Health and Safety

Farming Bulletin

OCCUPATIONAL SAFETY & HEALTH SERVICE
DEPARTMENT OF LABOUR
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If Visitors to My Farm are Injured, Am I Liable?

Section 16 of the Health and Safety Employment Act 1992 (HSE Act) was amended in March 1998. Now people who control workplaces, including farmers, have only a simple duty to warn visitors, who have permission to be on their properties, of any work-related, out-of-the-ordinary hazards that may cause them serious harm.

This bulletin answers questions you may have about this change to the law.

Why was the law changed?

Farmers were worried about their liability under the HSE Act if visitors to their farm, including recreational visitors, were harmed.

The amendment makes it clear that you cannot be held liable, as long as you warn authorised visitors of any out-of-the-ordinary hazards arising from work on the farm which you know could harm that person.

Now, under Section 16 of the Act, you have two types of duties:

- A duty to warn authorised visitors.
- A full duty to employees, contractors, and people who are paying customers (this is explained later).

You are not liable if anyone comes on to your land without your permission and suffers harm, whether from a work-related hazard or for any other reason.

Duty to warn

You have a duty to warn authorised visitors of work-related, out-of-the-ordinary hazards.

What is meant by an authorised visitor?

This is anyone who comes on to your farm with your express permission. It includes people who come for leisure or recreational activities. It also includes people on your property who are doing work that is unrelated to your work, such as research workers and electrical workers.

What about workers who have legal authority to go on to my property?

Your duty to warn extends to people who are legally authorised to be on your property, but only where they have given you oral notice of their visit. People in this situation include employees of Trans Power, DOC and local authorities.

What is meant by a work-related, out-of-the-ordinary hazard?

This is a hazard that:

- Arises from some work activity on the farm;

- Wouldn't normally be expected by a visitor; and
- Could cause a person serious harm.

Examples might be:

- Trees being felled;
- Blasting;
- Earthmoving machinery operating; or
- Where pest control operators are working.

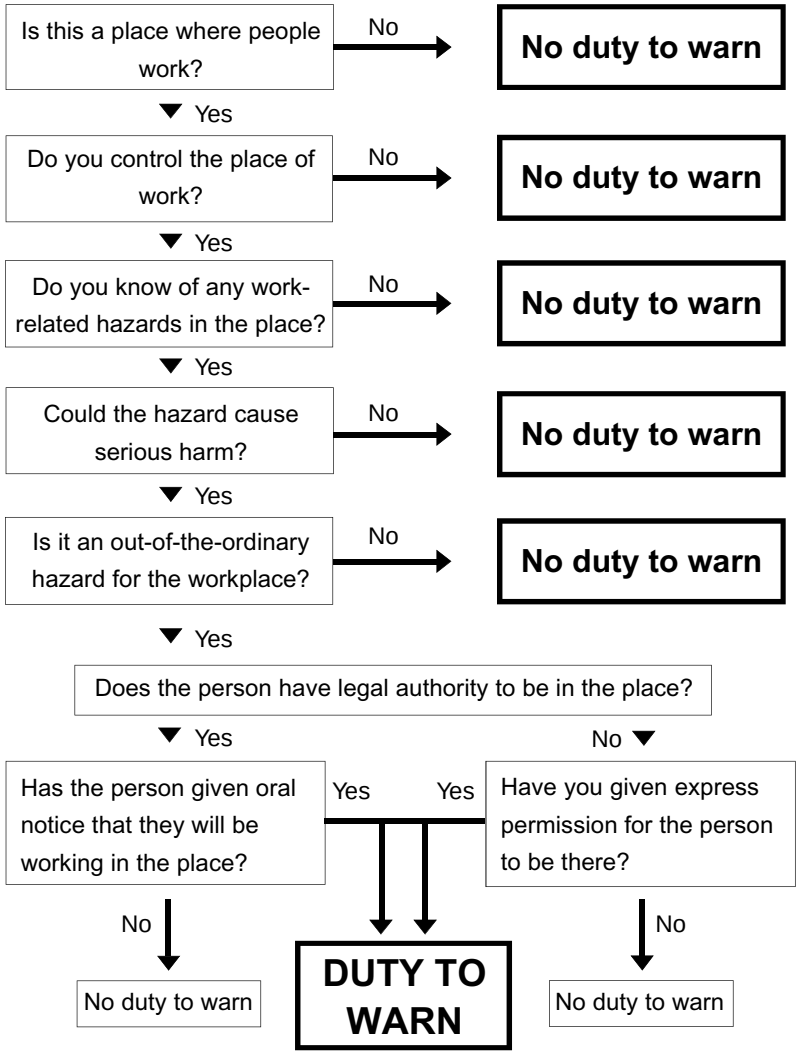
Natural hazards are excluded. You are not liable for warning visitors of natural hazards on your farm, such as: bluffs, tomos, landslides, rivers, swamps, wasp nests, and so on.

What sort of warning should I give and when?

You need only give a verbal warning about the hazard. You need to do this at the time you give that person express permission to go on to your land. If a group of people are involved, it's sufficient to give the warning to a representative of that group.

The warning can be given by your farm manager if he or she is the person giving permission.

When do I have a duty to warn people about hazards?



Full duty

The relationship changes if people pay to use your land for any purpose. In this case the people become your customers, and you have a full duty to take "all practicable steps" to ensure that they are not harmed by any hazard arising on the farm.

This would include situations where people pay to use your land for camping; horse trekking; "pick your own" fruit or berries, or where a tour operator pays for tourists to visit a scenic site on your land.

You also have a full duty to the other groups below:

- All employees who work for you (e.g. farm-hands, fruit pickers).
- All contractors you engage (e.g. for shearing, fencing, tree felling).
- All people buying or inspecting goods offered for sale (e.g. farm produce, craft items).
- All people in the vicinity of a place of work (e.g. driving on a road alongside a paddock where you are working).

What is meant by "all practicable steps"?

It means things that can reasonably be done to ensure people are not harmed, such as fitting guards to your power takeoffs. It might also mean restricting access to certain areas of your farm, e.g. where chemical spraying is being done, or setting weight limits on bridges.

But, remember, you are only responsible for hazards within your control.