

OHS Consultation for Managers

Owner: Health, Wellbeing and Safety (HR)
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1. What are the duties in relation to consultation?

The Occupational Health and Safety Act (OHS Act) requires the University through its managers to consult with **all employees** on matters relating to work health and safety. This means the University must consult, so far as is reasonably practicable, with its contractors and sub-contractors and their employees (including consultants), and labour hire personnel. It is also recommended that volunteers, research students etc who are directly affected by the health and safety matter are also consulted. For the remainder of this documents, these groups are referred to as **workers**.

Duty holder	Responsibilities under the OHS Act
Employer	<ul style="list-style-type: none">• must consult, so far as is reasonably practicable, with employees who carry out work for the business or undertaking and who are (or are likely to be) directly affected by a health and safety matter [s.35]• must consult in an effective way [s.36]• must consult on certain matters [s.35 (1)]• must consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter [s.35 (2)]• if workers are represented by a health and safety representative, consultation must involve that representative [s.36(2)].

If the University shares responsibility for work health and safety matters with another person (undertaking), then the OHS Act requires the University to consult, co-operate and co-ordinate with each other person who shares the responsibility. For example, a labour hire organisation and 'host' employer may be required to consult a worker on certain matters. That process of consultation should be co-ordinated between all relevant duty holders.

Workers should participate in the consultation arrangements at the workplace and report any hazards and health and safety incidents to their manager. Workers are entitled to be represented in relation to work health and safety by health and safety representatives.

2. The Basics: When, Who and How

When must you consult?	<p>If you are doing one or more of the following:</p> <ul style="list-style-type: none"> • identifying or assessing hazards or risks that may harm people • making decisions on how to control risks that may cause harm • making decisions about the adequacy of facilities for worker's welfare • making decisions about procedures to: <ul style="list-style-type: none"> – resolve health and safety issues – consult with workers on health and safety matters – monitor workers' health and workplace conditions – provide information and training • determining the membership of any health and safety committee • proposing changes to: <ul style="list-style-type: none"> – the workplace – plant, equipment, substances or other things used in the workplace – the work performed at the workplace that may affect the health and safety of workers. <p>You must consult so far as is 'reasonably practicable', which simply means doing what is reasonable in the circumstances.</p>
Who must you consult?	<p>Workers if:</p> <ul style="list-style-type: none"> • they are directly affected now by any of the health or safety matters listed above or • they will be directly affected in the future by any of the health or safety matters listed above and • If the workers are represented by a Health and Safety Representative (HSR), the HSR must be involved.
How must you consult?	<ul style="list-style-type: none"> • share information with directly affected workers – should be timely and understood by all • give workers a reasonable opportunity to express their views • take those views into account – to help shape decisions.

3. Why is consultation important?

Consultation is a legal requirement and an essential part of managing health and safety risks.

A safe workplace is more easily achieved when people at the workplace communicate with each other about potential health and safety problems and work together to find solutions.

Effective health and safety consultation also has other benefits:

- *Greater awareness and commitment* – because workers have been actively involved in how health and safety decisions are made

- *Positive working relationships* – because understanding the views of others leads to greater co-operation and trust.

4. What is effective consultation?

Consultation is a two-way process between the University through its managers and its workers where you:

- *talk* to each other about health and safety matters
- *listen* to their concerns and raise your concerns
- *seek and share* views and information, and
- *consider* what your workers say before you make decisions.

Consultation requires that:

- relevant work health and safety information is shared with workers
- workers are given a reasonable opportunity to express their views and to raise health or safety issues
- workers are given a reasonable opportunity to contribute to the decision-making process relating to the health and safety matter
- the views of workers are taken into account, and
- workers are advised of the outcome of any consultation in a timely manner.

An employer can be prosecuted for not only failing to consult with employees and independent contractors but also for a failure to consult in the prescribed manner described above.

Management commitment is important in achieving effective consultation. Workers are more likely to engage in consultation when their concerns about health and safety are taken seriously.

Consultation does not mean telling your workers about a health and safety decision or action after it has been taken. You should ensure that your workers are:

- made aware of health and safety matters as soon as possible
- encouraged to ask questions about health and safety
- encouraged to raise concerns and report problems
- encouraged to make work health and safety suggestions
- involved in the problem solving process, and
- promptly informed of the outcome of the consultation and your decisions.

