend other approved training.

Is an HSR (or deputy HSR) entitled to attend another initial training course after being re-elected in the same DWG?

No, not generally. **s.67**

Every HSR (and every deputy HSR) has only one entitlement for initial training.

If the HSR (or deputy) is re-elected in the same DWG and has already participated in an initial training course, they do not generally have an entitlement to time off work with pay to attend a further initial training course. However, in a situation where the nature of an HSR's role or workplace changes substantially, there may be an entitlement to attend another initial training course.

The absence of an entitlement does not prevent an employer who recognises the benefits of HSRs receiving training from allowing them to attend additional courses.

If an HSR (or deputy HSR) had initial training under the 1985 OHS Act, are they entitled to another initial training course under the new OHS Act?

No, unless they have been elected under the new OHS Act in a different DWG. **s.67**

This does not prevent an employer agreeing with an HSR trained under the 1985 OHS Act that they may attend another initial training course.

Are there circumstances in which an HSR (or deputy HSR) can attend initial training a second time?

Yes. **s.67**

An HSR who is elected in another DWG (i.e. an HSR who changes employer and is then elected HSR by a new DWG) is entitled to time off work with pay to attend a further initial training course.

When can refresher training be taken?

Refresher training may be taken any time after 12 months has elapsed from the initial training and again at least every 12 months after that. **s.67**

This entitlement to time off work with pay to attend refresher training only applies to those HSRs (and deputies) who have completed an initial training course.

HSRs who were elected and have already completed a training course under the 1985 OHS Act are also entitled to time off work with pay to attend the refresher training under the OHS Act for each year in office that finishes on or after 1 July 2005.

How much notice must an HSR (or deputy) give to the employer prior to attending a health and safety training course?

At least 14 days' notice. **s.67(2)**

This is to ensure that the training provisions are workable and do not cause unnecessary inconvenience to the workplace and the employer. Employers may need time to make alternative arrangements to meet their business requirements.

However, it is not acceptable for business requirements to be used repeatedly as a reason by an employer for delaying attendance.

Health and safety courses

Training courses must be: **s.67(3)**

- approved or conducted by WorkSafe.
- relevant to the HSR's role or the work of the DWG.

The courses must be either relevant to the work of the members of the DWG in terms of dealing with hazards or risks found in the DWG's workplace or to the role of the HSR.

- selected by the HSR in consultation with the employer.

The OHS Act requires training courses for HSRs under this section to be chosen by the HSR in consultation with the employer. Consultation means that the HSR must:

- inform the employer of the proposed course;
- give the employer the opportunity to present views about the suitability of the proposed course and suggest alternatives; and
- take those views and suggested alternatives into account when deciding which course to attend.

It is desirable for HSRs and employers to agree on which course the HSR should attend. Issues that might be considered include:

- timing of attendance – the sooner HSRs attend training after being elected, the more effective they will be in performing their role;
- cost of courses, where prices differ substantially;
- costs of attendance for remotely located workplaces including travel and accommodation expenses (in such circumstances, the arrangements that would apply for any other work-related professional development courses will determine what is reasonable);
- the relevance of any hazard-specific course to the DWG; and
- the total number of employees requiring training.

Must the employer pay the HSR (and deputy) their normal salary for the days they attend training?

Yes.

An employer must allow each HSR (and deputy HSR) paid time off to attend training, equivalent to what they would otherwise be entitled to receive for working during that period. HSRs should not be disadvantaged in any way as a result of accessing the training that the OHS Act entitles them to. **s.67(4)**

HSR training is part of normal work-related activity. HSRs are entitled to receive their normal/expected earnings during course attendance. Normal/expected earnings include pay entitlements relating to shift work, regular overtime, higher duties, allowances or penalty rates that would have applied had the HSR been at work.

There are circumstances in which the HSRs may need to attend a course that is being conducted outside their normal working hours. For example, this might apply when an HSR:

- normally works two days a week and attends a five-day course run on consecutive days;
- has a rostered day off during the course; or
- Has a shift that does not overlap or overlaps only marginally with the course's hours.

All time spent at a course by an HSR (including casual employees) must be treated by the employer as time at work. HSRs must be paid as if they had been at work for the relevant time.

It is advised that employers alter rosters or shifts to accommodate any HSR who attends training. If it is necessary for the HSR to work hours in excess of the normal weekly hours, additional hours must be compensated in the same manner as other additional hours are treated. When the HSR and the employer agree, time off work may be taken in lieu of payment.

Who pays for the costs associated with attendance at training?

The employer.

HSR training is a work activity. Employers must pay course fees and any other expenses associated with attendance at the course, including: **s.67(4)**

- travel to and from the approved course (where it is greater than travel to the normal workplace); and
- accommodation, meals and incidental expenses where an approved course is remote from the workplace.

If, when establishing a DWG, the employer and employees agreed to the election of multiple HSRs and deputy HSRs, the employer will need to cover the costs outlined above for all HSR and deputies to ensure they can all effectively undertake their functions.

What if there are multiple employers?

If the HSR or deputy HSR represents a DWG involving multiple employers, the costs of the HSR (and deputy, if any) exercising their powers under Part 7 of the OHS Act, and the costs associated with training outlined previously, must be equally divided between each of the employers, unless agreed otherwise. **s.68(1)**

Any agreement to divide costs in another way may be varied at any time by negotiation between each employer. **s.68(2)**

If any of those employers fulfils the obligations in section 67 concerning the training of HSR (and deputies, if any), then each of the other employers will be deemed to have fulfilled this obligation. **s.67(8)**

What happens if an employer refuses to allow an HSR (or deputy HSR) to attend training?

If employer refuses to allow an HSR to attend an approved initial or refresher training course, or they cannot agree on which course to attend, the HSR may ask WorkSafe to determine an appropriate course. This determination will be handled by WorkSafe's Workplace Support and Education Division, with initial contact to be made through WorkSafe's Advisory Service, Level 24, 222 Exhibition Street, Melbourne, 3000. (Telephone: 03 9641 1444. Toll-free: 1800 136 089. Email: info@workcover.vic.gov.au) **s.67(5)**

If WorkSafe is asked to determine a specified course that an HSR may attend, it will first seek to gain agreement between the employer and the HSR about which course the HSR may attend. Reasons for disagreement may include: the HSR giving insufficient notice; choosing a training course not approved by WorkSafe; or choosing a course not relevant to the role of the HSR or the work of the DWG.

In such circumstances, the following actions can be taken.

- If the HSR has given less than 14 days' notice, WorkSafe will determine a course that is to be held more than 14 days from that date.
- If the HSR proposes a course that has not been approved by WorkSafe, WorkSafe will nominate an approved course to be held more than 14 day from that date.
- If the issue relates to the relevance of the particular course to the work of the DWG or to the role of HSRs, a relevant course will be selected.

However, if the HSR did give 14 days' notice, the course is approved by WorkSafe, and the course is relevant; then it is highly likely that WorkSafe will affirm the course as chosen by the HSR. **s.67(6)**

Any determination made by WorkSafe must be made in writing and WorkSafe must ensure that it is made more than 14 days before the course is about to start. **s.67(7)**

It is an offence under the OHS Act for an employer to refuse, without a reasonable excuse, to allow an HSR to attend a course determined by WorkSafe.