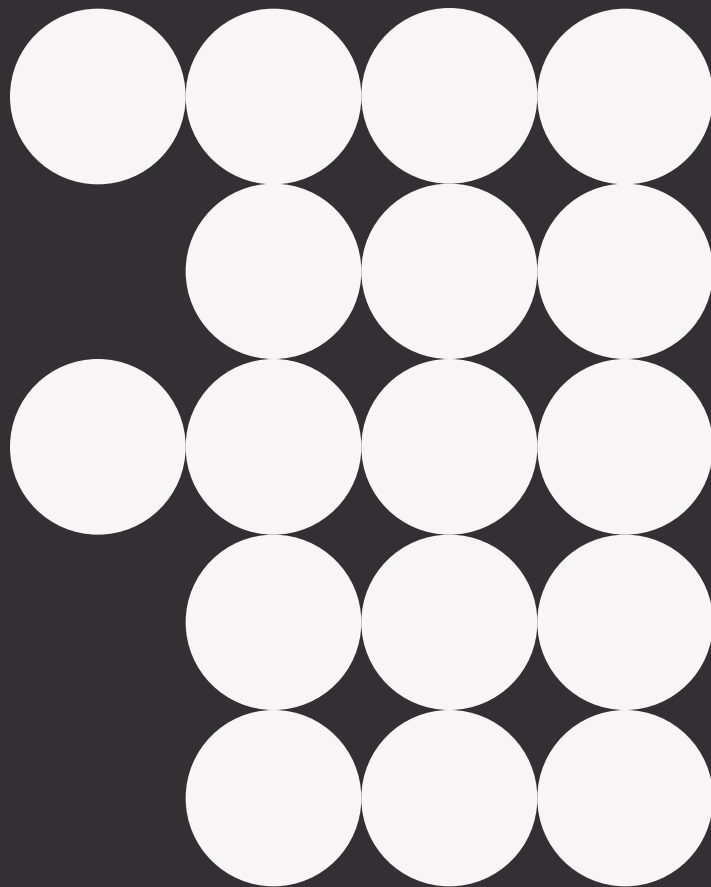


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HR Highlights (Special Edition)

*Inside the Digital Work Systems (AI) WHS
Amendment*

Cormack Dunn, Adam Foster and
Matthew Giles



Agenda



Setting the scene: NSW legislation with Australia-wide impacts

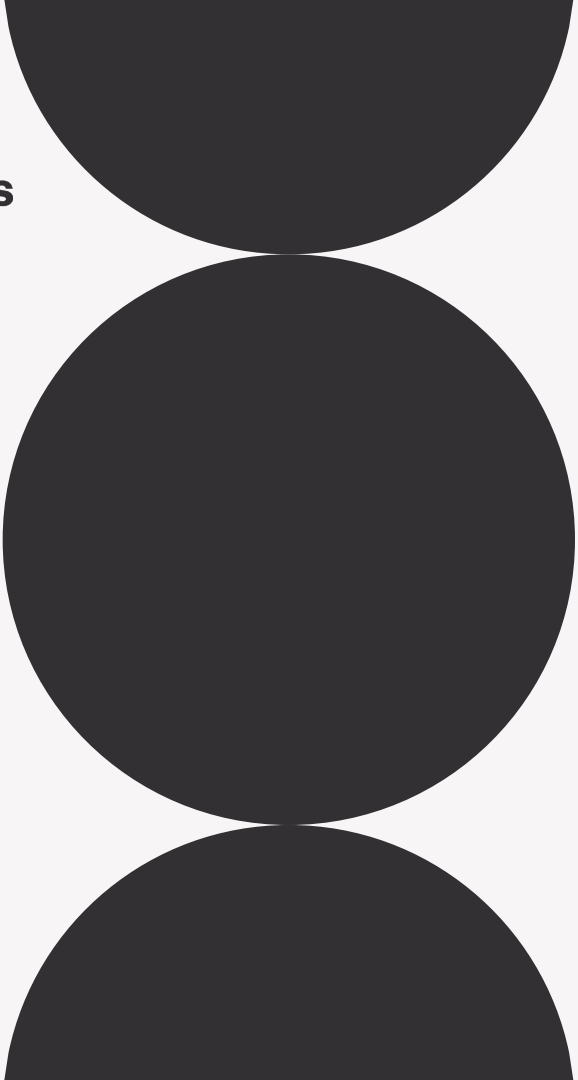
Overview of amendments to the *WHS Act 2011* (NSW)

Predicted impact of the new legislation

Implications for businesses: What does it mean for you?

