

# THE **STAGESAFE** BASIC GUIDE TO HEALTH AND SAFETY LAW

## HEALTH AND SAFETY LAW

### Background

The history of health and safety legislation can be traced back to the passing of the first factory statute in 1802 enacted as a result of the appalling work conditions for children. (Stuffing small boys up chimneys and down the mines where some people think they should still be).

Various laws and legislation were then introduced and amended in a piecemeal fashion for the next 170 years. (Hundreds of acts to cover Factories, Mills, Shops, Railways, Agriculture, Mines, Quarries etc. etc. etc. etc..... and every trade under the sun).

In 1972 Lord Robens, in the report bearing his name, underlined that the primary responsibility for the high levels of occupational accidents and disease lay with those who create the risk, employers, and those that work with them. The Robens report went on to form the legal framework of the Health and Safety at Work Act (H&SAWA) 1974 which is an enabling Act. This means that the Secretary of State can produce further, often more detailed, Regulations to flesh out the Act where necessary with a much less onerous parliamentary procedure than that required for new Acts.

The most pervasive result of the H&SAWA is that companies are obliged to provide "safe systems of work", defined as a formal procedure which results from the systematic examination of a task in order to identify all the hazards. It is also recognised that designing and implementing safe systems of work applies not only to the organisations permanent activities and processes, but also to those which can occur at infrequent or irregular intervals, for instance during maintenance or breakdown. However, whilst these formal systems of work need to be "formal" they can either be written or verbal.

The actual Act is enforced using both civil and criminal law. Civil law requires a "duty of care" which is prosecutable and compensatable when negligence is proven. Any decision being made on the "balance of probability." Criminal law is enforced using Health & Safety law which result in fines, prison and criminal records arising from any contravention. Punishment being dealt when issues can be proven "beyond reasonable doubt".

At this point it might be useful to introduce some of the legal terms applied to health and safety:

Reasonably practicable: what is reasonably practicable is determined by the employer balancing any decision between what is cost effective and the likelihood / severity of a particular problem arising.

Practicable: decisions must be made within the bounds of known knowledge, cost is NOT a consideration.

Shall / shall not: where these words are used in law there is an absolute legal requirement

Hazard: any substance, article, material or practice which has the potential to cause harm to the safety, health or welfare of employees at work and others affected by that work.

Risk: the likelihood of that potential being realised.

Competent person: Someone who has sufficient training, experience, knowledge and understanding of the work involved, the capability to apply this to the tasks required, an understanding of current best

practice and most importantly, knows their own limitations One final, and often overlooked, point before we move on to some of the more common legislation is that you do not have to have had an accident to be in breach of the law!

The next section briefly explains the more common Acts and Regulations and asks a number of questions. If you are able to answer yes to the questions you should be reasonably confident that you are meeting your legislative requirements.

### **Health & Safety at Work Act 1974 (HASAWA)**

The Health and Safety at Work Act applies to all work situations and applied to everyone regardless of whether they are employed or self employed, it also protects anyone else who's health and safety may be affected by the work being undertaken, for instance the general public.

- Do you, so far as reasonably practicable, ensure the health, safety and welfare of your employees?
- Do you, if you have more than 5 staff, have a written statement of health and safety policy which is regularly reviewed and kept up to date?
- Do you provide information, instruction, training and supervision to ensure the health and safety at work of all employees?
- Do you provide a safe place of work with a means of safe access and exit?
- Do you ensure all of your plant and equipment is safe (to use) at all times including maintenance and shutdown periods?
- Do you have safe systems of work, documented where necessary?
- Do you have safe methods for handling, storing and transporting of goods?
- Do you undertake risk assessments for all day to day activities and tasks undertaken by employees?
- Does this include risk assessments for: Fire, VDU use & manual handling?
- Do you have arrangements for consultation with employees with a view to making and maintaining and promoting effective health and safety?
- Do you allow horseplay to go unchecked?
- Do you provide personal protective equipment (PPE)? If so do you ensure you take all reasonably practicable actions to ensure that it is used?
- Do your employees take reasonable care for the health and safety of themselves and others that might be affected by their acts, or omissions, at work?
- Do your employees co-operate with their employers, or others who may have legal responsibilities to comply with the Act, its Regulations or associated legislation.
- Do your employees know that they must NOT intentionally or recklessly interfere with or misuse anything required by the law and provided in the interests in health and safety.

