

Managing Health and Safety

The HSE have published refreshed and enhanced 'Managing for Health and Safety' guidance. It is aimed to help business leaders, owners, directors, trustees and line-managers understand the action they should take to manage health and safety in the workplace. The guidance is based on the Plan; Do; Check and Act approach and will help you to comply with your legal requirements as well as giving you the best chance of managing health and safety successfully.

The guidance is split into four key sections:

- core elements of managing for health and safety;
- delivering effective arrangements;
- resources; and
- are you doing what you need to?

In addition to the general requirements as contained in the Health and Safety at Work etc Act 1974, Regulation 5 of the Management of Health and Safety at Work Regulations 1999 requires you to put in place, arrangements for the effective planning, organisation, control, and monitoring of health and safety in your workplace. The new HSE guidance will help you achieve this.

Are you doing what you need to?

The new guidance is an important publication and you must not ignore it. The HSE (and their Inspectors) will judge you and your approach to health and safety with reference to the new guidance.

You need to refer to the new guidance and take the advice on board. In particular you should consider the following questions;

- What are the strengths and weaknesses of your organisation's health and safety performance, and are there any barriers to change?
- How reliable and sustainable for the future are the measures currently in place?
- If your organisation is getting risk control right, why is that? For example, does performance depend on one person's dedication and enthusiasm or is it a key value across the organisation?
- If there are problems, what are the underlying reasons, e.g. competence, resources, accountability, leadership, lack of engagement with the workforce?
- Have you learned from situations where things have gone wrong?

It is also known as HSG65 and is now available online at: <http://www.hse.gov.uk/managing/>.

The improved information will also be of value to workers and their representatives and the third section will be of great help to those responsible for putting in place or overseeing their organisation's arrangements for health and safety.

HSE Consultation Documents

The HSE has launched four consultations on changes to the content of Approved Codes of Practice (ACOPs):

Please click on the headers below to download the consultation documents if you would like to read the proposals. Any person is free to respond to the proposals as part of the process.

CD259 – Consultation on Control of Substances Hazardous to Health Regulations 2002 (as amended)

This consultative document seeks views on HSE's proposed revised version of the Control of Substances Hazardous to Health Regulations 2002 (as amended) Approved Code of Practice (ACOP).

CD258 – Consultation on Legionnaires' disease: The control of legionella bacteria in water systems (L8)

The consultation provides an opportunity to comment on whether the draft ACOP text provides legal clarification and proportionate advice in low risk scenarios. The accompanying guidance provides advice on achieving compliance, and information of a general nature including explanation of the requirements of the law, specific technical information or references to further sources of information.

CD254 – Consultation on Dangerous Substances and Explosive Atmospheres Regulations 2002

This consultative document seeks views on HSE's proposed consolidated version of the following parts of the Approved Code of Practice on the Dangerous Substances and Explosive Atmospheres Regulations 2002 (DSEAR). L134 – Design of plant, equipment and workplaces; L135 – Storage of dangerous substances; L136 – Control and mitigation measures; L137 – Safe maintenance, repair and cleaning procedures; L138 – Dangerous Substances and Explosive Atmospheres.

CD255 – Consultation on draft revised Approved Code of Practice (ACOP) Managing and working with asbestos

This consultative document seeks views on HSE's proposed consolidated version of the Approved Code of Practice (L143) – Work with materials containing asbestos, and Control of Asbestos Regulations 2006 incorporating the Approved Code of Practice (L127) – The management of asbestos in non-domestic premises.

Fee for Intervention

Following the introduction of the scheme, as advised in my last newsletter, businesses have seen the level of invoices levied by the HSE for site safety visits soar by 68%.

The third batch of invoices sent out under the HSE's Fee for Intervention scheme has hit a new record. A freedom of information request by law firm DWF has revealed that invoices during February and March topped the £1m mark.

The average charge for the period was £428 with construction seeing the largest increase in invoices as the HSE launched an industry inspection blitz.