Practical steps

Key takeaways



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**Setting the
scene: NSW
legislation with
Australia-wide
impacts**

Work Health and Safety Amendment (Digital Work Systems) Bill 2026

- The *Work Health and Safety Amendment (Digital Work Systems) Bill 2026* passed NSW Parliament on 12 February 2026 by a vote of 20 to 17
- It amends and inserts provisions into the *Work Health and Safety Act 2011* (NSW), providing specific duties for employers and expanded inspection powers for unions
- NSW is the first Australian jurisdiction to introduce an express obligation to manage risks associated with 'digital work systems'
- The reforms are currently limited to NSW, but impacts will be seen and felt Australia-wide
- We will likely see an increase in regulatory action, union oversight and public attention
- It is yet to be seen if other jurisdictions will follow in the footsteps of NSW, but the impacts will be felt regardless



Why These Changes Were Needed: A Deeper Explanation

Rapid Growth of
Algorithmic and
Automated
Management

Evidence of Harm in
the Gig Economy
and Beyond

Limitations of
Existing WHS Laws
for Digital Risks

Emerging
Psychosocial Risks
Required Stronger
Regulation

Need for
Transparency and
Accountability in
Algorithmic
Workplaces

Ensuring Fair and
Non-Discriminatory
Work Allocation

Recognition That
Digital Tools Are
Now Core "Systems
of Work"

Case Studies

Scenario 1

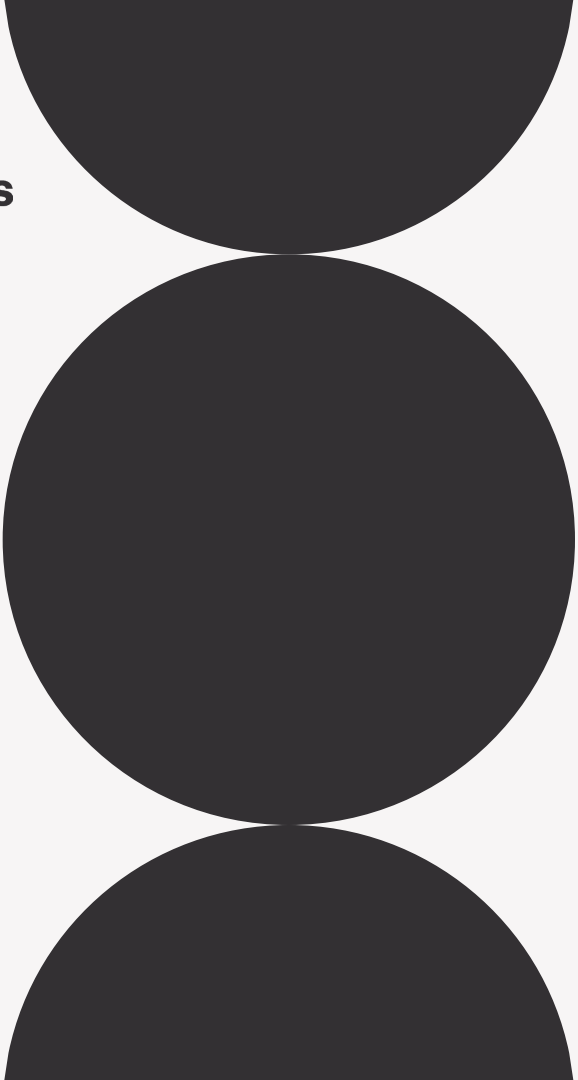
- A distribution centre uses an AI-driven warehouse management system (WMS) that tracks picker speed. When workers consistently meet or exceed their targets, the system automatically raises the benchmark for the following week.

Scenario 2

- A major retailer uses a digital rostering platform that automatically schedules workers based on availability and predicted store demand. The system prioritises cost optimisation over worker fatigue considerations

Scenario 3

- A national company deploys an AI-screening tool that reviews employee data to allocate training and development opportunities. The model relies on historical data showing younger employees had faster promotion cycles.



