TIPS & ADVICE "HEALTH & SAFETY

Your easy to use, money-saving guide to staying on the right side of the law

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ENFORCEMENT

News

Paying for inspections

The HSE's fee for intervention (FFI) charging scheme has been in place for just over a year. How has it been used and are there ways of avoiding a large bill?

How much? When the fee for intervention (FFI) scheme - which allows the HSE to charge for its inspectors' time - was introduced on 1 October 2012, we warned you that spending time with an inspector could be expensive (yr.11, iss.3, pg.1, see **The next step**). A **Freedom of Information Act** request has revealed that we were right. Since October 2012, the HSE has roused £5,532,565 from the scheme.

Warning. It should be noted that the scheme took plenty of time to get going. In the early days inspectors were unwilling to use it, so many businesses escaped large bills. However, now more often than not a visit will result in the business owner facing a bill for the inspector's time.

Expensive lessons. Recent statistics published by the HSE indicate that fewer enforcement notices have been served in the last twelve months than in previous years. However, this isn't because inspectors are becoming more lenient; rather than issuing a notice, they are putting the business on the FFI clock. As a result, while their case is under scrutiny, businesses are incurring bills at a rate of £124 an hour - which seems more than enough to convince them to rectify the issue as quickly as they can.

Be prepared. If you're expecting a visit, don't make it easy for an inspector to spot something. If, for example, guards are broken or, worse, missing, you'll be on chargeable time.

Tip. Before the inspector arrives, carry out a check of your premises looking for obvious problems (see **The next step**). If you can't fix it before the visit and the inspector notes it, make it clear that you're already dealing with the issue. Ideally, you should lock off power to unguarded machines and display "*do not use*" signs.

The next step

For a previous article (HS 12.06.01A) and for a quick premises checklist (HS 12.06.01B), visit http://tipsandadvice-healthandsafety.co.uk/download.

Be aware that inspectors are using the FFI scheme rather than enforcement notices. To prevent a bill, check your site before they arrive and deal with any potential issues - displaying "do not use" signs on faulty machinery should do the trick.

WORKPLACE

School sued by boy hurt in fight

The Court of Appeal recently considered whether a child was due compensation for an injury sustained while trying to punch his brother. Did common sense prevail?

The incident

In the summer of 2010, Lewis Pierce (L) was visiting a West Sussex school with his brother and mother. They were attending an after-school club which their mother helped to run. Whilst there, the nine and a half year old, L, and his seven-year-old brother, George (G), were playing. G sprayed water from a fountain which led to a punch thrown by L. Unfortunately, L's hand struck the underside of the water fountain causing a deep laceration.

After surgery to repair a tendon, L had full functionality of the affected thumb but was left with a 2.7cm scar.

The original hearing

The case was heard at Brighton County Court and the judge concluded that West Sussex County Council was liable.

After examining the water fountain he found that there was indeed a sharp edge as alleged by L's representative. Furthermore, there was no evidence of a "*properly considered risk assessment*" carried out by the Council before or after the water fountain was installed in June 2010. L was awarded over £3,000 in damages.

The appeal

The Council challenged the decision and took the case to the Court of Appeal, arguing that the judge had not applied the correct legal test. The Court agreed and overturned the original decision. But why did it come to this common sense conclusion?

The occupier's duty

The Court of Appeal considered the actual wording of the **Occupiers' Liability Act 1957**. Under the Act "occupiers", i.e. businesses in control of premises, have a duty of care towards their visitors which requires them to "take such care as in all the circumstances of the case, is reasonable, so that the visitor is reasonably safe in using the premises". When deciding what precautions are required, the occupier should take into account the likely behaviour of visitors and "must be prepared for children to be less careful than adults".

Not a danger

The Court of Appeal found that the underside edge of the water fountain was not considered "sharp" as it would not cut a finger that was pressed on it. The occupiers were under no more obligation to soften or protect it than they would be for the numerous other corners and edges found throughout a building. **Note.** Although the Council won this case without carrying out a risk assessment, it's much easier to contest a claim if you can show that you have completed a risk assessment.

