

SIMPLY SAFE – JULY 2009

ACCIDENT REPORTING

Under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), it is a legal requirement that certain types accidents and incidents are reported to the Incident Contact Centre. Most employers are aware of what constitutes a serious injury and would report it accordingly, but there are a significant number of managers who are assuming (incorrectly) that most accidents and incidents need not be recorded or reported. Thus, some may take it upon themselves to 'filter out' what they believe to be minor, non-reportable incidents. As a consequence, it is not unknown for the first time that the senior management team of a company gets to hear about an incident is when the Letter of Claim arrives from the injured party's solicitor! This can make it more difficult to defend any claim successfully, particularly as several months may have passed since the incident.

Instead, managers must record all incidents on an appropriate accident and incident form. Then, unless the completed forms are to be passed on to Perry Scott Nash to deal with, managers should always seek advice as to whether any incident must be reported under RIDDOR, rather than assuming that it does not. Making records of all incidents also enables managers to identify any changes, or trends and thus implement suitable control measures to prevent similar incidents from recurring, which is also a legal requirement under RIDDOR.

In addition to non-reporting of incidents, there are penalties for late reporting. Employers must report all RIDDOR incidents as soon as reasonably practicable, which means within 24 hours in most cases. The only exceptions being injuries not deemed to be major, but which inhibit, or prevent the employee from carrying out their normal duties for a period greater than three days. These incidents have to be reported within 10 days instead.

Finally, it is vital that any information about the circumstances of the incident, including witness statements and photographs is gathered immediately; otherwise it may be lost. Remember, it is a legal requirement that all incidents be investigated, although in practice you should aim to investigate all major incidents at least. Any accident investigation should also be carried out as soon as possible afterwards, and any findings and subsequent action plans recorded and acted upon.

If in doubt, seek advice. It is better to report too many incidents, than run the risk of failing to report one.

A – Z OF FOOD SAFETY

K is for "Kill"

Poor food safety practices can kill. In one year alone (2000), Salmonella was responsible for the deaths of 119 people in the UK. E. coli, also, has been responsible for the deaths of a number of people in recent years, particularly amongst the young and elderly members of the population. Whilst the vast majority of people who suffer food poisoning experience symptoms that are unpleasant, albeit sometimes painful, there is always a risk of long term ill health (e.g. kidney damage from E. coli; paralysis and brain damage, Clostridium botulinum). Don't take a chance with someone's life. Follow good food safety practices at all times.

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REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

This new Act is now fully in place since the final part (Part 2) came into force on 6 April 2009. Part 1 gave statutory powers to the LBRO (Local Better Regulation Office) in England and Wales. Part 2 permits the LBRO to run a Primary Authority Scheme, replacing the original 'Home' Authority Scheme. Companies can apply to a local authority to be appointed as their primary authority, although the LBRO has the power to nominate a second Primary Authority if, for example, the requisite expertise did not exist in the company's first choice. Thus, any dispute as to compliance with and interpretation of specific legislation can be referred to the Primary Authority of a business, rather than be open to different interpretations by various authorities across England and Wales.

Part 3 of the Act allows enforcing authorities, e.g. Environment Agency, Food Standards Agency and local authorities, access to civil sanctions. These include Fixed Monetary Penalties (FMPs); discretionary requirements, stop notices and enforcement undertakings. FMPs are fines for relatively low fixed amounts, to be used in respect of minor instances of regulatory non-compliance. The maximum fine per offence is capped at £5,000 and is seen as a way of reducing the caseload of the Courts. However, before imposing a fine, the enforcing authority must serve a 'notice of intent', which *inter alia* provides a period not exceeding 28 days to appeal the FMP in writing.

Discretionary requirements are imposed in the case of more serious examples of regulatory non-compliance, which may include a variable monetary penalty (VMP) commensurate with the offence, the level of which is not capped, although it is thought that it would not normally exceed £5,000. A discretionary requirement may also include making good an unsafe item of equipment, changing a process, or providing training. As with a FMP, a notice of intent must be issued before imposing a discretionary requirement.

Stop notices have the same effect as a prohibition notice, that is, to cease an activity that is causing harm, or presents a serious risk of causing harm. A notice of intent is not required prior to serving a stop notice.

Enforcement undertakings are agreements between the enforcing authority and a business to undertake specific actions to rectify a non-conformance. This allows a business to propose creative and innovative ways of returning to compliance, provided that it can ensure that the offence does not continue or recur; it can restore the situation to what it would have been had the offence not been committed; it can compensate any person affected by the offence; and fulfil any other actions demanded by the enforcing authority.

The overall aim of this is to help regulators meet the requirements of the Government's better regulation agenda.

THE HEALTH AND SAFETY AT WORK POSTER

Just a quick reminder to say that this poster has changed, but you can use your old posters (provided that all requisite information has been filled in correctly, is legible and up to date) until 5 April 2014. This information can be obtained from HSE's Infoline on 0845 345 0055.

RECENT PROSECUTIONS

On Wednesday 30 July 2008 Lancashire Fire and Rescue Service prosecuted the operator of a Blackpool hotel at Blackpool Magistrates Court for 8 offences under Regulatory Reform (Fire Safety) Order 2005.

A fire safety audit was carried out on the premises in early October 2007 and revealed a number of shortfalls in the management of Fire Safety, the fire alarm system, fire separation and fire doors. An enforcement notice was issued and extended twice but by April 2008 the enforcement notice had expired and minimal attempt had been made to comply with the notice. Breaches resulting in offences were: Failing to test fire alarm, emergency lights and firefighting equipment; Storing combustibles close to ignition source in an area with no fire separation; Failing to make a suitable Fire Risk Assessment; Failing to maintain the Fire Alarm in efficient working order; Failing to provide adequate fire doors on 12 bedroom doors; Failing to provide adequate fire separation to an external fire exit; Failing to keep give adequate training to staff; Failing to comply with an enforcement notice.

The magistrates commented that "they considered these extremely serious as it involves the protection of the public". They decided to deal with what they considered the two worst offences (failing to comply with an enforcement notice and failing to provide a risk assessment) as specimen offences and awarded fines of £3,300 for both offences, with £1,928 full costs awarded to Lancashire Combined Fire Authority, a total of £8,543.

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