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Overview of amendments to the *Work Health and Safety Act 2011* (NSW)

Existing Provision

19 Primary duty of care

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—
 - (a) workers engaged, or caused to be engaged by the person, and
 - (b) workers whose activities in carrying out work are influenced or directed by the person,while the workers are at work in the business or undertaking.
- (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

New Provision

Section 19 Primary duty of care

Insert after section 19(3)(c)—

- (c1) the health and safety of workers is not put at risk from the use of digital work systems by the business or undertaking, and

Extended Duty of Care

21A Duties of persons conducting businesses or undertakings involving digital work systems

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of a worker is not put at risk from the allocation of work by a digital work system used by the business or undertaking.
- (2) A person conducting a business or undertaking must consider whether the allocation of work by or using a digital work system creates or results in any of the following risks—
 - (a) excessive or unreasonable workloads for workers at work in the business or undertaking,
 - (b) the use of excessive or unreasonable metrics to assess and track the performance of workers at work in the business or undertaking,
 - (c) excessive or unreasonable monitoring or surveillance of workers at work in the business or undertaking,
 - (d) unlawful discriminatory practices or decision-making in the conduct of the business or undertaking.

Inspection Powers

Section 118 Rights that may be exercised while at workplace

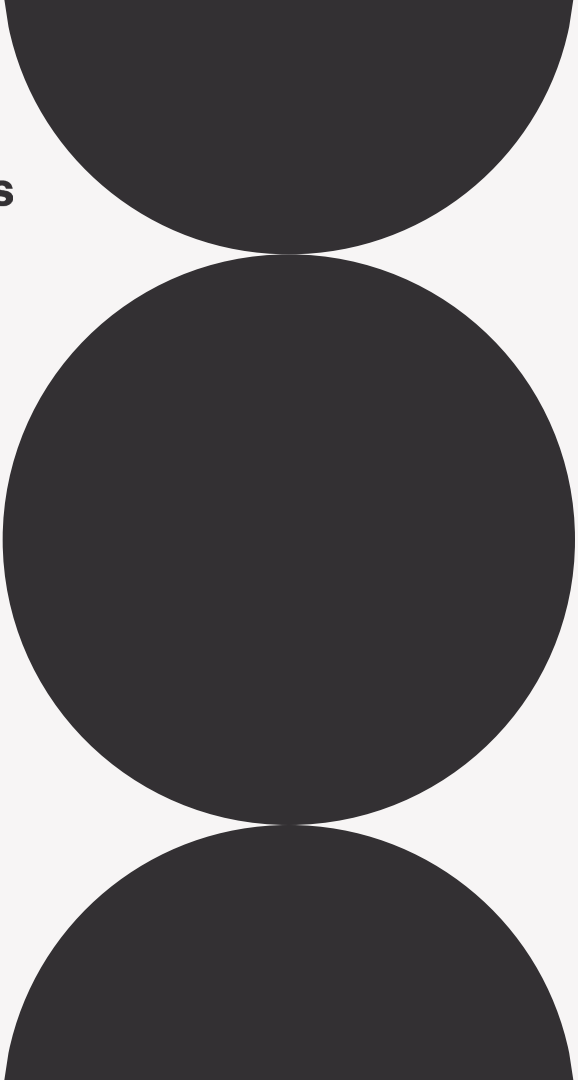
Insert after section 118(1)(a)—

- (a1) require the relevant person conducting a business or undertaking to provide the WHS entry permit holder with reasonable assistance to access and inspect a digital work system relevant to the suspected contravention,

Section 118(2A)

Insert after section 118(2)—

- (2A) The WHS entry permit holder's power under subsection (1)(a1) to require a relevant person conducting a business or undertaking to provide the WHS entry permit holder with reasonable assistance—
 - (a) may be exercised only if the WHS permit entry holder has, during business hours, given the relevant person notice of the proposed entry at least 48 hours, and not more than 14 days, before the entry, and
 - (b) is subject to guidelines made by the regulator under section 118A.