4.1 What does Good Consultation Look Like?

Timing	Early, before agenda is set and decisions are made
Employer's role	Interested in and values employees' perspectives
Employees' role	Actively participate
Interaction style	Planned, genuine, collaborative sense of ownership
Attitude towards each other	Trust, mutual respect
Process	Allows for employee participation
Communication	Opportunities for one-on-one communication with employees; clear and regular feedback
Safety outcomes	Improvements to systems, procedures etc.

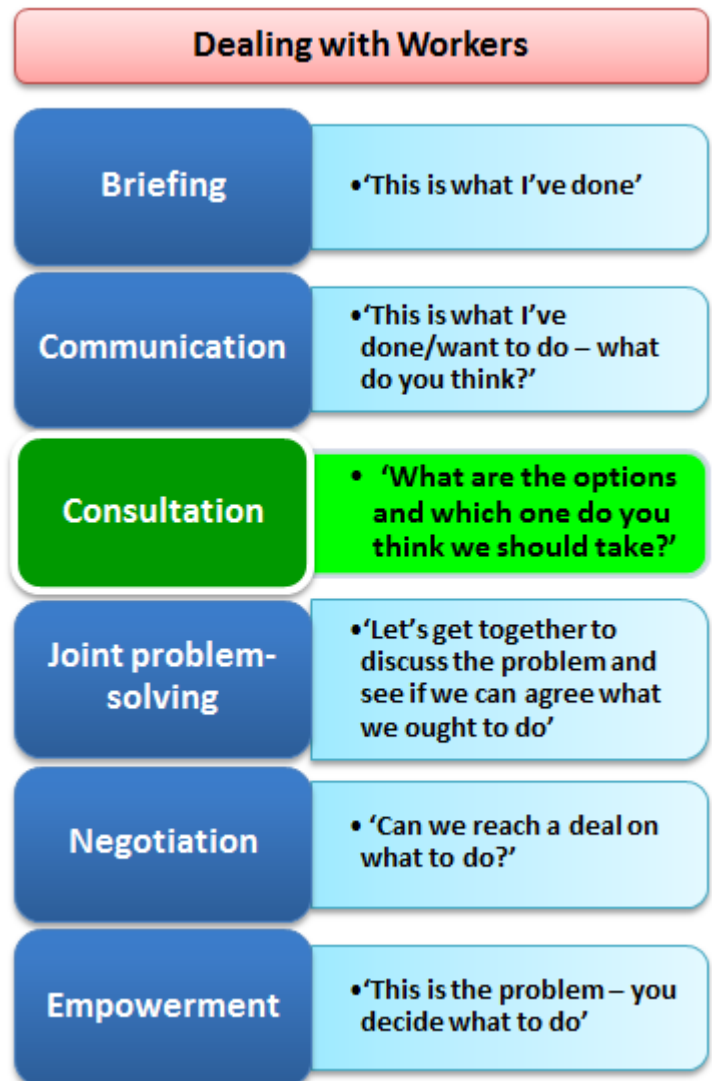
4.2 Sharing information

For consultation to be meaningful, you must share information with workers and their health and safety representatives about matters that are relevant to them. This information should be provided early on so that workers and health and safety representatives have enough time to consider the matters, discuss them and then provide feedback to you.

You should make available all the information that you have relating to the health and safety matter to enable informed and constructive discussions. This information may include:

- health and safety policies and procedures
- technical guidance about hazards, risks and risk control measures
- hazard reports and risk assessments
- proposed changes to the workplace, systems of work, plant or substances, and
- data on incidents, illnesses or injuries (in a way that protects the confidentiality of personal information).

The information should be presented in a way that can be easily understood by your workers and take into account literacy needs and the cultural or linguistically diverse backgrounds of your workers.



4.3 Providing reasonable opportunities to express views and contribute

Giving your workers a reasonable opportunity to express their views and contribute to health and safety decisions may involve:

- providing a suitable time during work hours for consultation with workers
- allowing opinions about health and safety to be regularly discussed and considered during workplace meetings, and
- providing your workers with different ways to provide feedback, for example using email, setting up an intranet health and safety page or a suggestion box.

If there are health and safety representatives for the workplace, you must include them in the discussions, with or without the involvement of workers directly. Allow time for consultation whenever a health and safety representative makes a reasonable request to meet with you.

