

LegislationWATCH

THE No.1 RESOURCE FOR WORKPLACE LAW AND HEALTH AND SAFETY

Choosing work equipment

Inside this issue...

Protecting Life and Limb



Health, Safety and Whistleblowing



The MEWP - a beast to be tamed



**SAFETY
MADE
EASY**

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Editor
Cheryl Peacock

Deputy Editor
Heidi Malcolm

Designer
Nada Curley

UK Sales Director
Chris Humphrey

Head Office
14 Wildmere Road
Banbury
OXON
OX16 3JU

Letter FROM THE EDITOR



Dear Customer,

Welcome to the latest edition of Legislation Watch.

In this edition of Legislation Watch magazine, you'll find featured articles on Choosing Safe Work Equipment, Health, Safety and Whistle blowing Polices, E-cigarettes and much more.

We strive to provide you with a wide range of discussion topics and updates, and this edition is no exception, with more than 20 different topics covered. You can rest assured that all the latest legislation and best practice is included. However, if you are still unsure then please ask us, our IOSH accredited experts are always on hand to help.

I hope you enjoy this edition of Legislation Watch magazine – don't forget you can get everything online including printable PDF checklists, downloadable Training Tool presentations and access to our unique 'Ask the Expert' service where you can have your health and safety questions answered by our IOSH accredited experts for FREE! Simply go to www.legislationwatch.co.uk.

Happy reading!

Heidi Malcolm
Deputy Editor

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Legal UPDATE

HSE updates guidance on work-related road safety

More than a quarter of all road traffic incidents involve somebody who is driving as part of their work at the time and health and safety law applies to work activities on the road in the same way as it does to all work activities.

That is the message from the Health and Safety Executive (HSE) in its "Driving at work: Managing work-related road safety" guidance which has just been updated and is available at <http://www.hse.gov.uk/pubns/indg382.pdf>.

"The leaflet applies to any employer with employees who drive, or ride a motorcycle or bicycle at work, as well as self-employed people," the HSE makes clear. "It also applies to those using their own vehicle for a work-related journey."

Brake, the road safety charity, has welcomed the revised publication describing it as an essential guide for any organisation with employees who drive for work in helping them to prevent needless crashes and casualties and to drive down costs.

The guidance has been improved with examples of types of activities companies can use to manage road risk and with signposts to further information from other organisations, such as Brake.

Julie Townsend, the charity's deputy chief executive, said: "I would urge all organisations with employees who drive on work time to read this updated HSE guidance, alongside Brake's essential guide to fleet safety, to ensure their risk management policies and practices are up to date and in line with best practice."



New Heroism Bill to protect "good Samaritans" and employers



The Justice Secretary, Chris Grayling, has announced measures "to bring some common sense back to Britain's health and safety culture", with a so-called "Heroism Bill" to protect good Samaritans from lawsuits and to provide more protection for responsible employers from liability claims. The Bill has been designed to protect volunteers and other community members from worries about risk and liability if something goes wrong in their activities. However, in a statement, Chris Grayling said the legislation will also bring forward measures to put the law "more clearly on the side of employers who do the right thing to protect employees if something does go wrong through no fault of their own". The statement said that the measures will provide greater protection to small business owners who "face challenges from irresponsible employees" even if they have taken a responsible approach to safety training and procedures.

The changes will be made in new legislation expected to come into effect next year and follow ongoing efforts by the Government to tackle the apparent compensation culture. The new Social Action, Responsibility and Heroism Bill has been nicknamed "Sarah" by the Conservatives and the "Heroism Bill" by the press. Hugh Robertson, Senior Policy Officer for Health and Safety at the Trades Union Congress (TUC) said, "There is... the possibility that this Bill will have a much more sinister application, which is shifting the blame to workers when they are injured, with employers claiming the worker was acting 'irresponsibly'. If that is the case, this is not a Heroism Bill, it is a Blame Bill." Introducing the changes, Chris Grayling said, "I don't want us to be a society where a responsible employer gets the blame for someone doing something stupid. I want a society where common sense is the order of the day, and I believe this measure will help us get there."

Extending the right to request flexible working from 30 June 2014

The right to request flexible working was extended to all employees, not just those who are parents or carers, from 30 June 2014. Employees still need 26 weeks' continuous service in order to be eligible and there is a duty on employers to deal with requests reasonably (although they don't have to follow a statutory procedure). Eligible employees are only able to make one request in any 12-month period.





WORK EQUIPMENT AND THE APPLICATION OF

PUWER

The Provision and Use of Work Equipment Regulations 1998 (PUWER) expand the general rule set out in s.2 of the Health and Safety at Work, etc Act 1974, which requires employers to provide and maintain safe equipment, plant and work systems. PUWER applies to all work equipment, including items that are leased, hired or second-hand. The regulations apply to most workplaces.

“Work equipment” is broadly defined as including any machinery, appliance, apparatus or tool, assembly or components which work together to function as a whole. Case law examples of this, which illustrate the breadth of the definition, include:

- A postman’s delivery bicycle
- Vehicles supplied for use at work
- A drinks vending machine
- A railway signalling system
- A metal fence
- A lift in an office building
- A train driver’s cab seat.

Firefighters injured in garage fire

The most recent case applying PUWER is French and another v Strathclyde Fire Board (2013, Scottish Outer House). The facts, in summary, were that two firefighters, F and D, were injured during the course of their employment when fighting a fire at a garage.

When they arrived at the fire, part of the roof of the garage had been destroyed and a car inside was alight. The watch commander, following a risk assessment, told F to use a Halligan tool (a multipurpose forcible entry tool) to enter the garage through the front door. As he attempted to do so, the brickwork above the door collapsed onto him. Evidence was given that the fire could have been effectively fought from a side window. There was no requirement to open the front door. The burning away of the roof had left the brickwork above the main door weak and unsupported, and the use of the Halligan tool caused vibrations that led to the collapse. The watch commander should have recognised the garage as a dangerous structure and the incident had been avoidable and foreseeable.

Further evidence was given that fighting the fire from the main door was a recognised standard fire-fighting technique. The watch commander had carried out a suitable risk assessment and his actions had been reasonable in the circumstances. High temperatures could have caused the lintel above the door to expand, causing the brickwork to collapse.

F sought compensation in common law negligence and for breaches of regulations 3 and 4 of PUWER.

The Scottish court found that F’s employer was liable. It made the following points:

- The fire could have been brought under control through the side door and the lower panel of the front door
- It was probable that the use of the Halligan tool had caused vibrations in the structure
- The watch commander should have realised that ordering F into the area under the wall was inherently hazardous
- The watch commander had failed, as a skilled officer in his position, to exercise reasonable care and to realise the danger presented by the wall
- Where it was reasonably foreseeable to a skilled firefighter that the use of the Halligan tool where the wall was unstable and liable to collapse, liability arose under regulation 4 of the 1998 Regulations. This regulation imposes strict liability where an employer fails to ensure that work equipment is suitable for the purposes for which it is used or provided
- F had not been contributorily negligent. The primary responsibility for safety fell on the watch commander as the officer in charge and it would not have been reasonable to expect F to double check his risk assessment.

Firefighter injured by ram

Another relatively recent case involving firefighters and work equipment is Pennington v Surrey County Council and Surrey Fire and Rescue Service (2007). P was a firefighter employed by S. In February 2001 he injured his finger while repeatedly attempting to rescue a critically injured victim of a road accident from the wreckage of a vehicle. P had been called in because a firefighter from another station was suffering from exhaustion. P used a 1040 Homatro Ram for the rescue. This was a powered T-shaped spreading device. As P was trying to position the device in the cab of the vehicle, he trapped his finger between the housing of the ram’s arm and the extension as it retracted into the housing. P had not previously used this equipment because his own station used a lighter ram.

P claimed compensation from S on the basis of a breach of regulation 4 of PUWER and in common law negligence. At first instance, his claim succeeded. The judge found that the ram had been unsuitable for the purpose for which it was provided. S appealed to the Court of Appeal. That court dismissed the appeal and made the following points:

- When operated by properly trained and instructed personnel, the ram was suitable
- It had not been P’s decision to use the ram. He had not had the opportunity to assess which equipment should be used
- The equipment was substantially heavier than that which he had been trained for. Therefore, he had not been supplied with a safe system of work. This was a breach of regulation 11 of PUWER because, although fixed and other guards had not been provided or were impracticable, instruction and training should have been given on the heavier ram.