The number of proactive inspections remained largely the same at 3,077, compared with the previous bi-month total of 3,062. On the face of it, it appears to show a more efficient conversion rate, with 82 per cent of proactive inspections resulting in chargeable time versus 59 per cent on the previous run.

The question now is:

Does that show businesses are less compliant or that inspectors are more keen to recover costs for their time?

If you receive a visit, please contact me – it is important that any invoices received are checked for accuracy and also that the wider implications of automatic acceptance are considered.

How can you avoid a potential FFI fee?

I would suggest it is reasonable to keep your Safety arrangements up to date, and that the best way is to review your Health and Safety arrangements on an annual basis – this is something I recommend to all my clients and am happy to do as part of my role.

Such a review keeps your Safety Management System up to date in an efficient manner minimising your costs!!

It is not a guarantee that you will avoid any fees, as it is your responsibility to manage safety on a daily basis, but it will help to minimise the risk as all documents will be kept up to date.

Work in High Temperatures: Your Duties to Your Employees

With the recent hot weather poised for a return, working in high temperatures could be an issue again for workers. It can be very uncomfortable, and can lead to discontented and less productive workers. While the Workplace (Health, Safety and Welfare) Regulations 1992 do not set a specific maximum working temperature, they do require you to provide a 'reasonable' working temperature. The Approved Code of Practice, which accompanies the Regulations, gives practical guidance on how to achieve this.

Achieving a comfortable working temperature is an important issue, but there are serious risks to health for those working in hot environments and engaged in hot processes, such as in bakeries, foundries and other hot factory work. Exposure to high workplace temperatures can be accentuated by hot weather.

Heat stress occurs when the body's means of controlling its internal temperature starts to fail. Air temperature, work rate, humidity and work clothing are all factors which can cause heat stress.

Heat stress can affect individuals in different ways, and some people are more susceptible to it than others.

Typical symptoms are:

- An inability to concentrate
- Muscle cramps
- Heat rash
- Severe thirst
- Fainting
- Heat exhaustion – fatigue, giddiness, nausea, headache, moist skin
- Heat stroke – hot dry skin, confusion, convulsions and, eventually, loss of consciousness, which can lead to death.

If your staff are likely to be exposed to high temperatures, you have a legal duty to carry out a heat-stress risk assessment.

What You Must Include in Your Heat-Stress Risk Assessment

The major factors you need to consider, when carrying out your risk assessment, are:

- Work rate – the harder someone works, the more body heat they generate
- Working climate – this includes air temperature, humidity, air movement and the effects of working near a heat source
- The worker's clothing and respiratory protective equipment – these may mean that sweating and other means of the body regulating its temperature are less effective
- The worker's age, build and medical factors – these may affect an individual's tolerance.

You must take steps to remove or reduce the sources of heat and the effect on your staff, where necessary. You might need to change the process, use air-conditioning, provide drinking water and rest breaks in a cool area.

If heat stress is a risk in your business, ensure you have reasonable controls in place to keep your staff safe. More information can be found on the Health and Safety Executive's website at <http://www.hse.gov.uk/pubns/indg451.htm>

RIDDOR: What You Need to Know for October 2013

The purpose of the changes to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) is to simplify reporting arrangements, following the Löfstedt review of health and safety regulations.

The main changes are in the following areas:

- The classification of 'major injuries' to workers is being replaced with a shorter list of 'specified injuries'
- The existing schedule detailing 47 types of industrial disease is being replaced with 8 categories of reportable, work-related illnesses
- Fewer types of 'dangerous occurrence' will require reporting.

There are no significant changes to the reporting requirements for:

- Fatal accidents
- Accidents to non-workers (members of the public)
- Accidents which result in the incapacitation of a worker for more than seven days.

Recording requirements will remain broadly unchanged, including the requirement to record accidents resulting in the incapacitation of a worker for more than three days.

