

ALERT

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New safety requirements for construction companies

Construction companies should be aware that amendments to the *Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry (Guidelines)* and the *Occupational Health and Safety Regulations 2007 (Vic) (OHS Regulations)* commenced on 1 July. Among other things, these changes include controversial new drug testing and site security rules.

New drug testing & site security rules

In accordance with the Guidelines, a Workplace Relations Management Plan (WRMP) is required for any project where a Victorian government department or public sector body contributes (directly or indirectly) \$10 million or more (or where the contribution is at least \$5 million and represents at least 50 per cent of the total construction project value).¹

From 1 July, on sites where a WRMP is required, tenderers must include in the WRMP:

¹ For other Victorian government construction projects with a value of under \$10 million, contractors are still required to have policies to address their management of drugs and alcohol in the workplace, safety and site security measures, which may be audited to ensure compliance.

- a fitness for work policy to manage alcohol and other drugs in the workplace; and
- security and risk management processes and procedures.

The Guidelines relevantly prescribe that tenderers must outline their approach to managing drug and alcohol issues in the workplace and what steps they will take towards ensuring no person attends the worksite under the influence of alcohol or drugs. Critically, it states that this will include the tenderer outlining:

- how it will ensure that all subcontractors and their employees and workers agree to comply with the relevant policy (through a contract or some other enforceable means);
- which objective medical testing method/s it proposes to implement to detect the presence of alcohol or specified drugs in a person's system;
- the medical thresholds against which positive or negative test results will be determined (noting that, subject to testing detectable levels, the acceptable level for all substances is zero);



ALERT

- how persons will be selected for testing and the frequency of that testing (including general random testing, voluntary testing, targeted testing of higher risk activities, on suspicion testing and for cause testing);
- how persons returning a positive result will be prevented from working until it is safe for them to do so; and
- counselling and rehabilitation processes that may apply in the event of a positive test.

The Guidelines also note that the tenderer must maintain responsibility for the testing and cannot pass the implementation or cost of testing to its subcontractors.

Tenderers will also be required to explain the systems, processes and procedures the tenderer will adopt to ensure site integrity. The Guidelines state that this should include security measures in

the form of CCTV, swipe card access systems, and photographic or biometric security systems (or similar). If such measures are not 'feasible', the tenderer will be required to include reasons as to why they are not.

Lastly, the Guidelines now require that tenderers commit to providing the government department or public sector body with a project-specific health and safety management plan (**HSMP**) if they win the project. The successful tenderer's managing director must also declare that the HSMP complies with the requirements of the Guidelines and includes a copy of the fitness for work policy submitted in the WRMP.

For employers

All construction companies undertaking Victorian government-funded construction work are required to comply with the Guidelines. Companies seeking to tender for publicly funded projects need to consider how to satisfy the new requirements under the Guidelines, which should include reviewing existing fitness for work policies to ensure compliance.

OHS Regulations

The Victorian *Occupational Health and Safety Amendment Regulations 2014 (Amendment Regulations)* make various changes to the OHS Regulations, including relevantly to parts dealing with licensing, plant and construction.

Construction amendments

Principal contractors will be required to prepare fewer health and safety coordination plans in accordance with changes brought about by the Amendment Regulations, which provide that the principal

contractor's duties relating to health and safety coordination plans and signage will now only apply to construction projects if the cost of the project is \$350,000 or more (formerly, the threshold was \$250,000).

The Amendment Regulations have also removed the requirement for construction employers to keep a record containing details of any construction induction card for each person employed to perform construction work (although the obligation to ensure only registered employees perform construction work has not been changed).

Licences

The Amendment Regulations also make various changes to the requirements for and administration of high risk work licences, such as:

- workers who work with plant for the purpose of testing, installing, commissioning, maintaining or preparing that plant will no longer be required to hold a high risk work licence regarding that work (high risk work licences will be required for work with scaffolding, dogging or rigging for the purposes of maintenance as well as for loading or unloading plant onto and from transportation vehicles);
- the Victorian WorkCover Authority (**VWA**) will be required to provide notifications regarding its intention to grant or refuse applications for high risk work licences within 45 days of receiving an application (formerly 60 days);
- interstate high risk work licence holders will have longer to apply to renew their licences with the VWA (now within 120 days prior to the licence expiry date);



ALERT

- if a worker holds a high risk licence from the VWA and in any other jurisdiction, s/he will now be able to apply to the VWA for a consolidated licence at any time (rather than only if any part of the licence is due to expire within 60 days);
- high risk work licences will no longer be required for operating heritage boilers.

A new definition of 'forklift truck' has been added to make clear that tractors fitted with forklift attachments do not need an associated forklift licence (and forklift licences currently held for such tractors will not need to be renewed).

Plant

In accordance with the Amendment Regulations, some items of plant will no longer be required to be registered with the VWA (this includes the plant listed in Schedule 2 of the OHS Regulations, such as some boilers and pressure vessels, tower cranes, self-erecting tower cranes, lifts, building maintenance units, some amusement structures, concrete placing units (truck-mounted with boom) and mobile cranes with a safe working load greater than 10 tonnes).

Several items of plant requiring registration of design have been added (including the design of new chairlifts and new truck-mounted concrete placing booms).

For employers

Although it is important to be aware of these changes, they do not represent a significant change for employers currently complying with the OHS Regulations.

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