- Did you know that if one person makes another breach the legislation that person will also be in breach?
- Did you know that if guidance on health and safety is provided to employees but not heeded, then a problem arises as a result of the advice being ignored, a judge might ask "Who was managing health and safety?" In this instance the answer would be the employee. The judge would then remind the employer that it is the employer's duty to manage health and safety.
- Did you know that if an accident or incident occurs during a working operation it cannot be a safe way of working. The operation may have been undertaken many times before without accident or incident. A judge might decide you were previously "just lucky".

### **Management of Health & Safety at Work Regulations 1999**

These regulations are designed help companies manage their health and safety processes and set out more specific responsibilities for both employers and employees. The core of the Regulation is the stipulation that employers produce a Health and Safety Policy and undertake a suitable and sufficient assessment of risks in the workplace.

- Do your risk assessments identify the significant risks?
- Do your risk assessments allow for the prioritisation of measures that need to be taken?
- Are your risk assessments appropriate to the nature of work and such that they remain valid for a reasonable period of time?
- Are your risk assessment conducted by a competent person?
- Have you developed emergency procedures for serious and imminent danger and danger areas?
- Do you ensure that temporary workers and visitors are given adequate information regarding health & safety?
- Are your staff encouraged to notify you of shortcomings in the health and safety arrangements?

It is a legal requirement for all employers and self-employed persons to carry out risk assessments. Employers are required to assess risks to their employees and anyone else that may be affected by the business. The self-employed must assess risks to themselves and anyone else that may be affected by their work. If a business employs five or more people the assessments must be recorded.

## **Health and Safety Enforcing Authorities**

*Information to help you establish who enforces the law relating to health and safety within your type of premises.*

The split between the LA and HSE is not always clear therefore, HSE and LA inspectors liaise closely on enforcement issues.

Failure to comply with Health and Safety Law (as this is Criminal Law you can't insurance against any

<p><b>Essentially the Local Authority (LA) inspectors look after the following main activities in non-domestic premises:</b></p>	<p><b>HSE deal with the rest including factories and in particular:</b></p>
<ul style="list-style-type: none"> <li>• Warehouses storing goods for wholesale or retail;</li> <li>• Wholesale and retail shops, including tyre and exhaust fitting establishments;</li> <li>• Display and sale of goods at an exhibition;</li> <li>• Catering establishments, including restaurants, cafes; sites and caravan sites;</li> <li>• Health clubs and leisure activities, theatres, cinemas, discos etc;</li> <li>• Therapeutic treatments, including massage parlours, solaria, aromatherapy</li> <li>• Child care, including nurseries and play groups;</li> <li>• Office activities;</li> <li>• Consumer services in shops such as shoe repairers;</li> <li>• Hotels, guest houses, bed and breakfast, camp sites</li> <li>• Undertakers;</li> <li>• Churches and religious meeting halls;</li> <li>• Coin operated wet and dry cleaning;</li> <li>• Animal accommodation, including kennels, catteries and stables;</li> <li>• Zoos.</li> </ul>	<ul style="list-style-type: none"> <li>• Mines and quarries;</li> <li>• Fairgrounds;</li> <li>• Radio or television broadcasting;</li> <li>• Most construction work;</li> <li>• Agricultural activities;</li> <li>• Use of x-ray machines;</li> <li>• Activities on board ship;</li> <li>• Ski lifts, ski tows and cable cars;</li> <li>• Maintenance repair and installation of electricity and gas systems;</li> <li>• Maggot, fish and game breeding;</li> <li>• LA activities, and the services (Police, fire and health, including hospitals);</li> <li>• Domestic premises.</li> </ul>

breach) may mean that any insurance you may have is invalid and you risk fines and imprisonment after which you may still face civil action against you or your business.