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Predicted impact of the new legislation

What inspectors will be looking for



Risk assessments considering digital system outputs



Evidence of worker consultation



Access to documentation explaining algorithmic logic



Change logs for system configuration updates



Records of how unreasonable workloads or metrics are prevented

Background to the Reforms: Context and Debates



- Modernises existing WHS laws to cater for technological innovation in the workplace
- Creates a legal obligation for employers to consider and control the resulting health and safety risks (stress, fatigue, loss of control over work)
- Minimises unsafe AI-driven work practices



- Inspection powers will allow unions to access confidential business information
- Provisions are too broad to function effectively
- Will increase compliance burden for employers without meaningfully improving safety outcomes
- Fails to focus on underlying work design and organisational drivers that create risk

Predictions for other States and Territories

Likely Early Movers (High likelihood: 1–3 years)

- Queensland
- South Australia
- ACT
- Northern Territory
- Commonwealth

Moderate Likelihood (Likely eventually, slower adoption)

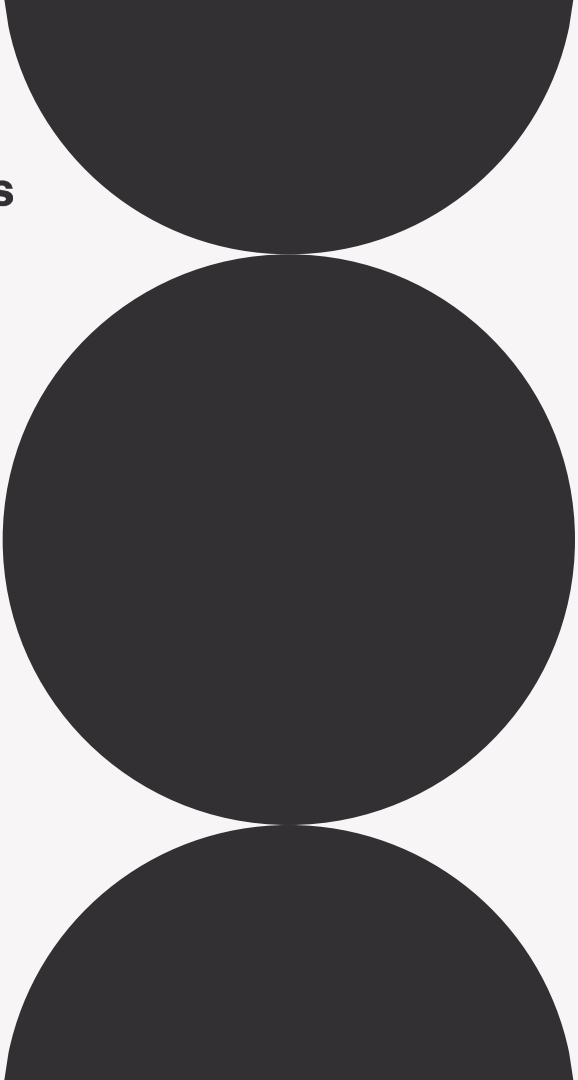
- Victoria

Lower Likelihood (Longer-term potential)

- Western Australia
- Tasmania

National Forces Driving Future Adoption:

- A. Rising regulatory scrutiny of AI and digital management
- B. Ongoing national focus on psychosocial hazards
- C. Enforcement and union pressure



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**Implications for
businesses:
What does it
mean for you?**