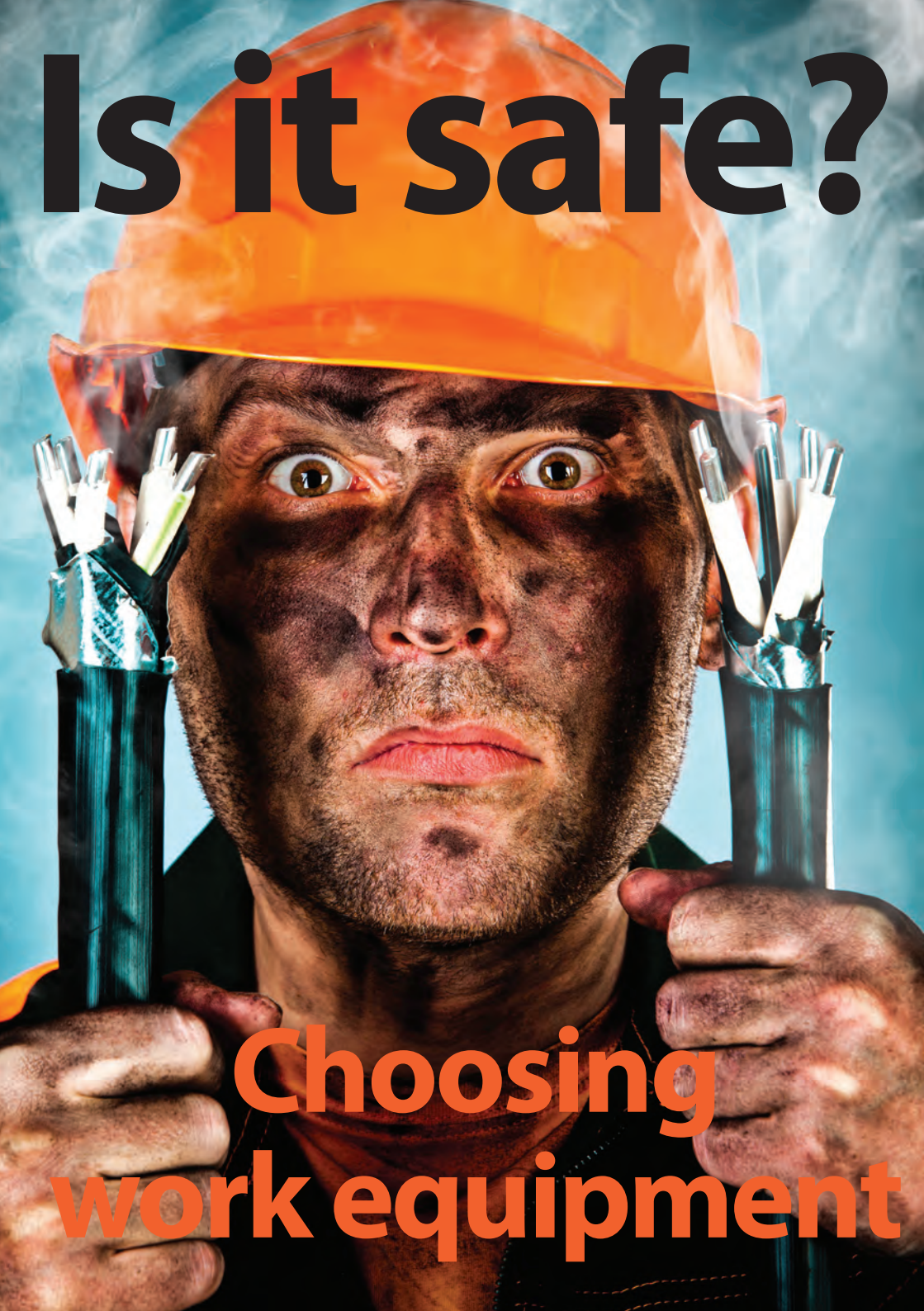
PUWER - definition of “dangerous parts”

Regulation 11 of PUWER deals with dangerous parts of machinery. It states, in summary, that employers must take measures to prevent access to dangerous parts of machinery or to stop the movement of any dangerous machinery before any part of a person enters a danger zone. The danger zone is the area on or around machinery in which there is a risk of contact between a person and a dangerous machinery part.

A “dangerous part” of machinery has been defined by the courts as one which might be a reasonably foreseeable cause of injury to anyone acting in a way in which a human being might be reasonably expected to act in circumstances which might be reasonably expected to occur.

A machine is dangerous if, in the ordinary course of human affairs, danger might reasonably be anticipated from its use, not only to the prudent, alert and skilled operative intent upon his or her task, but also to the careless and inattentive operative whose inadvertent or indolent conduct might expose him or her to the risk of injury or death.

Is it safe?



Choosing work equipment

There are a range of laws, codes, guides and standards in place to ensure that the equipment provided for use at work is in a safe condition to use. The aim is to ensure that the purchaser receives equipment that is safe to use. There are separate regulations requiring that, once in place, such equipment is safely operated and maintained.

In this article the requirements relating to providing machinery at work will be considered.

In June 2007 there was a major fire at Aztec Aerosols, based in Crewe. At its height the fire covered an area equivalent to a full-sized football pitch. More than 100 firefighters and 25 fire engines were needed to extinguish the blaze.

The source of the fire was found to be an aerosol shedding machine, made by Pakawaste of Grimsargh, near Preston. The machine was being operated by Greenway Environmental Ltd. Both companies were prosecuted over the incident; Greenway Environment was prosecuted for failing to protect the safety of its employees and fined £37,000 plus £50,000 costs.

Pakawaste, however, was charged under Section 6 of the Health and Safety at Work, etc Act 1974 (1974 Act) after it admitted failing to ensure the shredding unit was designed and constructed to be safe. The company was fined £50,000, with costs of £87,030.

Section 6 (1) (a) of the 1974 Act states: "It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work to ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when properly used."

This section of the 1974 Act actually covers a wide range of "articles for use" at work, including chemicals. Since the introduction of the 1974 Act,

developments in the European Union (EU) now mean that there are numerous EU Product Safety Directives. These identify the design and construction requirements of specific products and include machinery, electrical equipment, explosives, gas appliances, etc. A more comprehensive list can be found at the HSE website (www.hse.gov.uk/work-equipment-machinery/uk-law-design-supply-products.htm).

While the supporting regulations may be extensive, for the purchaser of equipment the key points are as follows.

Machinery suppliers

Under the Supply of Machinery (Safety) Regulations 2008 it is required that machinery:

- Is safe when it is supplied
- Has a Declaration of Conformity and that user instructions are supplied with the machine - in English
- Has the designated CE mark on it.

The Declaration of Conformity identifies that the machine complies with the essential safety requirements of the Machinery Directive. These requirements must be met by the manufacturer when they place the machine into the EU market. Clearly, there may be agents or retailers who sell such machinery and act as intermediate suppliers, and they must ensure that any machinery they provide meets the requirements of s.6 of the 1974 Act. Those buying the equipment, have responsibilities to ensure such machinery is safely operated and maintained under the Provision and Use of Work Equipment (PUWER) Regulations 1998, as amended.

European dimension

In 2008, the EU introduced the Regulation on Accreditation and Market Surveillance. It was introduced because of concerns about inconsistencies in monitoring and enforcement in some Member States. The Regulation aims to improve the exchange of information and enforcement of the related Directives. It forms part of a new approach established in a New Legislative Framework, to make it easier for products to be marketed and circulated in the EU.

The Regulation requires Market Surveillance Authorities (MSAs) to be established in Member States and it establishes a set of minimum powers for the officers to enforce Product Safety Directives. As different Product Safety Directives are enforced by different government agencies, all the related agencies form the UK MSAs. These include Trading Standards, Ofcom and the Vehicle Certification Agency. The Health and Safety Executive (HSE) is the MSA for safety standards for work equipment.

However, the HSE already had structures in place to improve its ability to monitor the safety of machinery being placed on the market. The key points are set out below.

- The HSE has a central Safety Team that liaises with Product Safety Teams in their regional offices, as well as other Market Surveillance Authorities

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- When a defective machine is identified, other teams are notified and an investigation undertaken
- While an inspector will take the appropriate action regarding defective machinery with the supplier, the details will be logged on a European database: the Information and Communication System for Market Surveillance (ICSMS). This ensures that where defective machines are identified in one Member State, awareness is raised throughout the EU MSAs
- Should it be necessary, products can be withdrawn from the market, if modifications cannot be made.

Some examples of the equipment the HSE has been involved with in its MSA role are:

- Provision of lifts in tall wind turbine towers
- Safety of UV tubes in tanning equipment
- Research on platform lifts
- Safety of industrial electric cables
- Stability of scissor lifts
- Safety and compliance of post driving machinery/attachments.

Issues likely to be considered in the future are:

- Compliance of chainsaws that may be used by consumers or at work
- Safety and compliance of firewood processing machinery/log splitters
- Hygienic design/cleaning instructions for machinery processing foodstuffs
- Powered gates and component parts for these gates.

The HSE also revised its safety alerts bulletins so that, where defective equipment is identified, the specific information can be quickly distributed. Safety alerts are for major faults that would result in a serious or fatal injury and where urgent corrective action is required.

For example, in February 2010 a man was killed when a piece of metal became detached from a modified strimmer, striking and killing a nearby worker. In March 2010 the HSE issued a safety alert that advised users of modified strimmers of the fatality and what to do. They also stated: "UK suppliers should immediately cease the supply of such chain flail attachments, whether or not intended for professional use."

In September 2011, the European Commission required Member States to prohibit the use of such modified equipment.

At a European level, the New Legislative Framework is aimed at providing a more effective way of supporting free trade without compromising health and safety standards. Over the next few years a number of directives - not including the Machinery Directive - will be amended to come into line with the new approach.

While these changes at European level may be complicated, for users of machinery the principles are straightforward. They need to check that the machinery complies with EU standards; ensure that all the safeguards are present; and ensure that it is operated and maintained safely. The HSE is the MSA for machinery at work and so, should the standard of safety of a new machine be in question, it can act to ensure safe standards are correctly applied and report any relevant findings within a European information system.

Should you have any concerns about whether or not machinery you have bought meets legal standards, you should contact the HSE.

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HEALTH, SAFETY AND Whistleblowing POLICIES

In November 2013, the Whistleblowing Commission published a report into the effectiveness of current arrangements in UK workplaces that enable employees to disclose information on wrongdoing.

This independent commission concluded that so-called "whistleblowing" plays an important role in achieving effective governance and an open culture.

However, the evidence collated for the report found that although the majority of respondents have arrangements in place, a third "did not think or did not know whether those arrangements were effective".

From a health and safety perspective, arrangements and a culture that enable employees to make a disclosure, primarily to the employer, rather than to a relevant external organisation can play a significant part in engaging and involving employees in the management of health and safety.

Health, safety and whistleblowing

Following a number of high profile events, legislation was introduced so that if workers bring information about a wrongdoing to the attention of their employers or a relevant organisation, they are protected in certain circumstances.

The Public Interest Disclosure Act 1998 (PIDA) protects employees if they disclose malpractice in an organisation that is in the public interest.

PIDA amended the Employment Rights Act 1996 by introducing new rights of protection for workers not to suffer detriment or dismissal for raising concerns (blowing the whistle) on their employers' fraudulent, criminal or dangerous activities.

Protection relates to a qualifying disclosure of information by a worker about specified categories of wrongdoing or malpractice including those "endangering the health and safety of any individual".

From a health and safety perspective, PIDA widened the class of people who have protection while making a disclosure and "provides protection to workers raising health and safety concerns with the enforcing authority", this being the Health and Safety Executive (HSE) or the local authority where it is the enforcing authority.

