

H&S Information Sheet #2

Health & Safety Law

Introduction

Prevention of accidents is good business. Failure to do so could incur 3 types of costs:

- **Legal:** compensation claims and/or fines. Individual managers can also be prosecuted for H&S offences, resulting in fines or even imprisonment.
- **Economic:** damage to equipment, materials and property. Uninsured costs - legal costs, management investigation time, lost sales, replacement labour costs - can often be far greater than insured losses.
- **Human:** pain and suffering to the injured, their family, friends, and colleagues.

Common (or Civil) Law

Common Law derives from precedents set by decisions in court cases. Injuries or damage caused by negligence may lead to a claim for compensation.

All individuals, companies or organisations have a **Duty of Care** towards others to ensure that no “reasonably foreseeable loss” is caused by the acts or omissions of that individual or organisation. Failure to exercise this duty properly may give rise to Civil Liability, which gives one person the right to present a legal claim against another.

A number of cases over the years have established the employer’s duty to take “reasonable care” to protect employees. In particular, an employer must provide:

- a safe place of work, including safe access and egress
- safe systems of work
- safe plant and equipment
- safe and competent fellow employees

The employer’s duty of care is owed to each employee individually. Therefore, the susceptibility of any particularly vulnerable employee must be considered when exercising duty of care.

An employer is responsible for the actions of an employee while in the course of his employment. If an employee causes injury to another person, by neglect, or through a lack of competence, during the course of his work, the employer may be liable for the injury. This is called “Vicarious Liability”.

Statute (or Criminal) Law

Statute Law stems from Acts of Parliament and Government Regulations. Breaches may lead to prosecution and fines.

The most important piece of H&S legislation is **The Health and Safety at Work Act 1974**. This sets out the duties of employers to employees and to others who may be affected by their work activities. It also sets out the duties of people who are in control of premises as well as employees’ duties.

This Act implied the need for employers to manage H&S in a structured way without actually making it a legal requirement. The **Management of Health and Safety at Work Regulations 1999** were subsequently introduced to make this requirement explicit.

Some of the main features of these Regulations require employers to:

- assess the risks to the health and safety of employees and other affected people (e.g. self-employed contractors)
- follow certain principles for preventing or controlling risks
- have arrangements in place to implement these controls
- appoint competent people to advise and assist in H&S matters
- provide procedures and training for all foreseeable emergency situations
- provide information to employees about risks identified by the assessments
- ensure that work given to employees is within their capability to carry out, taking account of their training, knowledge and experience

- follow specific procedures with regard to new or expectant mothers and young persons under 18

There are several other pieces of legislation, usually in the form of Regulations, which cover specific aspects of health and safety such as:

- Fire Safety
- Substances Hazardous to Health
- Manual Handling
- Personal Protective Equipment (PPE)
- Working at Height
- First Aid
- Asbestos at Work

Under The Corporate Manslaughter and Corporate Homicide Act 2007, companies and organisations can also be found guilty of corporate manslaughter if serious Health And Safety management failures result in a gross breach of a duty of care. This Act, which came into force on 6 April 2008, puts the onus on senior managers to ensure that:

- legal standards are adhered to
- the workplace is as safe as possible
- they can prove they have received adequate training and advice

Levels of Duty

There are 3 levels of duty imposed by the law.

Absolute: employers **must** do certain things; there is no choice. For example, equipment must be maintained in a safe condition.

Practicable: employers must take action that is feasible given current technology.

Reasonably practicable: employers need to take action until the costs of further precautions far outweigh the risks.

Cost Benefit Analysis

Regulations stating that employers have a duty to do what is “reasonably practicable” allow employers to balance the cost of taking action against the risk being considered. This cost benefit analysis must be done prior to any complaint by an enforcing agency. Only if costs are grossly disproportionate to the risks can the safety precaution be considered unreasonable.

Official Guidance

The Health and Safety Commission and its executive arm (HSE) produce formal advice in the form of Approved Codes of Practice (ACOPs) and Guidance Notes. ACOPs interpret an Act or Regulations. They are not law in themselves, but they do have persuasive authority in a court of law.

HSE guidance is not compulsory but it does define the minimum acceptable standards to which employers should comply in order to meet their legal duties. If an employer should choose not to follow this advice, he would need to show an enforcing authority that he has complied with the law in some other way.

Enforcement

Local Authorities are responsible for enforcing most H&S legislation in charity retailing. Environmental Health Officers (EHOs) carry out this work. EHOs can provide informal advice either verbally or via correspondence. They also have wide powers to enter premises, to test materials and conduct investigations, to issue Improvement and Prohibition Notices and to prosecute.

An **Improvement Notice** will specify a period of time by which a problem must be rectified. A **Prohibition Notice** will prohibit any work it describes from taking place until steps have been taken to remedy the situation.

EHOs are responsible for occupational health and safety issues, whereas Trading Standards Officers enforce regulations relating to the safety and legality of goods offered for sale.

Although EHOs will comment on fire matters when they visit premises it is Local Fire & Rescue Services who are responsible for enforcing Fire Safety Regulations. This is an important point to note because an EHO report may only appear to make passing references to fire hazards in a shop. This is not because the risk of fire may be low, but because it is not their area of responsibility to enforce.

Further Reading

Health & Safety Regulation. HSE leaflet HSC13REV1. This explains Regulations, Approved Codes of Practice and Guidance and how they relate to each other.

An introduction to health and safety. Health & Safety in small firms. HSE leaflet INDG259

What to expect when a health and safety inspector calls. HSE leaflet. HSC14

Consulting employees on health & safety. HSE leaflet INDG 232