You may be prosecuted by the HSE or the Crown Prosecution Service. In a Magistrates Court you could face fines of over £20,000 and prison sentences. In a Crown Court you can face unlimited fines and prison sentences.

## **Health & Safety at Work - The Basics**

The law imposes a responsibility on the employer to ensure safety at work for all their employees. Much of the law regarding safety in the work place can be found in the **Health & Safety at Work Act 1974**.

Employers have to take reasonable steps to ensure the health, safety and welfare of their employees at work.

Failure to do so could result in a criminal prosecution in the Magistrates Court or a Crown Court. Failure to ensure safe working practises could also lead to an employee suing for personal injury or in some cases the employer being prosecuted for corporate manslaughter.

As well as this legal responsibility, the employer also has an implied responsibility to take reasonable steps as far as they are able to ensure the health and safety of their employees is not put at risk. So an employer might be found liable for his actions or failure to act even if these are not written in law.

An employer should assess the level of risk as against the cost of eliminating that risk in deciding whether they have taken reasonable steps as far as they are able.

The employer's responsibility to the employee might include a duty to provide safe plant and machinery and safe premises, a safe system of work and competent trained and supervised staff.

Certain groups of employees may require more care and supervision than others, for example disabled workers, pregnant workers, illiterate workers etc.

The employer must consult either directly with their employees or through an elected representative on health and safety matters. If there is a recognised union with an appointed safety representative they must consult with them and allow them time off for training in health and safety issues.

Usually the employer's responsibility is only to his or her own employees and premises; however, the responsibility can be extended in some circumstances.

For example:

1. Where employees from different firms are employed on one job, the main contractor will then be responsible for co-coordinating the work in a safe manner and must inform all employees of possible hazards whether they are his actual employees or not.
2. Where the employee is sent to work for someone else but remains employed by the same employer but an accident happens at the place where he has been sent to work, the responsibility may fall on the original employer.
3. The employer may also have responsibility to customers or visitors who use the work place. It is always advisable for employers to have a written code of conduct, rules regarding training and

supervision, and rules on safety procedures. This should include information on basic health and safety requirements.

Leaflets and posters giving warnings of hazards are always advisable.

In any event an employer must establish a health and safety policy if they employ five or more workers. Where there is a recognised trade union in the workplace, which has appointed a safety representative that person must be consulted when drawing up the safety policy.

Also the Management of Health & Safety at Work Regulations 1999 requires an employer to carry out a risk assessment of the work place and put in place appropriate control measures.

The Health and Safety at Work Act 1974 established the Health and Safety Commission and the Health and Safety Executive. The Commission is responsible for advising and authorizing research and suggestions on putting into effect the provisions made in the Health and Safety at Work Act, as well as suggestions for passing regulations to support the provisions in the Health and Safety at Work Act and issuing codes of practice. The Executive is responsible for providing information and advice to government ministers and to investigate breaches. The Health and Safety Commission was amalgamated with the HSE in 2008.

Any prospective employer setting up a new business should be aware of six important regulations which came about as a result of membership to the European Union and are incorporated into UK law, they are often referred to as the "six pack" regulations.

#### **Management of Health and Safety at Work Regulations 1999 (Management Regulations)**

places an obligation on the employer to actively carry out a risk assessment of the work place and act accordingly. The assessment must be reviewed when necessary and recorded where there are 5 or more employees. It is intended to identify health and safety and fire risks.

#### **Work place (Health, Safety and Welfare) Regulations 1992**

deals with any modification, extension or conversion of an existing workplace. The requirements include control of temperature, lighting, ventilation, cleanliness, room dimensions etc. The regulations also provide that non-smokers should be allocated separate rest areas from smokers.

#### **The Provision and Use of Work Equipment Regulations 1998**

deals with minimum standards for the use of machines and equipment with regard to suitability, maintenance and inspection. The regulations will also cover mobile work equipment from December 2002.