PIDA and its associated guidance encourage the resolution of problems within the workplace, before they are raised outside the workplace.

However, there have been high profile cases where there has been a clear failure to listen. The Public Inquiry into

the Mid-Staffordshire NHS Foundation Trust found that the Board "did not listen sufficiently to its patients and staff or ensure the correction of deficiencies brought to the Trust's attention".

Chair of the Inquiry, Robert Francis, recommended that reporting of incidents of concern "needs not only to be encouraged but insisted upon".

Whistleblowing Commission Report

Against the background of cases such as that detailed above, the charity Public Concern at Work set up an expert independent commission to review current legal, governance and best practice arrangements in relation to disclosure.

The Whistleblowing Commission reported in November 2013 on its findings. It concluded that "the main reason enlightened organisations implement whistleblowing arrangements are that they recognise that it makes good business sense" and will be better able to:

- Deter wrongdoing
- Pick up any problems at an early stage

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- Ensure critical information gets to the right person/s who can act accordingly
- Demonstrate to stakeholders good attitude towards corporate responsibility and accountability
- Reduce anonymous and malicious leaks
- Minimise costs and compensation occurring from unwanted events
- Maintain and enhance its reputation.

Although the report found many organisations had arrangements in place relating to disclosure, evidence suggested that employees fail to speak up through fear of reprisals, concerns that they will not be listened to and that no action will be taken despite highlighting concerns.

Indeed, there are a number of Employment Tribunal cases where individuals have claimed detrimental treatment due to the concerns and disclosures they made (such as Saunders v Westminster Dredging and Scott v Building Management Services).

The Whistleblowing Commission report made a series of recommendations, including:

- Amending PIDA to enable a Code of Practice on disclosure arrangements to be issued that courts and tribunals can take into account
- That regulators (such as the HSE) include whistleblowing statistics in annual reports
- That the range of workers covered by the PIDA protection be expanded upon and include those working overseas.

Of interest, the Commission rejected the introduction of rewards or incentives to encourage whistleblowing as this “undermines the moral stance of a genuine whistleblower”.

Evidence from the Commission’s report has been fed into the Government’s consultation and call for evidence on the current “whistleblowing framework”.

Developing policy and procedures

Although there is no (current) statutory requirement in PIDA for organisations to have a whistleblowing policy or arrangements, the Government does expect public bodies to have a policy in place, while the Combined Code on Corporate Governance obliges UK-listed companies to have whistleblowing arrangements or explain why they do not.

From a health and safety perspective, the HSE states that employers should ensure they have procedures in place that allow workers to raise concerns internally and that:

- An existing company procedure, e.g. near miss reporting, hazard spotting, complaints procedures, may suffice, or could be adapted to allow for reporting
- Internal procedures should be simple to use, readily accessible and encourage workers to raise concerns internally as a first step.

The Whistleblowing Commission report contains a draft Code of Practice that is “designed to help employers, workers and their representatives deal with whistleblowing”.

However, Public Concern at Work, in conjunction with the British Standards Institution, has already developed a Code of Practice.

PAS 1998:2008 Whistleblowing Arrangements Code of Practice notes that, “regulators and the courts are

increasingly- looking at the adequacy of whistleblowing and other risk management arrangements, to determine whether an offence has been

committed by an organisation under regulatory or criminal laws”.

It continues by emphasising that, under PIDA, the adequacy of an organisation’s whistleblowing arrangements is one of the factors that tribunals and courts look at when they consider whether a wider public disclosure is protected under the legislation.

PAS 1998 and the proposed Code of Practice contained in the report reflect similar principles for the effective development of arrangements. The PAS Code of Practice suggests that good arrangements should:

- Provide examples distinguishing whistleblowing from grievances
- Give employees the option to raise a whistleblowing concern outside of line management
- Provide access to an independent helpline offering confidential advice
- Offer employees a right to confidentiality when raising their concern
- Explain when and how a concern may safely be raised outside the organisation
- Provide that it is a disciplinary matter to victimise a bona fide whistleblower and for someone to maliciously make a false allegation.

When developing a policy and procedures, it is worth noting that the term whistleblowing can have negative connotations. Many organisations therefore avoid its use, preferring terms such as “speaking up” or “raising concerns”. Alternatively, they include the practical arrangements as part of ethics, compliance or disclosure policies.

Both the PAS and proposed Code of Practice, if planned and implemented correctly, can overcome the barriers that have been identified as preventing workers from utilising disclosure arrangements that may already be in place.

On this point, PAS 1998 recommends that employees should be consulted with to “clarify the drivers behind the organisation’s whistleblowing arrangements and the language of the policy” but also to “consider asking staff for suggestions as to what the policy should be called”.



Mobile elevated work platforms (MEWPs) can provide a reliable and adaptable means of safely working at height. Yet there are still prosecutions arising from inadequate controls concerning their use. What are MEWPs and how do we manage them?

The MEWP - a beast to be tamed



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Mobile elevated work platforms (MEWPs) can provide a reliable and adaptable means of safely working at height. Yet there are still prosecutions arising from inadequate controls concerning their use.

What are MEWPs and how do we manage them?

A MEWP enables individuals to work in difficult to access spaces and/or at height. MEWPs are used in many different applications in construction, facilities management, landscaping, highways management and manufacturing, as well as having fire fighting and rescue applications.

MEWPs, broadly, fall into four categories: self-propelled booms; trailer mounted booms; vehicle mounted booms; and vertical scissor lifts. This article will not attempt to look at each type in detail but, rather, how wider risk assessment concepts can help make the selection and use of MEWPs more appropriate. MEWPs, on first impression, seem an ideal solution to working at height or where there are complex access issues. Surely, MEWPs are safer and more adaptable than ladders, abseiling or other more time-consuming solutions such as scaffolding? This is not always the case and, in any event, MEWPs need to be carefully selected and deployed to operate both safely and in a cost-effective way, i.e. a risk assessment must be done for each work application. This means that if a MEWP is chosen for a task and that task is then outsourced, it is equally important that the contractor is skilled in both that type of MEWP and the work application required. A contractor who is highly experienced with particular types of scissor lifts may only have limited skills with trailer-mounted booms.

It is also vital that not only individual MEWP operators, but also their managers, are properly trained; often just the operators' training records are checked, but this should never be considered adequate. The MEWP operator is, of course, vital, but so is his or her manager's role in terms of risk assessment, providing proper resources for the MEWP and ensuring that it is only used in suitable, safe environments.

Thinking outside the box

MEWPs are a diverse range of kit and their use does not come under one set of regulations. The Provision and Use of Work Equipment Regulations 1998 (PUWER), Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) and the Work at Height Regulations 2005 (as amended) (WAH) can all apply in certain circumstances - and this is not an exhaustive list. For example, there has been at least one successful prosecution under the Construction (Design and Management) Regulations 2007 (CDM) concerning a fatality when using a scissor lift.

Whether a work activity comes under CDM or not, the requirements of CDM can actually provide a helpful reference point for designing any strategy for safe systems of work for working at height. Can we design the structure, plant or even maintenance routine in such a way as to minimise the need to work at height? If so, how do we forward plan, then manage and monitor the way that work is eventually carried out?

This trend is likely to continue as built environment and plant design move towards four-dimensional Building Information Modelling (BIM), over the next few years, where the whole life cycle of the plant or building will be enhanced further with more intelligent, integrated engineering and facilities services designs at an early stage of the process.

Choosing and deploying a MEWP is something that should flow from these decisions, rather than being considered the sole, generic solution to working at height.

Arguably, there is often a cart before the horse scenario with the use of MEWPs. Sometimes there seems to be more emphasis on operator training rather than the design, planning and selection of the safest and, therefore, most appropriate method of work.

In short, deploying the MEWP is simply part of a process of risk assessment and procurement; there should be nothing random or assumed about their selection or use.

Being dynamic

For fire and rescue services in the UK, there is usually a concept of dynamic risk assessment employed with most fire and rescue operations, including the use of MEWPs such as hydraulic platforms and combined aerial rescue platforms (CARPs). Dynamic, in this context, refers to rapidly changing circumstances. The risk assessment is a continuous process of identifying hazards, assessing risk and taking appropriate responses at the incident being attended. In other words, the generic risk assessment is modified in a fast-changing operational situation, it is not slavishly followed. However, this is not a licence to do whatever one likes - dynamic risk assessment requires a high level of training and teamwork to be effective in providing a safer working environment.

This article is not suggesting that dynamic risk assessment takes the place of one of the existing MEWP training methodologies (such as the International Powered Access Federation or IPAF). Rather, it is simply one model that can be used to reinforce the importance of training to both managers and operators, and the type of practical issues they will often face on site.

For example, ground conditions are one area where dynamic risk assessment could focus a useful learning point. In a recent case, where the Bradford Metropolitan District Council pleaded guilty to various health and safety offences regarding the overturning of a "cherry picker", inadequate ground conditions for using the MEWP were found to be one of the causes of the accident, along with risk assessments that did not identify, among other things, the correct type of mats for stabiliser feet in those uneven conditions.

More generally, with all MEWPs, stability is one of the essential parameters for safe operation. Stability will vary according to ground conditions. Both managers and their operators need to understand the working requirements of their particular MEWPs and how individual ground conditions or any specific jacking requirements can be affected by changes to these. Dynamic risk assessment would help both managers and operators better understand how to apply and - check - the adequacy of risk assessments on site. Arguably, dynamic techniques are already implied, in any case, with some MEWP operator training.

When things go wrong

One thing that assists risk assessments is to have an element of planning for emergencies. In fact, WAH requires that "every employer shall ensure that work at height is... properly planned and... planning of work includes planning for emergencies and rescue". The competency requirements, later stated in WAH, also apply to this emergency planning process.