**Increased
Regulatory
Activity**

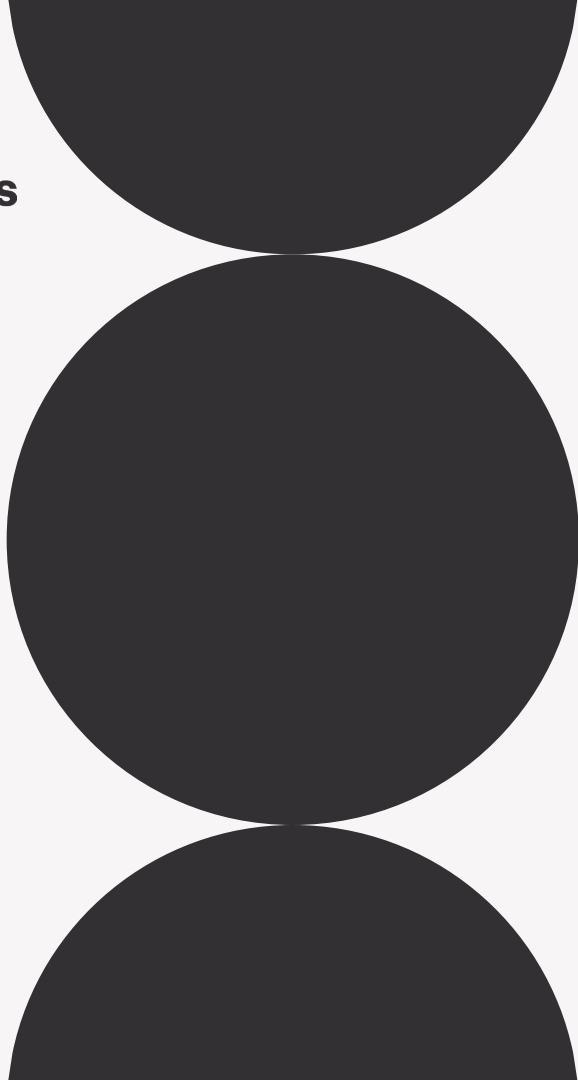
The way businesses interact with and utilise AI and other digital work systems will be subject to heightened scrutiny by regulators

**Increased
Worker
Claims**

Increase in complaints if employees believe that their employer is not meeting their obligations or appropriately managing the use of AI

**Increased
Public
Interest**

Legislative reforms in NSW and increasing media attention will bring the management of AI in workplaces more into the public eye

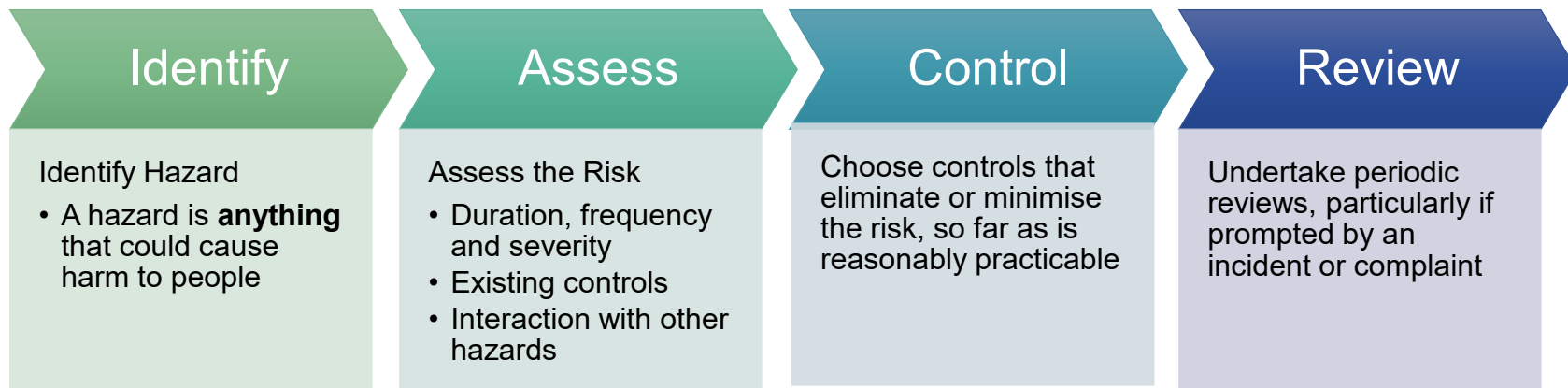


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Practical steps

Risk Assessments

"A systematic examination of a task, job or process that you carry out at work for the purpose of identifying the significant hazards, the risk of someone being harmed and deciding what further control measures you must take to reduce the risk to an acceptable level."



Consultation With Workers

Consultation will assist to:

- Identify potential hazards;
- Assess risks;
- Determine appropriate control measures; and
- Consider whether controls measures are adequately control the risks.

Early consultation is essential, and should be undertaken throughout the risk assessment process.