Tip 1. As part of your risk assessment bear in mind that children may not behave sensibly when considering hazards that might affect them.

Tip 2. Low-risk equipment, such as water fountains, can simply be included in a general risk assessment for a building or area. For potentially hazardous activities, e.g. using workshop machinery, a separate risk assessment for each machine should be carried out.

Although there's a higher duty of care towards children than adults, this doesn't mean safeguarding against every possible injury. To show you've taken "reasonable care", identify hazards to visiting children and note them in your risk assessments.

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STATISTICS

What do the numbers say?

The HSE has published its latest statistics on accidents at work, cases of ill health/disease and enforcement activities. How do the numbers stack up and how might you be affected by them?

Injuries at work

As we stated previously, 148 workers were killed at work in 2012/13 (yr.11, iss.22, pg.8, see **The next step**). The HSE also received reports of 58,515 over seven-day injuries and 19,707 major injuries (broken bones, dislocations, etc.). Whilst most businesses are fortunate enough to avoid a fatal accident, many will be affected by serious injuries at some time. It is therefore worth knowing that 43% of major injuries are due to slips, trips and falls on the same level.

Tip. To reduce the chances of contributing to the statistics, get ready for winter weather by putting your gritting plan in place, cleaning slimy paving slabs, clearing leaves and managing wet floors.

Guilty parties

When it comes to the worst offenders, it's the same old story. The waste and recycling sector continues to lead the way with 370 major injuries per 100,000 employees. Agriculture remains in second place with 239 major injuries per 100,000 while the construction industry is third, with 156 major injuries per 100,000. Although the numbers are lower than previous years, these sectors will continue to be inspected more frequently as a result.

Tip. If you are in one of these sectors and you report an incident in line with the **Reporting of Injuries Diseases and Dangerous Occurrences Regulations 2013** (RIDDOR), there is a very high chance of it being followed up by the HSE.

Under-reporting

When data was collected directly from workers

about the number of serious injuries, the results were much higher - 175,000 reportable injuries rather than 78,222. The reporting rate for employee accidents is thought to be just below half of all occurrences. Not surprisingly, the reporting rate for the self-employed is very low.

Warning. Although not reporting accidents under RIDDOR is a criminal offence, it appears that more employers than ever are taking the risk of not making reports.

Tip. It's not a good idea to fail to report accidents as the authorities have ways of finding out, e.g. via hospitals, newspaper reports or directly from informants. If the HSE finds out by an alternative source, they are much more likely to prosecute.

III health

Of the half a million or so new cases of workrelated ill health within the working population, 80% are musculoskeletal disorders (back pain etc.) and stress/depression/anxiety. Occupations with the highest rates of contact dermatitis are hairdressers and florists.

Note. There are an estimated 8,000 deaths from occupational cancer every year, around half of which are linked to asbestos exposure. Other main causes are exposure to silica, diesel engine exhaust and mineral oils.

Tip. Enforcement priorities are directly linked to the health statistics. Therefore, if you are inspected, be prepared for questions on manual handling, stress, exposure to silica, asbestos, etc.

The next step

For a previous article, visit http://tipsandadvicehealthandsafety.co.uk/download (HS 12.06.03).

148 fatalities and nearly 80,000 reportable injuries are still too many for the HSE. As the waste and recycling, agriculture and construction sectors are the worst offenders, it is likely they will be targeted by inspectors more frequently than others. If inspected be prepared for questions on manual handling and stress.

TIPS & ADVICE ** HEALTH & SAFETY

CONSTRUCTION

Client shared blame for trench collapse death

In September 2010 a construction worker was killed when the side of an excavation collapsed. At the recent trial, why were the owners of the development implicated alongside the construction contractor?

What happened?