One element of emergency planning is that, properly done, it indicates where the location or purpose is not suitable for a MEWP, e.g. where a MEWP is going to have to be jacked up on soft ground. Second, it can simply inform a safe system of work by bringing up an issue

not previously considered. The author once visited a food processing site where maintenance work was done on silos with connecting aerial walkways. The silos had been surrounded by landscaped grass. This greatly limited the type of MEWP that could be jacked on them and, equally, any rescue MEWPs (such as a fire service CARP) if, for example, an employee was taken seriously ill while on one of the elevated walkways. The emergency planning greater influenced the day-to-day process and future refurbishment of the silo landscaping.

Conclusion

MEWPs can be complex beasts with the need for complex risk assessments. This article has suggested just a few strategies that could revitalise your organisation's thinking about how to drive the safe message home on MEWPs.



Training TOOLS

This edition... Work Equipment

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ISO 14001

STANDARD CHANGING

The well-known Environmental Management Standard (EMS) ISO 14001 is undergoing significant change to ensure it is fit for purpose for future environmental issues. It has now been approved as a Draft International Standard (DIS).

What is ISO 14001?

ISO 14001 is an International EMS providing a systematic framework. Based on the model of "plan, do, check, act" (PDCA), the aim is to protect the environment in balance with socio-economic needs.

It can help organisations improve productivity and branding, reduce costs and risks and open up new business opportunities. With such associated benefits, more than 285,000 organisations worldwide are ISO 14001 certified.



History and timescale

ISO 14001 was first published in 1996 and revised in 2004. More recently, the group working to update the 2004 Standard reached Committee Draft 1 (CD1) in early 2013. The review process reached Committee Draft stage 2 (CD2) in October 2013.

There was a vote in January 2014 on whether CD2 should become a DIS. This has now been confirmed, taking CD2 to the next stage as a DIS.

The next ISO meeting addressed the latest comments from National Groups working on the Standard. Further consultation with users will lead to the final stages of the revision process.

Thus, publication of the revised ISO 14001 is expected in 2015. Organisations with existing 14001 certifications will have two to three years from the date of publication to meet the requirements of the new revised Standard. The new Standard will then remain in use possibly until 2025.

What is changing?

There will be major changes to ISO 14001, with the focus on creating long-term value. The structure of the Standard will change with new clauses and sub-clauses. Existing clauses will be strengthened and their order changed.

- Policy and scope - policy commitment has been broadened. Organisations will have to include wider environmental aspects. Together with legal compliance, pollution prevention and continual improvement, there needs to be a commitment to protect the environment within the organisation's specific context

- Leadership and top management - top management refers to those who direct or control the organisation at the highest level. To promote meaningful top management involvement in the EMS, there is a new clause on leadership. This strengthens the requirement to align the EMS with an organisation's overall strategy and core business processes. Integration of environmental performance into strategic planning, direction and organisational decision-making is also required. Top management cannot delegate authority for certain elements of environmental management (e.g. setting the environmental policy, allocating resources, roles and responsibilities and undertaking the management review)
- Risks and opportunities - the revision includes specific requirements for the management of potential business risks and opportunities arising from environmental impacts. The definition of risk within the context of ISO 14001 has proven difficult. The UK has proposed that the definition should mean negative consequences. This proposed definition is under discussion
- Value chains - the key change is the focus on significant environmental aspects, risks and opportunities that the organisation can control or influence. So where companies can exert such control or influence, environmental requirements must be specified (e.g. procurement of goods and services and integration into design and development). So there is greater emphasis on managing impacts across the lifecycle of products and services, as well as supply chains
- Compliance - compliance obligations include environmental laws, permits, contractual requirements, industry standards and other codes that an organisation must, or voluntarily chooses to, comply with. It replaces the term "legal requirements and other requirements". Stating the frequency for compliance evaluation and knowing and understanding its compliance status will also be included
- External and internal communications - the most significant change here is to ensure the quality of environmental information that is communicated. The aim is to improve the reliability of externally reported data (e.g. those required for regulatory purposes).

Conclusion

This fundamental revision will impact all ISO 14001-certified businesses as the EMS will have to be at the heart of business processes and strategy.

Implementation will also be challenging for those organisations considering a certifiable EMS and for environmental practitioners and auditors.

Tackling Occupational Disease

The HSE has set up a new occupational disease community site, designed to encourage the promotion and exchange of ideas and initiatives for tackling occupational ill health.

According to the HSE, in 2011/12 there were an estimated 1.1 million working people suffering from a work-related illness, with around 450,000 new cases of occupational-related ill health and a further estimated 12,000 deaths each year caused by past exposures to harmful substances at work.

HSE says that traditionally, health issues in the workplace have been, and still are, harder to tackle than safety issues

because cause and effect are often not clearly linked.

Many serious occupational diseases also have a long period of "latency", some up to 30 years, between exposure and development of ill health or disease, making the links even more difficult to establish.

However, where the link is established and exposure can be measured, then interventions and activities aimed at raising awareness and creating behavioural change can work to reduce exposures and prevent ill health and disease.

The new occupational disease community site is intended to encourage

organisations to get involved in reducing the burden of occupational disease and, in particular, share their approaches and knowledge in this regard. The primary focus of the site is on promoting initiatives aimed at reducing the incidence of occupational cancer (from all routes of exposure) and respiratory diseases (including asthma, chronic obstructive pulmonary disease and silicosis).

The community is open to anyone who has an interest in reducing the incidence of occupational disease and would like to promote their work or seek ideas.

Visit www.hse.gov.uk/aboutus/occupational-disease/index.htm for more information.

The launch of HSE's site coincides with a new report on the future of occupational health by the Council for Work and Health (CWH). The report, *Planning the Future: Delivering a Vision of Good Work and Health in the UK for the Next 5-20 Years* and the Professional Resources to Deliver It, points out that workplaces are environments where most people spend most of their working age life and that work and the workplace are responsible for a number of acute and chronic health conditions and absences from work.

It highlights the following key statistics:

- In 2011/12, there were 212,000 over-3-day absence injuries and 27 million working days lost due to

work-related illness and injury

- In the same year, a total of 1.1 million working people were considered to suffer from a work-related illness, with around 450,000 new cases of occupation-related ill health being reported annually
- More than 12,000 deaths each year are estimated to have been caused by past exposures at work, mainly to chemicals and dusts.

Key strategic themes highlighted in the report include:

- Using the workplace to improve health and wellbeing
- Preventing work-related illness
- Delivering integrated care -

particularly to those with long-term conditions

- Managing sickness absence.

The report represents the conclusions from the initial stages of the project. The next stages of the project will look at service delivery models, knowledge, and the competencies of practitioners and anticipated workforce requirements.

Launching the report, the Society of Occupational Medicine (SOM), a member organisation of the CWH, said the report made "a compelling case" for the development and repositioning of occupational health.

The maintenance of ageing Plant and Equipment

All plant and equipment will be subject to ageing which, if not managed appropriately, can lead to equipment/plant failure which, in turn, can lead to future financial burdens and pose health and safety, legal and business continuity issues.

As part of their overall maintenance strategy, organisations should identify plant and equipment that represents a high risk in terms of loss and which can be subject to ageing. They should put in place, as part of their maintenance strategy, a regime to maintain such items in a state of good repair and efficient working order.

Asset maintenance

A business will have many types of assets, including financial, human, information and physical, the latter of which includes items of plant and equipment.

According to PAS 55 Asset Management, the management of

physical assets is "complex and involves careful consideration of the trade-offs between performance, cost and risk over all stages of the asset's life cycle".

An overall asset management plan will include determining the most appropriate and cost-effective maintenance of the physical assets through the development of a maintenance regime. BS 8210 Guide to Facilities Maintenance, states that "a facility and the individual assets that it comprises, should be maintained to deliver the most effective outcomes in terms of minimal cost and risk".

Maintenance can be defined as "the combination of all technical and

administrative actions, including supervision, intended to retain an item or restore it, to a state in which it can perform a required function".

To achieve this objective, BS 8210 recommends that organisations develop a policy and accompanying strategy for the management of maintenance so as to provide a consistent approach to the planning, management and reporting of asset maintenance. This maintenance policy should clearly specify the guiding principles and objectives for the management and delivery of building maintenance, with subsequent plans being devised "to ensure that the service life of facility assets matches or, where desirable, exceeds their design life".

However, during its lifecycle, all plant and equipment can degrade due to age-related mechanisms, such as corrosion, erosion and fatigue. It is therefore essential that, as part of the overall maintenance regime, such ageing is identified and appropriate measures taken to manage the risks.

Defining ageing assets

When referring to ageing plant and equipment, it is important to note that this does not necessarily relate to the chronological ageing process, rather ageing "is the effect whereby a component suffers some form of material deterioration and damage, with an increasing likelihood of failure over the lifetime of the asset".

Ageing plant and equipment are assets

for which there is evidence or likelihood of significant deterioration and damage taking place since new, or where there is insufficient data to know the extent to which this is possible. Significance in this aspect relates to the potential effects on functionality, availability, reliability and safety.

The characteristics of an "ageing asset" are defined in the Health and Safety Executive's (HSE) Research Report (RR) 509 Plant Ageing as when:

- Damage due to degradation has accumulated and may have become widespread and be accelerating
- Design or performance margins may have eroded to a point where future acceptable performance cannot be assumed
- A different, more quantitative, approach to inspection and non-destructive testing may be necessary for determining the extent and rate of damage to demonstrate fitness for service
- Proactive ageing management and asset care is required through revalidation, major repairs, refurbishment and replacement of key items at various times.

The same report concludes that managing ageing plant and

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- Ensure there is feedback and analysis of the process to ensure it remains fit for purpose, including the use of performance indicators.

As well as the physical ageing process, other factors will need to be given consideration. This can include obsolescence and a lack of spare parts, or the disappearance of the original equipment manufacturer, or non-conformance with current safety requirements, codes, standards and procedures.

equipment effectively requires a paradigm shift in the way that asset condition is regarded, assessed and maintained. It suggests that this requires "a proactive approach with a thorough understanding of asset-ageing mechanisms and condition, and the ways in which assets interact".