Consultation is expressly required - see e.g. ss 47 - 49 of WHS Act



Connection with Psychosocial Hazards

A **psychosocial hazard** is a hazard that—

(a) arises from, or relates to—

- (i) the design or management of work, or
- (ii) a work environment, or
- (iii) plant at a workplace, or
- (iv) workplace interactions or behaviours, and

(b) may cause psychological harm, whether or not it may also cause physical harm.

High job demands

- Sustained or intense high levels of physical, mental or emotional job demands which are excessive, unreasonable or chronically exceed workers' capacity

Low job control

- Workers having little or no control over what happens in their work environment, how or when their work is done or the objectives they work towards

Poor support

- Tasks or jobs where workers have inadequate emotional and/or practical support from supervisors and/or co-workers

Review Policies and Procedures

Conduct a comprehensive review to assess whether existing policies and procedures:

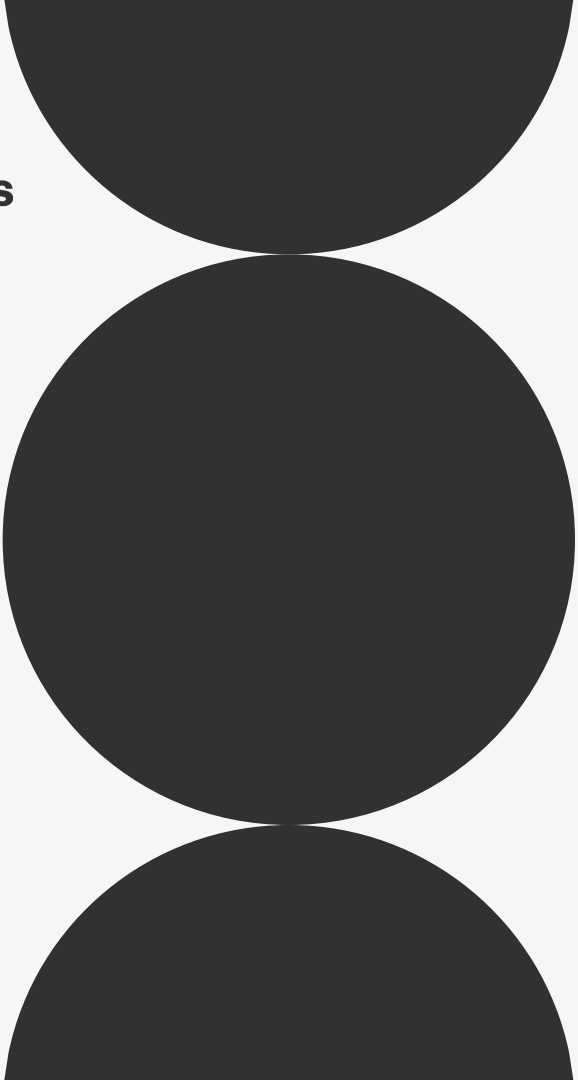
- Align with applicable legal and regulatory obligations (e.g. data protection, WHS laws)
- Outline how employees should engage with the relevant digital work systems;
- Define who is responsible for monitoring compliance with legal obligations, conducting risk assessments and overseeing the functioning of digital systems; and
- Establish clear processes for system oversight, auditing and incident response.



Questions to ask your digital platform provider



- Can you explain how the workload algorithm functions?
- How are performance metrics calibrated?
- Has the system been tested for discriminatory outcomes?
- What data is monitored, stored, or used for decisions?
- Can the system be configured to reflect WHS risk controls?



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Key takeaways



Use of AI as a workplace hazard has always been implicitly covered by the WHS Act



However, now that it is specifically legislated, regulators and unions will be more closely monitoring compliance