Only work-related accidents need to be reported and, when deciding if the accident that led to the death or injury is work-related, the key issues to consider are whether the accident was related to:

- The way in which the work was carried out
- Any machinery, plant, substances or equipment used for work
- The condition of the site or premises where the accident happened.

If any of the above factors were related to the cause of the accident, then it is likely you will need to report the injury to your enforcing authority. If none of the above factors are satisfied, it is likely that you will not be required to send a report. Examples of incidents that do/do not have to be reported are available at www.hse.gov.uk/riddor/do-i-need-to-report.htm.

What You Need to Do for RIDDOR 2013

1. Read the Draft HSE Guidance INDG453 (Rev 1), published in advance of the changes, available at <http://www.hse.gov.uk/pubns/indg453-rev1.pdf>. The Draft Guidance applies from 1 October 2013, and it is important to follow the current Guidance until then.
2. Look at your RIDDOR reporting procedures and make arrangements to amend them in line with the new RIDDOR requirements.
3. Provide training for appropriate staff with an involvement in RIDDOR issues.

Non-compliance with RIDDOR is a criminal offence, and can lead to prosecution and fines. It is important that you carefully consider the proposed changes to the reporting requirements and take the necessary steps to implement them.

Get ready for RIDDOR 2013!!

Golf clubs face 'worrying times' following injury liability settlement

Finally, a warning for any golfers amongst you!!

A legal settlement over an injury sustained by a golfer on a course in Scotland could lead to hikes in both claims and premiums, a specialist golf broker has warned.

The case, was settled between lawyers acting for Niddry Castle Golf Club and two golfers. It relates to an incident in August 2007 at the course in West Lothian when Anthony Phee lost an eye after being hit by a ball struck by fellow amateur player James Gordon.

In November 2011, initial hearings accepted there was at least one shout of "fore" from Gordon to warn Phee, but awarded £397 034.82 to the injured golfer, with liability split 70% to Gordon and 30% to the club due to its "failure to place signs at appropriate places".

Niddry Castle appealed the decision, arguing that 30% liability was unfair. But in a second ruling in March, the appeal court in Edinburgh substantially changed the liability of award, further citing the club's failure to erect warning signs and handing the golf club 80% of the liability, with 20% attributed to Gordon.

Course criticized

In handing down the revised liability ruling at the Scottish inner court, Lord Hodge slammed the club for its lack of both hazard awareness and support for novice golfers. "The club invited visitors to play on the course and did not stipulate any minimum standard of proficiency," Hodge stated. "It did not give visitors who played on the course a diagram of the course layout on their score card or any warnings about how to protect oneself from serious injury from a mishit golf ball."

Simpson & Marwick, acting for the golf club, confirmed a settlement had been reached but did not give any further details. HBM Sayers Solicitors, representing Gordon, said the firm remained disappointed that no negligence would now be found on the part of Phee for his failure to respond to warning shouts. Phee was represented by solicitor Lawford Kidd. The ruling has prompted the Scottish Golf Union to recommend golf clubs give greater attention to general health and safety procedures and insurance arrangements, adding that individual golfers are also encouraged to carry specialist golfers' insurance.

David Miller, golf director at Giles-owned Carrick Neill, which works with the Scottish Golf Union, has advised that the settlement leaves a lack of clarity over the issue and means clubs have to play it safe to ensure they are covered. He added: "It's quite a worrying time for golf clubs now. In the current financial climate, they are having to do things more robustly and spend money on health and safety specialists and improvements to the course."

Miller said many clubs have responded to the March ruling by arranging additional protection, with most asking for expansive "Rolls Royce" policies.

Carrick Neill deals with more than 1000 golf-related claims a year, but Miller said the severity of Phee's injury and the size of the award may lead to an increase in claims. He added: "The likelihood of claimants seeking compensation for an injury, now they're aware of the potential purse they can receive, could increase and it is likely to impact on future insurance costs.

"Potentially, an individual could be liable for any stray shots they hit. Certainly for the amateur golfer, if you're just having a fun game of golf it could cost you your house."