HMB Services Ltd (HMB) had been contracted by two brothers to convert a three-storey Lewisham property into nine flats. In part of the site, a long, three metre deep trench had been dug. Whilst subcontractor Xian Hou Ye was working in the trench one of the walls caved in, burying him under approximately 8.7 tonnes of earth. Efforts to dig him out were unsuccessful and he died at the scene. The immediate cause of the accident was that the trench sides were not properly shored. Some effort had been made using simple plywood sheets and timber props, but this was not good enough.

Failings of the contractor

The contracted firm, HMB, had been dissolved by the time of the court case, but its director, Vijay Patel, was personally prosecuted. He pleaded guilty to breaching the **Construction (Design and Management) Regulations 2007** (CDM) and was ordered to undertake 270 hours of community work.

The client's role

Mukesh and Kiran Shah, the clients in this case, denied responsibility for the mistakes made but were found guilty of two separate breaches. Under the CDM Regulations, clients are required to ensure that the contractors they appoint are competent and adequately resourced to work safely. Mukesh was fined £40,000 and Kiran £25,000. In addition, they were ordered to contribute £34,750 to the HSE's costs.

Avoiding the same

After sentencing, the HSE said, "A client has a very major influence over how a construction project is run, as they have responsibility for appointing competent advisors, principal contractors and ensuring that arrangements are in place for carrying out the project safely. The clients in this case failed on all fronts." If you are having building work carried out (other than on your family home), you will be defined as a "client" under CDM, with all the consequent duties.

Tip 1. Check that any potential contractor that you hire can demonstrate their ability to do the work safely. Requiring them to complete a competence questionnaire is the best way to start the process (see **The next step**).

Tip 2. Ask what formal arrangements your contractor will have in place to ensure site safety. For smaller projects they should produce risk assessments and method statements. For projects of more than 30 days in duration, they should state that a construction phase plan will be in place.

Tip 3. As a client you are not expected to get into the nitty gritty of the site safety arrangements. However, you should check that core elements of the job are included in the construction phase plan. If you have no idea what to look for, or what questions you should be asking, employ a competent advisor. In these circumstances, a health and safety consultant with experience in the construction industry would be the best choice.

The next step

For a sample contractor selection questionnaire, visit http://tipsandadvice-healthandsafety.co.uk/ download (HS 12.06.04).

As "clients" of the work, two brothers had strict responsibilities which they had not fulfilled under the CDM Regulations. To avoid the same situation you need to ensure that any contractor you employ is up to the job. Asking for a competence questionnaire to be filled out when hiring them is the best way to start the process.

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BISK ASSESSMENT

How to complete a risk assessment

You've been given the job of completing risk assessments for your business. However, you have no idea where to start or what you should be writing down. Is there a standard method?

Look around

Many people writing risk assessments struggle to make a first mark on the blank form, so don't imagine that you are alone. To get started, you need to have an idea of how many risk assessments you're going to produce and what places and/or activities they will cover.

Tip 1. On a separate sheet of paper write a list of your different premises and activities. Identify any particular safety concerns, e.g. recent accidents. You can use this list later to check that each item has been included somewhere in your risk assessments.

Tip 2. Aim to have as small a number of documents as possible. The weight of your risk assessment file is not a measure of quality. So, for example, an office-based business might have general risk assessments for: (1) the building and the activities taking place in it; (2) external areas; and (3) offsite activities.

Steps to success

To conduct a risk assessment you should follow this process:

- Step 1 look for the hazard
- Step 2 identify who might be harmed and how
- Step 3 evaluate the risks that remain and control them
- Step 4 record the findings
- Step 5 review the assessment periodically and as needed.

Before you begin you need to understand the terminology. What is meant in steps one and three may not be obvious.

What to look for

A hazard is something with the potential to cause harm. The definition is quite broad; it could be a piece of equipment, materials, an activity, a building, substance or way of working. Common hazards can include: (1) working at height; (2) machinery; (3) confined spaces; (4) manual handling; (5) exposure to hazardous substances.

Risk reduction

Once you have identified the hazards you must write down the existing measures taken to control the risk and any new ones needed to reduce the risk to an acceptable level.