The management of ageing plant and equipment therefore begins with an awareness that ageing is not about how old the equipment is, but what is known about its condition, and the factors that influence the onset, evolution and mitigation of its degradation. This suggests that, for those with responsibility for maintaining ageing assets, there is a need to:

- Organise for ageing management in terms of identifying the assets, what they do and their criticality to the business
- Make an assessment of current conditions through appropriate condition surveys, inspections and associated risk assessments, including how conditions may change over the asset lifecycle
- Implement an ageing management programme, including the use of preventative or condition-based maintenance regimes

Ageing management programme

Although aimed at the nuclear industry, HSE Research Report RR912 Management of Ageing contains a number of principles that can be adopted in other industries when managing ageing plant and equipment.

This is known as an ageing management programme (AMP).

The AMP should form part of the organisation's overall asset management plan. It should detail the actions necessary to ensure ageing plant and equipment is maintained in an efficient and cost-effective way. The main elements of such a plan include:

- Scope of the AMP (selection of systems, structures, components and understanding of ageing)
- Preventative actions (operating procedures/controls to minimise ageing)
- Detection of ageing (inspection, testing, plant monitoring)
- Monitoring of trends (data analysis, predictive analysis, etc.)
- Acceptance criteria (performance standards, probability of failure)
- Mitigation actions (maintenance, repairs, replacement, etc.)
- Corrective actions (revised operating procedures, de-rating, refurbishment)
- Feedback of operating experience (failure database)
- Quality management (record-keeping).

It should be noted that, within an AMP, there might be differing schedules to those in relation to statutory compliance requirements. Where this is the case, the AMP needs to interface with such compliance requirements.

The AMP will only be effective if supported by a robust management system. RR823 Managing Ageing Plant. A Summary Guide provides useful information on the key aspects of such a system. In particular, it emphasises the need for a clear, organisational structure and communication routes, and "job continuity plans to retain job knowledge and operational skills".

In addition, training and competency of employees involved in managing ageing assets is addressed with the recommendation that a competency development programme be developed, and structured training put in place. RR823 also makes suggestions for procedural processes, including the development of a defect reporting system and "technical safety reviews" for critical assets.

It should be noted that management of ageing plant and equipment will require regular monitoring, review and revalidation following any unwanted incidents, major repairs, refurbishment or replacement of key items.

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LIFTING MACHINERY AND EQUIPMENT SAFETY

Strength & Stability



Employers should consider whether the equipment has adequate strength for the proposed use, taking into account the combination of forces to which the lifting equipment will be subjected, as well as the weight of any associated accessories. Employers must also consider the stability of the equipment for the proposed use.

Lifting equipment that is mobile, (e.g. hydraulic jacks for vehicles, fork lift trucks and mechanical excavators and equipment which is dismantled and reassembled at different locations) should be stable during use under all foreseeable conditions. Account should be taken of the nature of the ground and other surfaces on which the equipment might be used.

Safe Plant

Under Lifting Operations and Lifting Equipment Regulations 1998 (LOLER), employers have a duty to assess the suitability of the equipment for its intended use as follows.

- Select the most suitable lifting equipment for the task by considering all the hazards and associated risks
- Ensure that the lifting equipment is inspected regularly; daily operator checks, weekly inspection and statutory six-monthly "thorough examinations"
- Ensure that the lifting equipment is regularly maintained in accordance with the manufacturer's instructions and a maintenance log kept of the work carried out
- After a hydraulic levelling system hose failure, establish whether the carrier tilt will lock when it is brought back to ground level. If it does, people are at risk of being tipped out.

Safe Working Load

The safe working load (SWL) can be stamped into the equipment or form part of a plate or chart. Information must also be provided on any configurations or combinations where the SWL may differ. Where it is not possible to mark SWL, e.g. on small items, a colour coding or labelling system should be used to clearly indicate SWL.

Equipment that could be used for lifting people, but which has not been designed for this purpose, must be clearly marked "do not use for lifting people".

Equipment designed for lifting people should have the maximum number of people (and the SWL) appropriately and clearly marked on it. These factors are jointly important, particularly as the population is getting heavier. It is also important to compare these figures and consider whether any additional load is

being carried (heavy tools or plant), as although a maximum number of people may not be exceeded, the total load could be in excess of the SWL.

Safe Site

Wherever possible, the general public should be prohibited from entering areas around lifting operations and traffic should be controlled or prohibited during lifting. It is also beneficial to ensure that areas where lifting operations are being performed are clean and free from debris to avoid slips, trips and falls.

The site needs to be as safe as is reasonably practicable for any work operation.

Safe Operators

There is a general duty for employers to give workers adequate training and information set out in the LOLER, but specific training and information should be given on:

- Procedures for loading and unloading the lifting equipment on delivery and removal
- Safe operation and use of the particular type of lifting equipment being used
- The daily safety checks required
- How to report and record any defect or malfunction
- The correct use of fall protection equipment
- Any task-specific tools and equipment being used, e.g. chainsaws, pressure washers, etc.

Stability of the Load

It is important that the load is under control during all parts of the lift or descent of the load.

Considerations here are:

- That clutches or ratchet mechanisms are adequately rated and properly maintained to ensure that they can at all times control the load
- That if the lift is powered, adequate safety precautions to ensure that the load does not drop are in place if the power fails

Typical precautions would be:

- Brakes that automatically operate if the power fails
- Equipment such as check valves in hydraulic systems

- Consideration must be given to how the lifting equipment is attached to the load. It is common for heavy objects to come equipped with lifting points, which will require examination
- The object may contain sockets for eye bolts. It is important that an adequate size of eye bolt is fitted, that an eye bolt with the correct thread is fitted and that the thread in both the eye bolt and the socket is undamaged
- Lugs are often welded to objects for lifting purposes, the adequacy of the lug and its welding should be examined. The welding should be intact and the lug should show no evidence of damage.

Unless specifically designed for lifting the load, the use of brackets or holes should be avoided as their strength and capacity for carrying the load will be unknown. Particular care is needed to examine the strength of the point on the object being lifted which will take the load, for example, where a sling touches.

Objects should never be lifted by the banding or strapping that is used to hold packaging around an object unless it is specifically designed for lifting.

The stability of the load must be examined, e.g. if the load tilts, it should be examined to see whether any part of the load will fall. If the analysis shows that it may, then the loose items should be secured or lifted separately.

Care should be taken that the load cannot fall unintentionally from the lifting equipment.

- Hooks will be needed to be equipped with safety catches so that the chains or slings cannot move off the hook under any circumstances
- Care will have to be taken with slinging awkward loads to ensure that the slings cannot slide during the lift and release the load
- If lifting such loads as palletised objects and the pallet is an integral part of the lift, then it is essential that the pallet is of adequate strength for the load under the particular lifting conditions. Again the stability of the pallet and the slinging will need to be examined.

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Working under Suspended Loads

People should never normally work under suspended loads. Loads should never normally be carried over people. Where this is impossible to avoid, e.g. where equipment is lifted to examine the underside of it, then extra precautions should be taken to ensure the safety of personnel.

- Everybody, other than the workers essential for the task, should be excluded from under the suspended load
- A safe system of working should be introduced for those working under the load
- The lifting equipment should be thoroughly examined prior to its use to ensure that it is safe to use
- The lifting equipment should be de-rated to ensure that a larger safety factor is in existence than would normally be in use when the lift was not above personnel
- Additional safeguards such as a secondary means of holding the load should be considered
- Additional protection for the workers under the load should be considered in case the load disintegrates or falls, e.g. cages or frames which might deflect or support the load before it could crush those beneath it.

Slips, Trips and Falls

Wherever personnel need to be on any lifting equipment that exposes them to the risk of a fall, steps should be taken to minimise the risk.

- The working area should be adequate and, if personnel could fall and sustain a serious injury, the working area should be fenced
- Any opening in the floor area should be fenced or covered
- The surface of the floor should be slip resistant, and be free of dust or liquids that could cause personnel to slip
- Consider if the work area will need to be fenced to prevent death or serious injury from an accidental drop.

Guarding Lifting Equipment

Where it is possible to do so (e.g. where regular lifting operations are undertaken) barriers or guards should be fitted to exclude people from the hazardous area.

This exclusion from the hazardous area is particularly important where automated lifting equipment such as that used for automated warehousing is in use.

Edge protection should be used around any elevated platform of lift equipment to reduce the risk of items such as maintenance tools from falling and injuring personnel below.

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Protecting Life and Limb

MACHINERY GUARDING

Although the advent of new technology has brought with it a number of hazards such as those associated with IT, machinery guarding remains an important issue. This is evident from the number of workers killed or injured by machinery each year and hardly a week goes by without the Health and Safety Executive (HSE) reporting on prosecutions involving machinery guarding issues.

Moving machinery can cause injuries in many ways, including the following:

- People can be struck and injured by moving parts of machinery or by ejected material. Parts of the body can also be drawn in or trapped between rollers, belts and pulley drives
- Sharp edges can cause cuts and severe injuries, sharply pointed parts can cause stabbing or puncture the skin, and rough surface parts can cause friction or abrasion
- People can be crushed, both between parts moving together and against a fixed part of the machine, wall or other object
- Parts of the machine, materials and emissions (such as swarf, sparks and steam) can be hot or cold enough to cause burns or scalds; electricity can cause electrical shock and burns
- Injuries can also happen due to lack of training and poor procedures to deal with breakdowns and blockages
- Injuries associated with these hazards are often severe, unpleasant, debilitating and can be fatal. So what should be the practical approach to deal with these hazards? What does the law require?

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Legal aspects

The old Factories Act 1961 took a hard line on the guarding of dangerous machinery when at s.14 it required every dangerous part of machinery “to be securely fenced”. This was an absolute duty that imposed a high standard of guarding for dangerous moving parts of machinery. Being an absolute duty meant that secure fencing had to be achieved irrespective of cost and practicalities, and in practice there was little or no defence.

Today, the Provision and Use of Work Equipment Regulations 1998 (PUWER) regulate the guarding of dangerous parts of machinery and they take a different and more flexible approach.