#### **The Manual Handling Operations Regulations 1992**

deals with the manual handling of equipment, stocks, materials etc. Where reasonably practicable an employer should avoid the need for his or her employees to undertake manual handling involving risk of injury.

#### **Personal Protective Equipment Work Regulations 1992 (PPE)**

deals with protective clothing or equipment which must be worn or held by an employee to protect against health and safety risks. It also covers maintenance and storage of such equipment. Employers cannot charge for such clothing or equipment which must carry the "CE" marking.

#### **The Health & Safety (Display Screen Equipment) Regulations 1992**

introduced measures to prevent repetitive strain injury, fatigue, eye problems etc. in the use of technological equipment. Every employer should make a suitable and sufficient analysis of each

workstation and surrounding work environment to ensure it meets the detailed requirements set out in the Regulations. This includes eyesight tests on request, breaks from using the equipment and provision of health and safety information about the equipment to the employee.

Other relevant Regulations include:

**Working Time Directive and Working Time Regulations 1998**

regulates the maximum working hours for workers, (including night workers) and free health assessments to assess suitability to work particular hours. It also governs rest periods and breaks.

**The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995**

employers must notify the Health and Safety Executive or local authority about work accidents resulting in death, personal injury or sickness where an employee is off work for more than 3 days. Records must be kept of all such accidents at the workplace for at least 3 years. Accident books must also be kept where an employer.

**Electricity at Work Regulations 1989**

these place a duty on an employer to assess risks involved in work activities involving electricity, (this can even cover electrical appliances such as kettles). All such equipment must be properly maintained.

**Health and Safety (First Aid) Regulations 1981**

These set out the duties on an employer to provide adequate trained first aiders, equipment and facilities. They also set out the standards for training first aiders.

**Control of Substances Hazardous to Health Regulations 2002**

Employers have a duty assess risks from hazardous substances and provide health surveillance if required.

**Dangerous Substances and Explosive Atmosphere Regulations 2002**

sets the minimum requirements for the protection of workers from fire and explosion risks related to dangerous substances and potentially explosive atmospheres (e.g. Liquid Petroleum Gas)

**Regulatory Reform (Fire Safety) Order 2005**

replaces all previous Acts and Regulations. Places responsibility on the Duty Holder to prevent fire etc.

**Health and Safety (First Aid) Regulations 1981**

employers have to make adequate and appropriate provision for first aid.

**Employers Liability (Compulsory Insurance) Regulations 1998**

employers must insure against liability for injury or disease sustained by an employee in the course of their employment. The sum to be insured is not less than £5 million.

**Noise at Work Regulations 2005**

imposes a duty on employers to reduce risk of damage to hearing of employees from exposure to noise.

**Lifting Operations and Lifting Equipment Regulations 1998**

these regulations are an extension to the Provision and Use of Work Equipment Regulations 1998 that set requirements for safe lifting equipment and lifting operations.

**Information to Employees (Amendment) Regulations 2009**

Require information to be given to employees by displaying the approved poster and providing the approved leaflet.

The Health & Safety Executive and the Environmental Health Departments for the local authorities are responsible for enforcing the Health & Safety at Work Act 1974 and the various regulations.

They can provide information and guidance as well as enter premises to investigate conditions or seize and destroy harmful substances. They can also prosecute employers or serve Notices on them to improve working conditions, or in some cases serve Notices that work should stop altogether.

Under the provisions in the Employment Rights Act 1996 employees are protected from dismissal or victimisation by an employer for a health and safety related reason, (e.g. bringing to the employer's attention matters connected to the work which is harmful or potentially harmful and breaches health and safety regulations).

Under the Health and Safety at Work Act employers must have a written policy on health and safety at work which must be provided to all employees. Failure to provide such written information is an offence and carries a maximum fine of £20,000 in a Magistrates Court or an unlimited fine in the Crown Court.

## **RISK ASSESSMENT**

**Risk Management:** The systematic identification, evaluation, cost-effective control and monitoring of those risks which threaten the personnel, assets and reputation of the organisation and consequently its ability to survive.

