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HEALTH AND SAFETY AT WORK ESSENTIALS

The one-stop guide to
health and safety issues
in the workplace



8th EDITION



**HEALTH
AND
SAFETY
AT WORK ESSENTIALS**

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Contents

<i>About the authors</i>	vii
<i>Introduction</i>	ix
1 General Information	1
1.1 Background	1
1.2 The Health and Safety Executive	2
1.3 Legal requirements	3
Criminal liability	3
Civil liability	4
The Health and Safety at Work Act 1974 and regulations	5
2 Starting a business	13
2.1 Registering your business	13
2.2 Providing information to employees	13
The health and safety law poster	14
First aiders	14
The accident book	18
The health and safety policy document	18
2.3 Emergency procedures	20
Fire prevention	21
Fire appliances	21
Legal requirements	23
2.4 Risk assessments	24
What are they?	25
What do they entail?	26
How to undertake an effective risk assessment	26
2.5 Insurance provisions	30
Your obligations to the insurance company	32
Employees abroad	32
Other insurance policies	33

2.6	Recruitment and training	33
	Approaches to training	34
2.7	Health surveillance	34
2.8	Personal protective equipment	35
	Legal requirements	35
	Risk assessment	35
2.9	Signs	39
2.10	Special groups of workers/Equality Act 2010	39
	Protection of young persons	39
	The Equality Act 2010	40
2.11	New or expectant mothers	41
	Legal requirements	41
	Risk assessment	42
2.12	Working time	43
2.13	Agency workers	44
3	Specific problems in the workplace	47
3.1	Slipping and tripping	47
	Legal requirements	47
	Risk assessment	48
3.2	Manual handling	49
	Legal requirements	50
	Risk assessment	51
3.3	Upper limb disorders	55
	Legal requirements	56
	Risk assessment	56
	Hand-arm vibration	57
3.4	VDUs	58
	Legal requirements	59
	Risk assessment	59
3.5	Hazardous substances	65
	Legal requirements	66
	Risk assessment	67
	Smoking	71
	Asbestos	72
3.6	Workers away from base	74
	Legal requirements	74
	Risk assessment	75

Other points to note	77
3.7 Violence at work	77
Legal requirements	78
Risk assessment	78
3.8 Stress	80
Legal requirements	80
Risk assessment	82
3.9 Noise	83
Legal requirements	84
Risk assessment	85
3.10 Vibration	86
Legal requirements	87
Risk assessment	87
3.11 Electricity	88
Legal requirements	89
Risk assessment	89
3.12 Working at height	92
Legal requirements	92
Risk assessment	92
3.13 Machinery	93
Legal requirements	93
Risk assessment	95
3.14 Construction	97
Legal requirements	98
Risk assessment	100
3.15 Vehicles in the workplace	103
Legal requirements	103
Risk assessment	103
3.16 Farming	107
4 Accidents at work	109
4.1 Checklist	109
Take the action required to deal with the immediate risk	109
Complete the accident book	109
RIDDOR forms	109
Accident investigation	113
Post-accident risk assessment	114

	Tell your insurer	114
4.2	HSE investigations	114
	What will happen if the inspector finds a breach	114
4.3	How a civil claim works	116
	Liability	116
	Who can claim?	117
	What can be claimed?	117
	How a claim can be made	119
4.4	Defending a civil claim	123
	Informing the insurer	123
	Investigating	124
	Record keeping	124
	Giving evidence	129
	Control of the case	131
4.5	Defending HSE and local authority prosecutions	131
	Legal advice	132
	Advance disclosure	132
	Which court?	132
	Defence/mitigation	133
	Penalties	133
	Prosecution costs	135
	Defence costs	135
4.6	Corporate manslaughter	135
	Sentencing for corporate manslaughter and health and safety offences causing death	137
	Points for action	138
	<i>Appendices</i>	139
	<i>Index</i>	157

About the authors

Henmans Freeth LLP (www.henmansfreeth.co.uk) has a long-established personal injury practice, handling claims nationally for both claimants and defendants, from an Oxford base. Formerly Henmans LLP, Henmans Freeth LLP is recognised as a leading personal injury firm in the legal directories. A specialist team deals with cases, from serious brain injuries and fatal accidents to minor road traffic accidents. The bulk of the work undertaken relates to medium to large claims, arising out of accidents at work, road traffic accidents and clinical negligence.

