WORKSAFE
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HSWA

QUICK GUIDE

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Seismic risk in buildings

This guide explains what the Health and Safety at Work Act 2015 means for PCBUs in relation to managing seismic risk to workplace buildings.

KEY MESSAGES

- Subpart 6A of the Building Act 2004 sets the requirements for identifying and managing seismic risk in buildings.
- If a building owner is not in breach of Subpart 6A of the Building Act 2004 HSWA provides an exception so PCBUs do not have additional duties to manage seismic risk in relation to any building element included in the workplace.
- PCBUs do not need to evacuate an earthquake prone building (EPB) solely because seismic strengthening work has not yet been completed in circumstances where the Building Act timeframe has not expired.
- PCBUs must still manage risks from workplace contents or other non-building elements. This includes, for example, shelving and heavy equipment that might move or fall over.
- PCBUs must still meet their emergency planning duties under HSWA regulations.

For more information about managing seismic risk in buildings see The Ministry of Business, Innovation and Employment website About the earthquake-prone buildings system

When does the exception for seismic risk to workplace buildings apply?

Section 37 of HSWA requires a PCBU who manages or controls a workplace to ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the health and safety of any person.

A PCBU who manages or controls a workplace can mean both the building owner and anyone who leases or occupies the building as its workplace.

HSWA provides an exception to the section 37 duty for PCBUs who manage or control a workplace in relation to seismic risk to workplace buildings.

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This reflects that the Building Act sets the requirements for identifying and managing seismic risk in buildings.

If the building owner is not in breach of the requirements of Subpart 6A of the Building Act 2004 HSWA does not require the PCBU who manages or controls the workplace to take additional steps to manage seismic risk in relation to any **building element** included in the workplace.

What is a building element?

For the purposes of this exception a building element is as defined in The building code

A building element is any structural or non-structural component and assembly incorporated into or associated with a building. This includes fixtures, services, drains, permanent mechanical installations for access, glazing, partitions, ceilings and temporary supports.

When does the seismic risk exception not apply?

When the exception does not apply, the PCBU has the full duty of a PCBU who manages or controls a workplace to, so far as is reasonably practicable, make sure that the workplace, the means of entering and exiting it, and anything arising from it are without risks to health and safety.

If Building Act requirements are not met

The exception does not apply when the owner of the building has not complied with Subpart 6A of the Building Act 2004 within the required timeframes.

For example, the exception does not apply when an EPB has passed its seismic work deadline without the required seismic work being done.

HSWA duties remain for managing seismic risk from workplace contents or other non-building elements and emergency planning

The exception applies only to managing seismic risks relating to any building elements included in the workplace.

It does not apply to managing risks from workplace contents or other non-building elements of the building. PCBUs remain responsible, for instance, for managing the risks from items such as shelving and equipment which could fall on or crush people in an earthquake.

PCBUs remain responsible for emergency planning as required by HSWA regulations.

If the building is under emergency management requirements

If a building (EPB or not) has been made subject to the Building Act's emergency management provisions, which grant territorial or other authorities' powers to manage disaster-affected buildings, the building owner should follow the instructions of the authority. If the building owner or authority does work to demolish or repair the building, they will be the PCBU with the HSWA duty for that work.

What does this mean for PCBUs who own an EPB?

As the building owner, you must comply with the Building Act requirements for an EPB. If you are not in breach of the requirements of Subpart 6A of the Building Act 2004 for seismic risk, the section 37 seismic risk exception will apply to you as a PCBU for that risk. HSWA does not require the PCBU who manages or controls the workplace to take additional steps to manage seismic risk to the building, such as evacuating it, unless an emergency affecting the building is occurring.

For more information about managing seismic risk in buildings see The Ministry of Business, Innovation and Employment website About the earthquake-prone buildings system

What does this mean for PCBUs who occupy all or part of an EPB?

If you manage or control a workplace in a building (for example, you are a tenant in the building or part of the building), you should check that the building owner is not in breach of the EPB requirements in the Building Act. You can do this by checking the status of the building on the EPB register

If the building owner is not in breach of the EPB requirements, HSWA does not require you to take any actions to manage the effects or potential effects of seismic risks on any building element or any part of the building (for example, by directing the evacuation of the building) unless an emergency affecting the building is occurring.

If the building owner is in breach of their EPB requirements, you must do what is reasonably practicable to manage the seismic risks from the building elements that are part of your workplace. This could include evacuating the building.

You must still manage seismic risk from workplace contents or other non-building elements, such as shelving and equipment that could move or fall in an earthquake.

You must still maintain emergency procedures and response in emergencies, including evacuating following an earthquake if there is an immediate risk, and following any civil defence instructions.

If you have a duty in relation to the same risk or other matter as other PCBUs in the same building (whether or not they are the building owner), you must consult, cooperate and coordinate activities relating to that same risk or other matter. See Overlapping duties for more information.

Resources

For more information about managing seismic risk in buildings see The Ministry of Business, Innovation and Employment website About the earthquake-prone buildings system

Checklist for PCBUs

If you are a PCBU that manages or controls a workplace in a building (for example, you are a tenant in the building) ask yourself:

- Is the building an EPB?
- If yes, is the building owner complying with EPB requirements? You can check this by checking the status of the building on the EPB register
  - If yes, then HSWA does not require you to do anything else to manage seismic risk in relation to any building element included in the workplace or evacuate the building (unless an emergency affecting the building is occurring).
  - If no, then you must do what is reasonably practicable to manage the relevant seismic risks from the building elements or parts of the building that are in your workplace, including evacuating the building if necessary.

- Do you have any other seismic risks (for example, shelves falling over, or heavy items falling from shelves)?
- Are any of these risks critical risks? See What is a critical risk? for more information.
- Have you managed your critical risks (if small PCBU) and have you managed your risks while prioritising critical risks (if large PCBU)?
- Do you have emergency procedures in case of earthquakes and first aid provisions in place?
- Are you working with other PCBUs who have duties for the same risks (overlapping duties)? See Overlapping duties for more information.

Key points to remember

- The seismic risk exception is narrow – it applies only to seismic risk associated with building elements because the Building Act manages those elements.
- It does not remove the HSWA duties for other workplace risks.