Tip. In our sample risk assessment we use numbers to evaluate the risk (as part of step three) (see The next step). If preferred, you can use the words "high", "medium", or "low". There is no set way of doing this - as long as your staff can understand your documents it will be acceptable.

What to include?

Tip 1. There are various formats for risk assessments and you may be told one way is better than another. But so long as you follow the steps, you'll be on the right lines.

Tip 2. The HSE advises, "insignificant risks can usually be ignored, as can risks arising from routine activities associated with life in general, unless the work activity significantly alters those risks".

The next step

For a free sample risk assessment document, visit http:// tipsandadvice-healthandsafety.co.uk/download (HS 12.06.05).

Your first step is to identify any potential hazards, for example, dangerous machinery. Then you need to detail what existing measures have been taken to control the risks and any others that may be needed to reduce the remaining risks further. To keep documents short and simple, only record significant risks.

PPE



Do your staff need ballistic trousers?

One of your workers has said that because he handles bags of waste you should provide him with ballistic trousers to reduce the risk of injury. What are these trousers and are they a necessary precaution?

Laceration risk

Ballistic trousers provide extra protection against sharp materials such as broken glass, crockery, metal cans, needles, etc. and are routinely used in the waste industry. Cuts are a common type of injury for waste operatives, especially when carrying bin bags. Lifting the bags by the neck keeps hands safe, but this means the bags are more likely to touch the sides of the worker's legs. Since the public can't be trusted to fill bags safely, workers could receive cuts with the added possibility of infection due to the unhygienic conditions.

Note. The term "ballistic" is often used to describe chainsaw trousers which have Kevlar padding. However, the ones we're referring to look more like everyday wear but have panels down the sides with higher tear and abrasion resistance.

Do they work?

A paper, published in 2008 in the respected journal "Annals of Occupational Hygiene", examined the use of these trousers in the prevention of needle injuries. The research, entitled "Sharps Injuries in Healthcare Waste Handlers", reported on a relatively small sample of workers and incidents but seemed to show a significant reduction in needle injuries when the trousers were worn.

Tip 1. The priority is to eliminate sharp items from bin bags by educating staff about the risks of injuring colleagues or contractors.

In work environments where the risk is very low, those handling rubbish can wear normal trousers.

Tip 2. If you do provide this specialist clothing, you should still do what you can to avoid the problem of sharp items in bags. Data suggests that the trousers don't remove all risk.

Practicalities

The material is tested to BS EN388. There are several degrees of tear and abrasion resistance under this standard, although most suppliers will just show "*BS EN388 compliant*", without indicating whether a product meets Level 1, 2, 3 or 4.

Tip 1. Due to the difficulties described, go to a specialist supplier of personal protective clothing where the staff should be able to give advice on the products most suited to your business needs.

Tip 2. The costs have halved over the last ten years, with basic pairs now costing around £20 and therefore compare favourably with the cost of general work trousers. The trousers can be ordered in different colours and with logos, if needed.

Are you obliged to provide them?

In a draft document on operating civic amenity sites the HSE has said, "*Cut-resistant* ("*ballistic*") *trousers should be worn wherever there is a risk of cuts to the legs.*"

This is a reasonable reflection of the law as set out in the **Personal Protective Equipment at Work Regulations 1992**, i.e. that where a residual risk exists - after other measures have been taken personal protective equipment (PPE) should be supplied. In practice, you would only provide PPE where someone is regularly exposed to the risk, such as a waste porter.

The priority is to control what goes into the bins to reduce the likelihood of sharp items and risk of injury. If, despite your efforts, there's a risk and staff are regularly exposed to this, you should supply work trousers with cut-resistant panels. Fortunately, they are relatively inexpensive at about £20 a pair.

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CDM

How the construction industry will be regulated

Reports based on the HSE's September board meeting provide an insight into how the new Construction (Design and Management) Regulations (CDM) will look and when they will come into force. What is likely to change?

Under review

As part of its review of health and safety legislation, the HSE plans to give the CDM Regulations a complete overhaul. This is because, although the 2007 Regulations were a marked improvement on the previous version, they're still not fit for purpose.