Three members of the team have combined forces to produce this 'one stop' book for anyone responsible for health and safety issues in the workplace.

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Introduction

In the last 40 years, the obligations upon and duties of an employer in the area of health and safety in the workplace have mushroomed. The combination of European legal influences and a more litigious society has led to a rise in legal claims which has left many businesses struggling to secure compulsory employer's liability insurance. Without such insurance a business is no longer able to trade.

Business owners are experts in business, not in insurance or health and safety law. This book is an attempt to explain, in a straightforward way, the legal requirements that an employer needs to comply with, in this increasingly complex area.

We would like to thank counsel, Charles Brown and Judith Ayling of 39 Essex Street, for their consideration and time in reviewing the content of an earlier edition of this book and for offering many useful comments. We would also like to thank Gemma Morris, Liz Turnbull, Amanda Shearer and Jo Eden for their assistance. The writers emphasise that any mistakes are their own and ask the reader to note that the law is correct as at 1 May 2014.

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CHAPTER 1

General information

1.1 Background

Every working day, there is on average one death and 311 reported non-fatal injuries to workers. Every year, three-quarters of a million people take time off work due to work-related illness and, as a result, last year about 27 million work days were lost.

In the UK, absenteeism is costing employers approximately £14 billion a year. Small companies, where the absence of one or two employees can make a huge difference, are the hardest hit.

Employers must have insurance cover for their employees' work-related injuries and ill-health. They also need insurance for accidents involving vehicles and possibly public liability and buildings insurance. However, various changes in the last 30 years have made employer's liability insurance an unattractive class of business for insurers. With mounting losses, the only companies they want on their books are those with a genuine commitment to health and safety. Many companies are being forced out of business, unable to trade without insurance cover or because of soaring premiums. Those who have difficulty getting renewal terms have often shown a disregard for health and safety issues in the past.

However, insurance policies only cover a small proportion of the costs of accidents. Costs not covered by insurance can include the following:

- Sick pay
- Damage or loss of products and raw materials
- Repairs to the plant and equipment
- Overtime working and temporary labour
- Production delays
- Investigation time
- Criminal fines

On a more positive note, managing the well-being of employees does offer the employer a means of reducing costs and motivating the workforce.

The law states that it is an employer's duty to ensure that the risks to health and safety are properly controlled and that there is the correct provision for the employees' welfare. In certain circumstances, this responsibility extends to the self-employed and to the protection of the health and safety of other people who may be affected by your business.

It is not always easy for business owners to find out exactly what is expected of them. It is hoped that this book, which is aimed towards the small to medium-sized employer in all areas of employment from office work to heavy industry, will help you navigate the important aspects of health and safety law. This will, hopefully, ensure that not only those on your premises are protected but that you are also protected from breaking the law.

1.2 The Health and Safety Executive

In the UK, the Health and Safety Executive (HSE) is the main body responsible for enforcing legislation and providing guidance on health and safety in the workplace. The HSE comprises over 3,000 staff. As well as inspectors, there are policy, medical and scientific advisers. In addition to the HSE, more than 380 local authorities are used to enforce the relevant law. Your local fire brigade also has certain responsibilities. The shared responsibility for enforcing health and safety is split by the type of business. The enforcing bodies dealing with each type of business are listed below:

- **The HSE** covers offices, factories, building sites, mines and quarries, fairgrounds, railways, chemical plants, offshore and nuclear installations, schools and hospitals.

- **The local authority** enforcement officers cover retailing, warehouses, most offices, hotel and catering, sports, leisure and consumer services.
- **The local fire brigade** deals with fire safety.

The law grants the enforcing bodies a wide range of powers. Amongst others, they have the right to do the following:

- Enter premises at any reasonable time, or at *any* time if in their opinion there is a dangerous situation.
- Carry out examinations and investigations, take measurements, photographs and samples, take possession of articles and arrange for them to be dismantled or tested.
- Require information, take statements from people and inspect copy documents.
- Issue improvement and prohibition notices and prosecute people in companies.

A report by Professor Ragnar Löfstedt, published in November 2011, was commissioned by the government to provide an independent review of health and safety legislation. One of its various proposals questioned the HSE's role in directing inspection and enforcement activity. The HSE has since developed a risk-based enforcement code to guide local authorities in their interventions. They have also published a list of sectors and activities suitable for proactive inspection.