### **Why do we need Health & Safety Risk Assessment?**

The principal health and safety legislation in the UK is the *Health and Safety at Work etc. Act 1974*. This Act places a general duty on employers to ensure the health, safety and welfare of their employees and to protect others who may be affected by their undertakings. To allow employers to discharge these broad duties, a range of topic specific Regulations have been produced, most of which are based upon the principal of "risk assessment".

**The Management of Health and Safety at Work Regulations 1999**, for example, require employers to carry out a "general risk assessment" and certain topicspecific regulations require the undertaking of 'specific' risk assessments, where appropriate.

### **What is a Risk Assessment?**

Essentially, risk assessment is the process of *identifying* all areas of harm which may affect personnel, determining whether this harm is *likely*, and implementing measures to *reduce* the likelihood of the harm occurring where necessary. Where 5 or more persons are employed, all "significant findings" must be recorded.

In 'plain English', the following questions require to be answered during a Risk Assessment:

- What could go wrong?
- How likely is this?
- What if it happened?
- Would this be acceptable?
- If not, how can we reduce the chance of it happening?

- Do our risk control systems meet minimum legal requirements?\*

\*\* You will need to reference the various regulations to confirm you meet the standards set by legislation.

## Common terms used in risk assessment

**Hazard** anything that can cause harm e.g. fire, chemicals, dusts, work at height, heat, electricity, lifting, noise, moving machinery parts, stress, violence etc.

**Risk** the chance, great or small, that someone may be harmed by a hazard. Naturally, a person must be *exposed* to a hazard for any risk to exist.

**Risk Control** measures taken to eliminate the hazard / risk or, where this is not reasonably practicable, to reduce the likelihood of harm to an acceptable level. Risk control measures may take the form of revised working practices, engineering equipment, British and European Standards, training, supervision or, as a last resort, Personal Protective Equipment (PPE).

## Directors Responsibilities Health and Safety Checklist

There are many questions that directors and partners of all organisations need to be asking themselves and their colleagues. The following are some of the principal issues and they will help find the best ways to lead and promote health and safety, and therefore meet health and safety obligations. These questions encompass organisations of all sizes and complexities and many will have a board of directors. Small companies will not have a board structure in the same way. However, all are subject to the new law and the laws of health and safety at work.

- For companies employing five or more people there has to be a written health and safety policy. It needs to be available to the employees and kept up to date
- Is there a company policy statement, signed by the most senior person and posted in a prominent location?
- Is there strong and active leadership from the top showing visible, active commitment from individual directors or the 'board' in larger organisations?
- Is health and safety on the board agenda?
- Have effective 'downward' communication systems and management structures been put in place?
- Do all directors adopt the integration of good health and safety management with business decisions?
- Do the directors engage the workforce in the promotion and achievement of safe and healthy conditions?

- For directors to know what is going on in the company is there effective 'upward' communication?
- How do the directors demonstrate their commitment to health and safety?
- What process is in place to ensure that there is an appropriate director to champion health and safety?
- Evaluate what has been done to ensure that those in the organisation, at all levels including the directors and board members, receive competent health and safety advice
- How do the directors and the board members demonstrate that they are sufficiently trained and competent in their health and safety responsibilities?
- How confident are the directors or board members that the workforce, particularly safety representatives in larger organisations, are consulted properly on health and safety matters, and that their concerns are reaching the appropriate level?
- What systems are in place to ensure the organisation's risks are assessed, and that sensible control measures are established and maintained?
- How well do the directors know what is happening on the ground, and what audits or assessments are undertaken to inform directors or the board about what the organisation and contractors actually do?
- What information do the directors or the board receive regularly about health and safety, e.g. performance data and reports on injuries and work-related ill health?
- What targets have been set to improve health and safety and the organisations performance against others in similar businesses?
- How are changes in working arrangements which have significant implications for health and safety, brought to the attention of directors or the board?
- How do the directors demonstrate that they have identified and provided high quality training for themselves and those they employ?
- Is there a robust system for identifying and managing the company's health and safety risks?
- Is there a competent person engaged either as an employee or as a consultant to provide competent health and safety advice?
- With regard to health and safety systems and procedures is there effective monitoring, reporting and reviewing performance available to the directors or board?