4.4 Taking views into account

You must take the views of your workers and health and safety representatives into account before making a decision. Consultation does not require consensus or agreement but it does allow your workers to contribute to any health and safety decisions you make in your business.

4.5 Advising outcomes of consultation

You should agree to respond to concerns and questions raised by workers within a certain timeframe and offer feedback about any options they propose. You must inform your workers of your final decision or course of action. You should provide information to help them understand the reasons for your decision.

5. To what extent should I consult?

You must consult on health and safety matters so far as is reasonably practicable with workers who carry out work for you and who are (or are likely to be) directly affected.

‘Reasonably practicable’ means that you must consult to the extent that is reasonable in the particular circumstances. What is reasonably practicable will depend on factors such as:

- the size and structure of the business
- the nature of the work that is carried out
- the nature of the particular decision or action, including the urgency of the need to make a decision or take action
- the work arrangements, such as shift work and remote work, and
- the characteristics of workers, including languages spoken and literacy levels.

In most situations it would be reasonably practicable to consult with workers who are:

- working in the workplace
- regularly working outside the workplace (e.g. drivers on the road or employees working from home), or
- on short-term leave (such as sick leave or annual leave).

You are not expected to do the impossible, but are required to take a proactive and sensible approach to consultation. For example, it may not be reasonably practicable to consult with workers who are on extended leave. However, it would be appropriate to ensure that these workers are kept informed about any matters that may affect their health and safety when they return to work.

The more likely a hazard is to cause serious harm, the more extensive your consultation should be. However, an urgent response to the risk may necessarily limit the extent of consultation in some circumstances.

It is not always necessary to consult with every worker in your workplace. The workers you consult with will be those who are, or could be, directly affected by the health and safety matter. For example, a problem with air temperature experienced on one level of an office block would not directly affect the work health and safety of workers on other levels. Only workers on the affected level must be consulted about the matter.

6. Must consultation be documented?

Consultation with workers and with other duty holders does not have to be documented unless specifically required under the OHS Regulations. However, it is recommended that you keep records to demonstrate compliance with consultation requirements. Records of consultation may also assist the risk management process and make disputes less likely.

The records should include any outcomes of discussions. The records can be brief and simple, and cover:

- who is involved
- what the safety matter is
- what decision has been made
- who is to take action and by when, and
- when the action has been completed.

7. How to consult with your workers

Consultation with your workers can be undertaken in various ways. It does not need to be a formal process and can be as simple as talking to your workers regularly and considering their views when you make health and safety decisions.

Consultation can also be undertaken through health and safety representatives and health and safety committees. You may establish any other arrangements for consultation to suit your workers and workplace situations, including agreed consultation procedures, as long as those arrangements are consistent with the requirements of the OHS Act.

7.1 What kind of consultation is best for your workplace?

Consultation arrangements for your workplace should take into account the size of your business and what suits your workers. Consider how you normally communicate with your workers. You may not need to establish separate consultation arrangements if you regularly have discussions with your workers, for example weekly team meetings. However you must ensure OHS is covered in these meetings and there is genuine consultation. Some workplaces may need a mix of consultation arrangements to suit different types of workers and situations.

7.2 Agreeing on consultation procedures

The OHS Act allows you to establish agreed procedures for consultation with your workers. If you create agreed consultation procedures, you must consult with your workers according to those procedures [s.36 (3)].

The University's Occupational Health and Safety Manual includes:

- The [University's consultation arrangements](#) and,
- The [University's agreed issue resolution procedures](#).

Agreeing on local procedures for consultation with your workers can save time and confusion about how and when consultation must occur. The agreed consultation procedures may clarify key responsibilities of people in the workplace and clearly state when consultation is necessary. The agreed consultation procedures must include the basic elements summarised in section 2.

Before proposed consultation procedures can be agreed, you must genuinely consult about the proposed consultation procedures with all affected workers at the workplace, including any health and safety representatives for the workplace.

If you and your workers have agreed to procedures for consultation, the OHS Act requires consultation to be conducted in accordance with those procedures. They must also be consistent with the requirements of the OHS Act.

7.3 How should the consultation arrangements be reviewed?

When you have established ways to consult on work health and safety that suit your workplace, you should monitor and review these procedures in consultation with workers and health and safety representatives to ensure that consultation occurs as required by the OHS Act and Regulations.

8. When to consult

The OHS Act identifies specific matters that trigger the requirement for consultation.