Regulation 11(2) specifies the measures to be taken to prevent access to the dangerous parts of the machinery and achieve compliance with PUWER. The measures are ranked in the order they should be implemented, where practicable, to achieve an adequate level of protection. The levels of protection are:

1. Fixed enclosing guards.
2. Other guards or protection devices such as interlocked guards and pressure mats.
3. Protection appliances such as jigs, holders and push-sticks.
4. The provision of information, instruction, training and supervision.

It is important to note that regulation 11(2) of PUWER is qualified by the term “practicable”. This has been defined in a number of court cases as meaning “physically possible” and “technically feasible” irrespective of cost. Therefore PUWER sets a higher standard than those legal requirements qualified by “so far as is reasonably practicable”, but lower than the absolute duties as found in the Factories Act 1961.

There are also duties imposed on machine manufacturers and suppliers to make sure that machinery is properly guarded. Section 6 of the Health and Safety at Work, etc Act 1974 places a duty on manufacturers, suppliers and designers of equipment for use at work. It places a general health and safety obligation on anyone in the supply chain, so far as reasonably practicable, for when articles for use at work are being used, set, cleaned or maintained. This

obligation includes providing information and instructions on safe use, including any subsequent revisions to that information.

The guarding options

The guarding options are well explained by the HSE and the main characteristics of each option are as follows.

The fixed guards referred to in regulation 11(2) have no moving parts and are fastened in position. They are kept in place either permanently, by welding for example, or by means of fasteners (screws, nuts, etc.) making removal/opening impossible without using tools, e.g. an Allen key. If, either by themselves or in conjunction with the structure of the equipment, they enclose the dangerous parts, fixed guards meet the requirements of the first level of the hierarchy. Note that fixed enclosing guards, and other types of guard, can have openings provided that they comply with appropriate safe reach distances.

Other guards in regulation 11(2) include moveable guards which can be opened without the use of tools, and fixed guards that are not fully enclosing. These allow limited access through openings and gates for feeding materials, making adjustments, cleaning, etc. Moveable guards may be power-operated, self-closing and adjustable and are likely to require an interlocking device so that:

- The machine cannot operate until the guard is closed
- If the guard is opened, the machine will stop
- When the guard is closed, the machine can operate but the closure of the guard does not by itself initiate operation.

Such interlocking devices must be arranged so that they are difficult to defeat and if they fail the machinery should be inoperable.

Other guards can include “protection devices”, which are devices that do not prevent access to the danger zone but stop the movement of the dangerous part before contact is made. Typical examples are mechanical trip devices, electronic devices such as light curtains, pressure-sensitive mats and two-hand controls.

Protection appliances such as jigs are used to hold or manipulate a work piece at a machine while keeping the operator’s body clear of the danger zone. They are commonly used in conjunction with manually-fed woodworking machines and certain other machines, such as band saws for cutting meat, where it is not possible to fully guard the cutting tool. These appliances will normally be used in addition to guards.

Adequate information, instruction, training and supervision are always important, even if the hazard is protected by guarding measures; however, they are especially important when the risk cannot be adequately eliminated by the guards.

Conclusion

In February 2014 alone, the HSE reported these serious accidents.

- A Burnley bakery appeared in court after an employee had the tips of two fingers chopped off by a pasty-making machine. The company was prosecuted by the HSE after an investigation found part of a metal guard had been deliberately removed, allowing employees to add fillings to the machine while it was still operating
- In another case, a food company was prosecuted after an employee lost the ends of two fingers in a poorly-guarded machine. The 45-year-old worker suffered partial amputation of the ring finger and serious injury to the little finger of his right hand after it was caught in a rotating drum that he was trying to clean
- In further incident at a plastic recycling plant, a company was fined after a worker suffered a broken arm when it became caught in machinery. He was checking a rotating auger, which was pushing materials through a metal tube, when his sleeve got caught on a bolt protruding from the electric motor driving the auger spiral. This twisted his sleeve so severely it acted like a tourniquet and broke his arm.

Machine guarding is not an outdated historical issue. It is a live issue that needs constant and urgent attention. Dangerous parts of machinery must be properly guarded or accidents causing serious injury will continue to happen.



ADVICE ON e-cigarettes

E-cigarettes are a relatively new product: most have been launched within the past five years. They are considered by many to be a safer alternative to regular cigarettes as they do not involve inhaling tobacco smoke. However use of e-cigarettes in the workplace is fast becoming a contentious topic: some employees want to use them in the workplace and, while it is not illegal, there are strong feelings both for and against their use. Here we look at some of the issues involved.

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Published Guidance

In 2013 the Chartered Institute of Environmental Health (CIEH) and the charity, Action on Smoking and Health (ASH) published a joint briefing note on e-cigarettes.

The briefing note 'Will You Permit or Prohibit E-cigarette Use on Your Premises?' was produced to assist organisations considering the use of e-cigarettes by their staff, clients or customers, or generally on their premises.

The note points out that the public health community is still debating the pros and cons of e-cigarettes, referred to in the document as nicotine-containing products (NCPs), and the advice of policy makers is limited by the available evidence.

It also notes that the term "electronic cigarette" is a generic term and not very helpful since, despite their name, e-cigarettes are totally different from

cigarettes. Many, but not all, are in the form of thin white tubes that look like cigarettes. Some e-cigarettes contain nicotine, some do not. Some produce a white odourless vapour, others produce no vapour at all. They do not burn tobacco and do not create smoke. For this reason they do not fall under indoor smoking bans.

The briefing note recommends that in order to establish a sensible and justifiable policy, it is advisable to consider five questions, as follows.

1. What are the key issues for the organisation e.g. is it maintaining compliance with smoke-free legislation, promoting good role models to children or projecting a clean and healthy image for the premises?
2. What is the organisation trying to control? Is it vapours, the use of nicotine, products that look like cigarettes or medical substances on the premises?
3. Are there concerns about the possibility of harm from NCPs, such as potentially harmful chemicals in some products, second-hand exposure, or renormalising smoking on the premises?
4. Will restricting or prohibiting the use of NCPs support compliance with smoke-free policies?
5. Is the intention for the organisation's policy to help to improve people's health?

Cancer Research UK

A recent report by Cancer Research UK highlighted a number of unanswered questions surrounding the safety and effectiveness of electronic or e-cigarettes.

In the report, which was published in the journal Tobacco Control, researchers from the University of Stirling selected key issues for

debate such as the involvement of the tobacco industry, marketing and whether e-cigarettes might undermine smoke-free laws.

The report also asks whether it is ethical to promote an addictive product - since e-cigarettes contain nicotine - and argues that these are questions that need to be answered by research and by regulators.

A source at Cancer Research UK said, "There is emerging evidence that many smokers are using e-cigarettes to help cut down, and some are trying to quit using them. However, there has been little research into how safe e-cigarettes are. There is also very little regulation to control these products or their marketing."

Regulation of e-cigarettes is being considered by the Medicines and Healthcare products Regulatory Agency (MHRA). A decision is expected in the coming months. Meanwhile the National Institute for Health and Care Excellence (NICE) is expected to report on its consultation on the use of tobacco harm reduction products.

Dr Marisa de Andrade, report author from the Institute for Social Marketing (ISM), said, "Many questions remain unanswered and this report is the first attempt to set out a unified research agenda for the tobacco control and public health community in the UK."

Wales looks to ban e-cigarettes in enclosed public places

Seven years after it initially banned smoking in public places, Wales could be the first part of the UK to also ban the use of electronic cigarettes in enclosed public places.

The proposition is contained in the White Paper "Listening to you: Your health matters", which closed for consultation on 24th June 2014.

Health Minister Mark Drakeford said: "I have concerns about the impact of e-cigarettes on the enforcement of Wales' smoking ban. That's why we are proposing restricting their use. I am also concerned that their use in enclosed public places could normalise smoking behaviour."

Online Health & Safety Training

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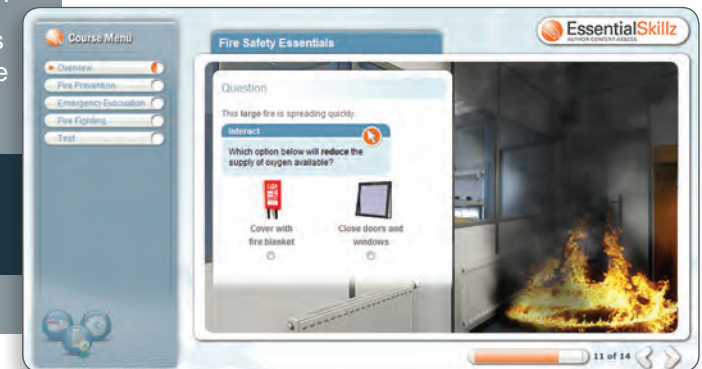
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New and Expectant Mothers	Pandemic Awareness
Personal Protective Equipment	Risk Assessment
Slips, Trips and Falls	Working at Heights



Online health and safety training

In recent years there has been a considerable proliferation of online health and safety training courses, often referred to as e-learning. The number of occupational health and safety (OHS) courses and subjects that are now offered is considerable and leaves those organising training a good deal of choice, as well as difficult decisions to make before investing time and money in a particular type of training. Courses from simple induction programmes all the way through to NEBOSH Diploma and OHS degree programmes are now offered online.

So what are the advantages and disadvantages of online training? Does it meet the legal requirements on the provision of training? Is it worth the investment?

The importance of training

Training is fundamental to the success of any health and safety management system. When it comes down to it, it is how people behave and the decisions they make that can cause or prevent accidents and incidents. So, effective training is key to that success.

Some professional roles, such as those appointed as competent persons under the Management of Health and Safety at Work Regulations 1999 (MHSWR), rely on their training as part of their competence to be able to advise employers and others in an authoritative manner. Others such as first-aiders and fork lift truck drivers need training to make sure they are able to fulfil their functions.

The provision of training is also a legal requirement. In particular, s.2(2)(c) of the Health and Safety at Work, etc Act 1974 requires employers to: "provide such information, instruction and training and supervision as is necessary to ensure, so far as reasonably practicable the health and safety of all employees".