The final action is for an independent audit, which can be carried out on an annual basis with feedback made available to directors and board members.

## **The Health and Safety (Offences) Act 2008**

From January 2009, employers and other duty holders who breach health and safety laws face the prospect of tough new penalties, including higher fines and the possibility of imprisonment for a wider range of offences.

Under the Health and Safety (Offences) Act 2008, which came into force in Great Britain and Northern Ireland on 16 January 2009, amends Section 33 of the Health and Safety at Work Act 1974 (HSW Act) to:

- raise the maximum fine available in the lower (magistrates') courts for regulatory offences
- make imprisonment an option for more health and safety offences in both the lower and higher courts
- make two offences currently triable only in the lower courts - contravening any requirement imposed by an inspector and preventing a person from appearing before an inspector or from answering their questions - triable in the higher courts as well.

### **Penalties for Health & Safety Offences**

The Health & Safety at Work, etc., Act 1974, Section 33 9 as amended) sets out the offences and maximum penalties, under Health & Safety Legislation, as follows: -

Failure to comply with an Improvement, or Prohibition, Notice, or a Court Remedy Order (Issued under the HASAW Act Sections 21, 22 and 42 respectively): -

- Lower Court Maximum - £ 20,000 and/or 6 months' imprisonment
- Higher Court Maximum - Unlimited fine and/or 2 years' imprisonment

Breaches of Sections 2 - 6 of the HASAW Act, which set out the general duties of employers, self-employed persons, manufacturers and suppliers, to safeguard the health and safety of workers and members of the public, who may be affected by work activities: -

- Lower Court Maximum - £ 20,000
- Higher Court Maximum - Unlimited fine

Other breaches of the HASAW Act and breaches of 'Relevant Statutory Provisions' under the Act, which include all health and safety regulations. These impose both general and more specific requirements, such as requirements to carry out a suitable and sufficient risk assessment, to provide suitable personal protective equipment: -

- Lower Court Maximum - £ 5,000
- Upper Court Maximum - Unlimited fine

**Contravening License Requirements, or Provisions relating to Explosives: -**

Licensing requirements apply to nuclear installations, asbestos removal and storage and manufacture of explosives. All entail serious hazards, which must be rigorously controlled: -

- Lower Court Maximum - £ 5,000
- Higher Court Maximum - Unlimited fine and/or 2 years imprisonment

On Conviction of Directors, for indictable offences, in connection with the management of a company (all of the above, by virtue of the HASAW Act Sections 36 and 37), the courts may also make a Disqualification Order (Company Directors Disqualification Act 1986, Sections 1 and 2). The courts have exercised this power, following Health and Safety convictions. Health & Safety Inspectors draw this power to the court's attention, whenever appropriate: -

- Lower Court Maximum - 5 years' disqualification
- Higher Court Maximum - 15 years' disqualification

## **Corporate Manslaughter and Corporate Homicide Act 2007**

- The definition of the offence is:

***“An organisation .... is guilty of the offence of corporate manslaughter if the way in which any of the organisations activities are managed or organised***

- a) Causes a person's death, and
  - b) Amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased”
- Triable **only** in a Crown Court.
  - Unlimited fines and prison sentences
  - Remedial Orders
  - Publicity Orders

No individual liable for aiding, abetting, counselling or procuring the commission of the offence of corporate manslaughter

Individuals can still be liable for

- Gross negligence manslaughter – maximum of life imprisonment
- Section 37 HASWA – fine\*
- Director disqualification (up to 15 years)
- Section 37 HASWA:

\*Section 37 HASWA

where an offence...is proved to have been committed with the **consent** or **connivance** of, or...attributable to any **neglect** on the part of, any director, manager, secretary or other similar officer...or a person who purporting to act in that capacity, he as well as the body corporate shall be guilty of that offence.