Consultation with workers must occur when:

- identifying hazards and assessing risks arising from the work carried out or to be carried out
- making decisions about ways to eliminate or minimise those risks
- making decisions about the adequacy of facilities for the welfare of workers
- proposing changes that may affect the health or safety of your workers, and

- making decisions about procedures for consulting with workers; resolving health or safety issues; monitoring health of your workers; monitoring the conditions at the workplace and providing information and training for your workers.

However, it may be useful to also consult workers about matters that are not listed above, for example when conducting investigations into incidents or 'near misses'.

Regular consultation is better than consulting on a case-by-case basis only as issues arise because it allows you to identify and fix potential problems early.

DOCUMENT HISTORY	
Name of procedure	<i>OHS Consultation for Managers</i>
Overarching policy	<i>Health Wellbeing and Safety policy</i>
OHS Manual	<i>Staff consultation and representation</i>
Original Date	<i>12 September 2012</i>
Review History	<i>28 June 2019 Review and update</i>
Author	<i>Michael O'Donoghue</i>

Example:**Consultation in a large University Division – with health and safety representatives**

Overview	<p>This division has four distinct workgroups. Only two of the workgroups have Staff OHS representatives. The division has a health, wellbeing and safety committee with representatives from all campuses and areas including the Staff OHS representatives. There are two senior management representatives on the committee.</p> <p>When the division identified the need to move to new premises, it recognised this had the potential to affect all workers on one campus. The committee played a major role in obtaining worker and health and safety representative input about layout, ergonomics, selection of new equipment and machinery, access/egress and emergency procedures. The committee members were also encouraged to undertake regular visits to the new premises to view progress and provide input.</p>
WHEN to consult	<p>Consultation was required for:</p> <ul style="list-style-type: none"> • the identification and assessment of hazards and risks • making decisions about risk controls • proposing changes to the workplace, and • making decisions about the adequacy of welfare facilities. <p>The design and fit-out of the new premises included consideration of layout, equipment selection, new work systems, design and commissioning specialised work areas and workshops, and air-conditioning for the new work-site.</p>
WHO to consult	<p>The relocation affected almost all staff on the campus. The two areas with health and safety representatives were all consulted via their respective health and safety representatives. The two areas without OHS representatives were invited to nominate representatives for the duration of the relocation. The committee acted as a centralised conduit for information flow in this process.</p>
HOW to consult	<p>The division consulted via health and safety representatives and the committee.</p> <p>Health and safety representatives</p> <p>Health and safety representatives acted as a communication channel between management and workers. Health and safety representatives chaired the health and safety sections of weekly team meetings, using these as an open forum to the committee.</p> <p>Health, Wellbeing and Safety committee</p> <p>Consultation procedures for the relocation were developed and agreed to by the committee. The committee took ongoing responsibility for ensuring that all relevant health and safety information is posted on noticeboards, e.g. meeting agendas, minutes, alerts and newsletters. The committee also sets timelines and frameworks for evaluating systems and processes during the initial occupation phase of the relocation.</p>

CONSULTATION CHECKLIST

Consultation compliance	Yes /No
1. Do I have one or more of the following consultation mechanisms which I have put in place after consultation with my workers? <ul style="list-style-type: none"> • Health and Safety Representative(s) • Health, Wellbeing and Safety Committee • (University) Agreed procedures • Other agreed consultation arrangements 	
2. Do the consultation arrangements include workers other than my employees such as contractors or labour hire workers who are part of my workforce?	
3. Do I use my consultation mechanism when I:	
• identify hazards and assess risks?	
• make decisions to control risks?	
• make decisions about welfare facilities?	
• propose changes to the work, including purchasing new or used plant or new substances or materials?	
• develop and review safety policies and procedures?	
4. When I consult with my workers on these issues do I:	
• Inform them of what I intend to do (<i>eg purchase a new piece of equipment?</i>)	
• Share relevant information about it with them?	
• Give them a reasonable opportunity to respond?	
• Discuss any of their safety concerns?	
• Take into account the views they express?	
• Advise them of my decision and the reasons for it?	
5. If workers are represented by a health and safety representative, do I:	
• Include the representative in all health and safety consultations?	
• Make myself available for the representative to raise and discuss health and safety matters with me?	
6. Do I consult other duty holders who share responsibility for a health and safety matter with me?	
• Do I co-operate and co-ordinate activities with them?	