Other regulations, such as the Health and Safety (Display Screen Equipment) Regulations 1992 and the Manual

Handling Operations Regulations 1992, also require training and lay down to some extent what should be covered in any training provided.

These legal requirements are supported by MHSWR, which require training on recruitment and on being exposed to new risks or increased risks. They also require an employee's capabilities to be taken into account. In all of these legal requirements there is no stipulation as to the form the training should take, and therefore online training is an option, providing the training is effective. As laid down in common law, competence is not just about qualifications. It is also about attitudes and behaviour. To be a competent employee he/she must have positive attitudes to health and safety at work and behave responsibly, and training can play an important role here. Can online training make a difference in this respect? All these issues need to be considered when making the choice on the type of training to be adopted.

Making the choice

Training should not be provided on a random basis. It must be based on an assessment of requirements and this can often involve a training needs analysis (TNA). TNA is the systematic collection of data to find out where there are gaps in the existing skills, knowledge and competence of personnel. TNA can also be used to analyse where there are deficiencies in attitudes, perceptions and other human factors important to health and safety in the workplace. A TNA is usually applied from three perspectives.

- At organisational level.

Training may encourage change or input in terms of improving or maintaining the organisation's standards of health and safety

- At job level. All jobs should have a training specification for skills and competence
- At an individual level. TNAs are very important for individuals and should be linked to personal development.

Following the TNA, a choice must be made about the type of training to be provided. Will the training be provided in-house or will a training provider be used? Where will the training take place? Who will do the training? What is the cost? Can the training be provided online? Will this be effective and should this option be taken up?

Online Training Pros

- Online training can often be less expensive than attendance at an external training provider's premises or providing in-house training. This not only

includes the fees for the training but associated costs such as time and expense in attending the course: travel, subsistence and accommodation, etc.

- Online training is flexible in terms of the availability and location of the learner: training can be undertaken anywhere and anytime, provided there is access to the internet.
- The learner can proceed at her or his own pace and is by default actively involved in the training
- There is no limit on the number of employees that can be trained providing there are adequate IT facilities

- Personal progress can be monitored and results tracked during the training
- The consistency of information and delivery can be maintained and assured
- There can be the option to join online discussion groups or contact made with tutors and teachers
- There can be blended learning options where the learner attends training sessions in addition to the e-learning
- Online packages can be visually attractive and interactive.

Online Training Cons

- Online options require discipline on the part of the learner and self-motivation is important
- If the training is undertaken in the workplace or in the learner's own time there can be unexpected interruptions
- There is limited or no interaction with other learners or the tutor. Learners may feel isolated and raising problems and asking questions may not be possible
- The learner may need confident IT skills and IT support may be required
- An investment in IT equipment and software may be required

- Online training can be interrupted by IT problems, such as slow internet connections, etc.
- There may be limited opportunity for practical and hands-on experiences.

The verdict

There is definitely a place for online OHS training but those organising training must consider the drawbacks as well as the advantages. It is also important to consider these from the learner's perspective and not just that of the organisation.

It is likely that online learning lends itself more comfortably to basic or fundamental training, such as induction or display screen equipment training. This is in contrast to higher level, more complex training, where contact with others and the trainer during the training is probably less important. This looks to be the biggest drawback for online training; there is no interaction with other learners or with the trainer at the time of training and it is difficult to quantify what may be lost through this omission. Discussion with and listening to others during training is an important part of the learning process. This may be offset to some extent by blended learning options (a mixture of online and classroom training).

It should not be forgotten that a good trainer can sometimes be inspirational and change a learner's attitudes and behaviour. It is difficult to see how online training could replicate that and achieve the same result.

The provision of training can be an expensive investment and it is important that the training is effective. Those organising training need to carefully consider their options before opting for online training.

THE PROS AND CONS

How to Deal with an Employee's Flexible Working Request

Meeting

A discussion should take place between the employee and the employer to discuss the flexible working request as soon as possible after the date on which the request has been made. (It would be prudent to keep a written record of this meeting.)

The meeting should provide an opportunity for the employer and the employee to examine the flexible working arrangement requested by the employee and discuss how the employer may accommodate the arrangement. Also, other flexible working arrangements may be examined if it is likely that the employer cannot accommodate the flexible working arrangement requested by the employee.

The time and place of a meeting must be convenient to the employer and the employee.

However, an employer is not required to hold such a meeting if it agrees to the flexible working arrangement (or the contractual variation) requested by the employee and notifies the employee accordingly. The notice must specify the flexible working arrangement (or the contractual variation) agreed to and the date when the flexible working arrangement (or the contractual variation) will begin.

Employer's decision after the meeting

The employer's decision on the employee's flexible working request must be given to that employee within three months of the employee's application to work flexibly. The employer's decision must be given in writing, and dated.

The employer and employee may agree to extend the time limit because, for example, the employer requires more time to examine the requested flexible working arrangement.

However, the agreement must be recorded in writing by the employer, be dated, specify what time limit the extension relates to, specify the date on which the extension is to end and be sent to the employee.

If the employer agrees with the employee's flexible working request, the employer must also specify the flexible working arrangement (or the contractual variation) agreed to and date that the arrangement (or the contractual variation) will begin.

For this purpose, the employer may use the model form FW(B): Flexible Working Application Acceptance Form provided on the Department for Business, Innovation and Skills' (BIS) website.

If the employer refuses the employee's flexible working request, the employer must inform the employee of the refusal and should state the grounds for that refusal and provide a sufficient explanation as to why those grounds for refusal apply in relation to the request.

Please note that an employer can only refuse a flexible working request on one or more of the grounds listed in Employer's Duties in Relation to an Employee's Flexible Working Request.

Where the employer refuses the employee's flexible working request, the employer's decision should also inform the individual of his or her right to appeal.

For this purpose, the employer may use model form FW(C): Flexible Working Application Rejection Form, which can be downloaded from the Business Link website at www.businesslink.gov.uk/Employing_People_files/Form_FWC_071206.doc.

The appeal meeting

An appeal meeting should take place between the employee and the employer to discuss the appeal and any decision regarding the appeal should be communicated to the employee within three months of the original request to work flexibly. (It would be prudent to keep a written record of this meeting.)

Right to be accompanied at the meeting and the appeal meeting

An employee does not have a legal right to be accompanied at a meeting or an appeal meeting but the employer should allow this as a matter of good practice. The person accompanying the employee at the meeting or an appeal meeting must be chosen by that employee. Also, that person can provide advice to the employee during a meeting or an appeal meeting and address the meeting or the appeal meeting but cannot answer questions on behalf of the employee.

A person who can accompany an employee at a meeting or an appeal meeting concerning a flexible working request is restricted to a worker who is employed by the same employer as the employee. Unlike a worker's right to be accompanied at a disciplinary or grievance hearing, this restriction

means that a trade union official who is not employed by the employer will have no statutory right to accompany an employee at a meeting or an appeal meeting concerning a flexible working request.

A person who accompanies an employee at a meeting or an appeal meeting concerning a flexible working request will have the right to paid time off when they do so.

Postponement of the meeting or the appeal meeting

If the employee's companion is not available at the time of the meeting or the appeal meeting, the employee can select an alternative time that is convenient for the employer, the employee and the employee's

companion and falls before the end of a seven-day period beginning with the first day after the day originally proposed for the meeting or the appeal meeting.

Withdrawal of flexible working request

An employer will treat an employee's flexible working request as withdrawn where that employee has:

- Notified to the employer orally or in writing that they are withdrawing that request
- Without reasonable cause, they failed to attend a meeting or an appeal meeting concerning their flexible working request more than once (i.e. fails to attend two meetings).

The employer must confirm the withdrawal of the flexible working request to the employee in writing unless the employee has provided the employer with a written notice of the withdrawal as stated above.

If the employee uses the model form FW(G): Flexible Working Notice of Withdrawal Form, which can be downloaded from the BIS website at www.berr.gov.uk/files/file37066.doc as notification that they are withdrawing the request, the employer should return to them the detachable slip at the end of the form as confirmation of receipt of the withdrawal notice.



Machinery

SAFETY CHECKLIST

General Installation Inspection	YES	NO	IF NO WHAT ACTION IS REQUIRED
1. Is there adequate natural and artificial light?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Is lighting of controls and displays satisfactory without glare?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Is lighting of parts of the machine that have to be viewed adequate?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Is the workplace temperature in a range to ensure the comfort of operators? Will local heating/cooling be needed?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Is suitable seating for operators provided?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Is there adequate space around the machine to allow easy and safe access by persons?	<input type="checkbox"/>	<input type="checkbox"/>	
7. Does any part of the machine move under power, or due to gravity, in a way which may trap a person against any other machine, structure or part of the building?	<input type="checkbox"/>	<input type="checkbox"/>	
8. Is storage for machine parts, spares or special tools needed?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Are fire extinguishers necessary local to the machine and if so, what type?	<input type="checkbox"/>	<input type="checkbox"/>	

Stability Inspection	YES	NO	IF NO WHAT ACTION IS REQUIRED
Is the machine securely located to prevent unexpected movement?	<input type="checkbox"/>	<input type="checkbox"/>	
Is the machine or any part of the machine unstable and likely to fall over or overturn causing injury?	<input type="checkbox"/>	<input type="checkbox"/>	

Controls Inspection	YES	NO	IF NO WHAT ACTION IS REQUIRED
1. Are controls clearly visible, identifiable and clearly marked where necessary?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Are controls located to ensure operators are not exposed to risk?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Can the operator see any other person who may be exposed to risk when the controls are operated?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Have systems of work been designed to ensure no person is likely to be exposed to risk when the machine starts?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Where 3. or 4. are not reasonably practicable, are there suitable audible, visible or other warnings?	<input type="checkbox"/>	<input type="checkbox"/>	

Safety Signs and Warnings	ADEQUATE		ACTION REQUIRED
AREA	YES	NO	
Hazardous surfaces	<input type="checkbox"/>	<input type="checkbox"/>	
Hazardous materials	<input type="checkbox"/>	<input type="checkbox"/>	
Hazardous parts or their movement	<input type="checkbox"/>	<input type="checkbox"/>	
Prohibited actions	<input type="checkbox"/>	<input type="checkbox"/>	
Correct operation	<input type="checkbox"/>	<input type="checkbox"/>	
Personal protective equipment (PPE)	<input type="checkbox"/>	<input type="checkbox"/>	
Emergency action	<input type="checkbox"/>	<input type="checkbox"/>	
Authorised operators	<input type="checkbox"/>	<input type="checkbox"/>	

Personal Protective Equipment (PPE)	
Is PPE necessary?	
If yes, what type and standard is required?	
Is local storage necessary and provided?	