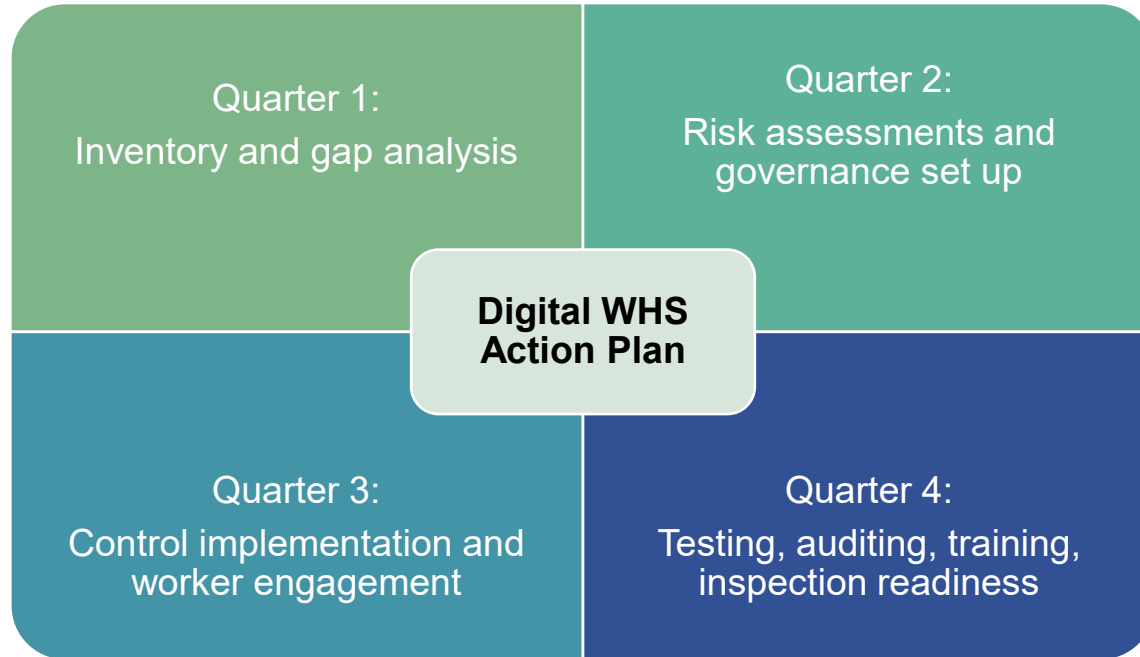


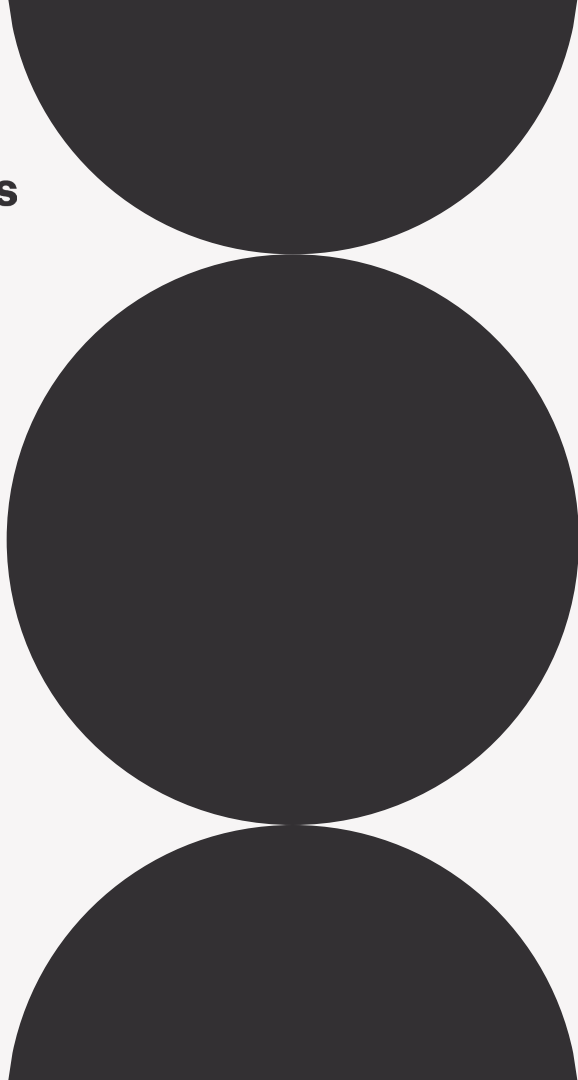
Remains to be seen whether other states will also adopt these changes, or some amended form



Employers should prepare by conducting risk assessments, consulting with employees, and reviewing policies and procedures

A 12-Month Digital WHS Action Plan





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Questions

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Thank you.



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