Timescale

Because of the scale of the proposed changes and the effect they may have, the revision is not being rushed. Until recently we were expecting the Regulations to be overhauled by October 2014, this has now slipped behind schedule. **Note.** According to the latest reports from the HSE, the new Regulations won't be published until April 2015 at the earliest.

What can you expect?

The first major change will be to remove Regulation 4 which imposes the explicit duty on you to complete competence checks on any contractor you intend to carry out construction work. **Note.** As the case on page four of this issue proves (yr.12, iss.6, pg.4), even if the explicit requirement to complete formal competency checks is removed, you will still need to ensure that you are employing a competent contractor to make sure the job is completed safely and effectively. The difference under the new Regulations is that you will have greater flexibility in how you go about this.

Code of Practice (ACoP) will be scrapped. This would be replaced with a mixture of HSEproduced and industry guidance. This may be comprised of core guidance providing legal interpretation with a supporting practical guide to managing health and safety on small construction projects.

Further detail would be left to sector-specific guidance aimed at typical small construction projects, supplemented by example health and safety plans. **Note.** This is potentially very useful as it will give small contractors a master document to use. The standard format will make it relatively easy for a non-construction expert to check that the document meets the requirements.

Last but by no means least

One of the most significant changes to the 2007 version compared with the 1994 Regulations was the introduction of the CDM co-ordinator role. However, this role has not been as effective as the HSE had hoped. As a result, current plans indicate that the title will disappear from the next version of the Regulations with more duties being given to the client and contractor instead. **Note.** Quite how this will work is unclear; however, indications are that it will be a positive move, as it will remove a layer of bureaucracy from the construction process.

Tip. These changes are still a long way off, so for the time being, any construction projects must be set up and managed under the current Regulations. Failing to do so on the basis that changes are coming will not be acceptable to an inspector.

Good to go

It has also been suggested that the Approved

Wholesale changes, including scrapping the explicit duty to assess contractors' competence, ditching the CDM co-ordinator role and replacing the ACoP with a suite of guidance documents, are planned. The new Regulations are unlikely to come into effect until April 2015. Until then, you must follow the current Regulations.

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DSE

Sitting comfortably?

In the chair. A recent study has blown traditional thinking about how to sit at a computer workstation out of the water. According to Scottish and Canadian researchers, the **Health and Safety (Display Screen Equipment) Regulations 1992** have it all wrong (see **The next step**). The findings of the recent report suggested that sitting up straight for prolonged periods is likely to cause damage to the spine.

The scientific solution? The report recommends that sitting upright, so that the angle between the thigh and torso is 90°, should be avoided. The optimum angle is 135°, which means almost laying down in your chair. Although we suspect that many of your staff would be happy to follow the scientists' advice, we suggest you continue to follow the current legislation and official guidance.

Tip 1. Staff using DSE for prolonged periods of time should be provided with a chair which is adjustable for height both in the seat and the back rest. This is what the Regulations require and even if your staff pick up this news story, there's no obligation to do more.

Tip 2. Encourage your staff to take breaks away from their desk - as per the Regulations. According to the study, doing so reduces the likelihood of the individual suffering from aches and pains and more serious health issues.

The next step

For further information on the study, visit http://tipsandadvice-healthandsafety. co.uk/download (HS 12.06.08).

Although scientists have identified that reclining in your chair is better for the spine, it won't be ideal in many workplaces.

H&S ADVICE

s the consultant register still active?

Q. Rumours are again circulating about the closure of the Occupational Safety and Health Consultants Register (OSHCR) (see **The next step**). Is there any truth in them?

A. No, the register is still up and running. The HSE continues to recommend that anyone looking to use the services of a health and safety consultant chooses one who is on the register.

The next step

For a link to the OSHCR, visit http://tipsandadvice-healthandsafety.co.uk/download (HS 12.06.08.02).

Ignore the rumours, the OSHCR hasn't been closed. The HSE is still recommending that you use it if you need to find a consultant.

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