Q&A'S

Investigating false fire alarms

Q. It has been suggested that when our automatic fire detection and alarm system actuates, we should undertake our own investigation before calling the fire service. Is that the case?

A. False alarms, or “unwanted fire signals” from automatic fire detection and alarm systems are deemed by many Fire and Rescue Authorities (FRAs) to be an unnecessary drain on resources. As a result, many FRAs are introducing new procedures aimed at reducing the number of unwanted fire signals from such systems, including the introduction of charges for attending false reports of fire and the filtering of calls where a system has actuated. There are no national guidelines as to whether call filtering should be introduced or not, rather it is a decision that each respective FRA will be making and the relevant FRA should be approached to ascertain its particular policy and procedures. In London for example, the London Fire Brigade guidance on false alarms (GN54) states that “where there are sufficient false alarms to unreasonably

impact emergency services, it is appropriate to consider the introduction of filtering measures”. The guidance then emphasises that filtering measures should only be employed as a result of a suitable and sufficient risk assessment that takes account of the system and associated management practices. The following considerations should take into account:

- The building size, layout and facilities
- The capabilities and flexibility of the alarm system
- Time available
- Communications issues
- Providing suitable training (to investigate alarm actuation)
- The ability to maintain a safe exit
- Lone working arrangements.

It should be emphasised that on any actuation of the fire alarm system the premises should be evacuated as normal and the usual role call procedures adopted.

However, where call filtering is deemed to be reasonable, the responsible person should ensure that appropriate procedures are adopted and justified in the fire risk assessment. This may include having to delay automatic transmission of alarms to the FRA by an alarm-receiving centre and undertaking an investigation by suitably trained staff members. Where the fire risk assessment does not justify the use of filtering procedures, the responsible person will be expected to take all reasonable measures to reduce unwanted fire signals and have in place management arrangement systems that enable this. Where false alarms do occur at a rate that is unacceptable to the FRA, then action may be taken against the responsible person under relevant legislation and the attendance of the FRA reduced until the situation is rectified.



Q&A'S

Responsibility for control of legionella

Q. As the “duty holder” responsible for the control of legionella in our properties, I have been informed that we must now appoint a “responsible person” to manage risks from the legionella bacteria. Is this the case?

A. In earlier guidance, the Health and Safety Executive recommended the appointment of a responsible person to take day-to-day responsibility for controlling risks associated with legionella bacteria.

However, the revised Approved Code of Practice (ACOP) L8 Legionnaires’ Disease. The Control of Legionella Bacteria in Water Systems has changed this guidance and has given ACOP status to “the specific role of the appointed competent person, known as the responsible person”.

Paragraph 48 of the ACOP states that where the assessment shows that there is a reasonably foreseeable risk associated with legionella bacteria, the duty holder should appoint “a competent person or persons to help undertake the measures needed to comply with the requirements in COSHH”.

The accompanying guidance then details that this appointment is known as the “responsible person” and that the appointee should “take day-to-day responsibility for controlling any identified risk from legionella bacteria” and should have “sufficient authority, competence and knowledge of the installation” to ensure operational

procedures are undertaken.

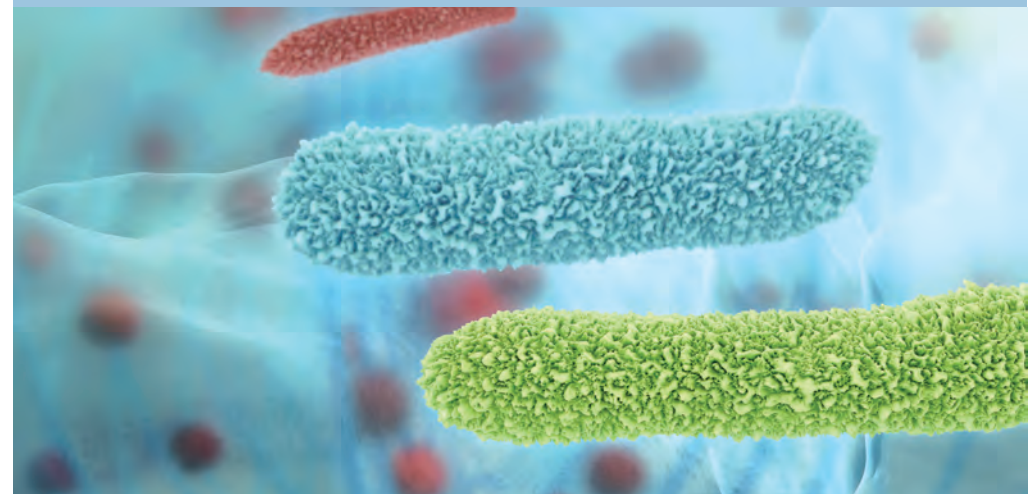
In addition, the guidance notes that they must be properly trained to a level that ensures tasks are carried out in a safe, technically competent manner and should have a clear understanding of their role and the overall health and safety management structure and policy in the organisation.

The ACOP states that where the duty holder does not employ anyone with the necessary competence, they may need to appoint people from outside the organisation.

In such circumstances, the duty holder should take all reasonable steps to ensure the competence of the people carrying out work who are not under their direct control and that responsibilities and lines of communication are properly established and clearly laid down.

ACOP status describes preferred or recommended methods that can be used to meet legislative compliance, and by following the advice the duty holder “will be doing enough to comply with the law in respect of those specific matters on which the Code gives advice”.

If a prosecution takes place and it is proved that the duty holder did not follow the relevant provisions of the Code, the duty holder will need to show that he or she complied with the law in some other way, otherwise a Court will find the duty holder at fault.



News ROUND UP

August 2014



Call for zero tolerance on drink and drug drivers at work

Road safety charity Brake has called for employers to implement zero-tolerance policies on at-work drink and drug-driving, after a survey found that fewer than half of bosses would dismiss an employee for driving over the legal alcohol limit.



Too ill to work, too worried not to

New research from AXA PPP healthcare, highlighting the issue of presenteeism (the act of attending work while sick), has revealed that 67% of workers have gone to work when sick, with 21% blaming a heavy workload and 18% saying that they felt guilty about staying at home.



Will you be hot-desking with your kids?

According to a survey, entitled Evaluation of the Teenagers, today's teenager is twice as likely to follow their parents' career paths as teenagers from the baby-boomer and the wartime eras. Of the teenagers polled, 34% said they expected to follow in their parents' footsteps career-wise.

Fewer fires in Great Britain in 2012/13

The Fire Industry Association (FIA) has welcomed new government statistics which indicate fewer fires in Great Britain in 2012/13, showing that in total crews were present at 192,600 fires, a 29% reduction from last year's figure of 273,000.



Flagging up health and safety problems

A builder working in London has walked out on his job after he was told to remove the two large England flags which he had displayed on the building where he was working. The flags could apparently be seen for miles around. While the company responsible for the construction project said that it wanted the flags removed because they posed a health and safety risk, cold water has been poured on that idea by the Health and Safety Executive (HSE). "Health and safety law does not stop anyone supporting their team and celebrating major sporting events," it said.



Time to talk about mental health in the workplace

The leaders of many major UK businesses have joined a campaign to end the culture of silence around mental health in the workplace, and to push recognition of mental wellbeing as a boardroom issue. Leading this collaboration is Business in the Community's new Workwell Mental Health Champions Group, whose founding members include BT, Bupa, RBS, Mars and Procter & Gamble.



HSE seeks new Chief Executive - with a commercial focus

The Health and Safety Executive (HSE) has announced it is seeking a new Chief Executive, with a salary of up to £160,000 on offer, "to lead change" and "take advantage of national and international commercial opportunities".



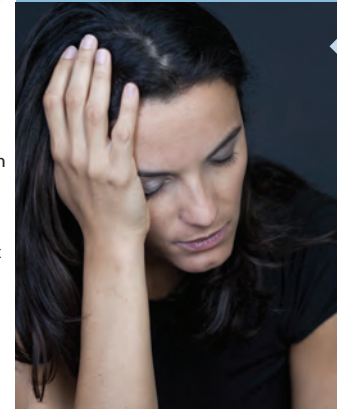
Are your managers up to the job?

This sounds like a question that might be echoing around the playing fields of Brazil, but it is actually addressed by the UK Commission for Employment and Skills (UKCES) to employers worried about their company's management skills. Nigel Whitehead, Group Managing Director of BAE Systems and a Commissioner at UKCES, explained: "Our research shows that the UK lags behind its international competitors when it comes to management skills. That matters. Good management practices boost productivity, staff engagement and ultimately drive economic growth."



Is the compensation culture a myth?

According to "The Compensation Myth", a report produced by the TUC with the Association of Personal Injury Lawyers, workplace compensation cases have fallen by more than half in the last decade - down from 183,342 in 2002/03 to 91,115 in 2012/13. The TUC also highlights that more than six out of seven (85.7%) of workers who are injured or made ill at work get no compensation whatsoever. Where damages are paid, they are not "a gift or a windfall" for the injured individual, the report argues, but designed with the sole aim of putting claimants back to the position they were in before being injured.



Employees would welcome workplace health advice

Problems with stress were matched only by absences following bereavements as a reason for taking time off work last year, affecting 20% of employees according to a survey by MetLife Employee Benefits. The nationwide study also found that nearly two-thirds (63%) of employees would welcome help and advice in the workplace on how to improve their health. Currently 61% receive some form of health and wellness support at work, with health advice the most popular.

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