We will deal more fully with the role of the HSE in chapter 4, sections 2 and 5.

1.3 Legal requirements

Breaches of health and safety law can incur both criminal and civil liability.

Criminal liability

A crime is an offence against the state. In health and safety law, criminal

liability refers to the duties and responsibilities under statute, primarily the Health and Safety at Work Act 1974 (also known as the 'HSW Act'). There are also several sets of regulations. These implement European legislation and provide the minimum health and safety requirements expected of an employer.

Both the HSW Act and the regulations are written in complicated legal jargon, so in order to help explain them in a language that is easier to understand approved codes of practice (ACOP) and guidance notes are issued regularly. The ACOP have special legal status similar to that of the Highway Code.

The penalties that can be imposed by the criminal courts include fines and imprisonment.

Civil liability

A civil action typically involves negligence and/or breach of legislation. In addition to the HSW Act and the regulations, various cases have also established legal principles which employers are obliged to follow. In a civil action a 'claimant' (the wronged person) sues a 'defendant' (the wrongdoer) for a remedy – usually financial compensation.

The question of whether a breach of a duty imposed on an employer by the regulations gives a right of action in civil proceedings is one which needs careful consideration.

For injuries sustained prior to 1 October 2013, a breach of a duty does not automatically give a person a right of action in civil proceedings against an employer, but this is often the case. It is nonetheless still necessary to consider the wording of the specific regulation.

For injuries sustained after 1 October 2013 however, the introduction of section 69(3) of the Enterprise and Regulatory Reform Act 2013 means that the regulations will not impose civil liability, unless the regulations state otherwise. Those exceptions are limited. A breach of the regulations will now be used to try and prove that an employer has acted negligently. Legal advice from a Law Society recommended solicitor should always be sought.

The Health and Safety at Work Act 1974 and regulations

The HSW Act requires the business owner to carry out actions that are reasonable and practicable in order to protect the workforce. The Act covers not only those who work full-time but also part-timers, casual workers and outside contractors. It also includes those who may use your business premises or equipment, which may include visitors and delivery drivers.

The regulations tend to relate to specific issues or risks in the workplace. We will deal with those risks commonly found in the workplace in detail in chapter 3.

It is, of course, impossible to make your premises 100 per cent safe and risk free, and both the HSW Act and regulations recognise this. As a general rule, to prosecute criminal proceedings successfully, the HSE must prove beyond reasonable doubt that the business owner failed to act as a reasonable employer in all the circumstances.

Six sets of regulations came into force in 1992 (but some of them have since been updated and are also subject to more recent amendments). They are often referred to as the 'Six Pack'. These are as follows:

- The Management of Health and Safety at Work Regulations 1999
- The Workplace (Health, Safety and Welfare) Regulations 1992
- The Provision and Use of Work Equipment Regulations 1998 (PUWER)
- The Manual Handling Operations Regulations 1992
- The Health and Safety (Display Screen Equipment) Regulations 1992 (DSE)
- The Personal Protective Equipment at Work Regulations 1992 (PPE)

There are other additional regulations. The Six Pack and other main legislation are summarised below. Many are dealt with in more detail in later chapters. It is important to know the contents of the regulations so that you are aware of your obligations and duties as an employer.

The Management of Health and Safety at Work Regulations 1999

These regulations are accompanied by an approved code of practice. You must comply with the precise terms of these regulations to avoid a potential claim for compensation.

To ensure a safe workplace these regulations state that it is the employer's responsibility to do the following:

- Carry out a suitable and sufficient assessment of the risks to the health and safety of employees in order to identify hazards, evaluate the extent of risks and take appropriate action. In addition, an employer must carry out a further assessment after an accident has occurred.
- Record the arrangements for health and safety including planning, organisation, control and monitoring as well as undertake a review of the 'protective and preventative measures' in place. Every employer must appoint one or more competent persons to assist him in undertaking these tasks.
- Employ competent people to carry out the work duties. You must not employ children of under school-leaving age, unless their employment is part of an authorised scheme.
- Ensure that any necessary contacts with external services are arranged, for example, first aid and emergency medical care.
- Provide comprehensive health and safety information to all employees, including temporary employees. This includes information on risks to health and safety as identified by risk assessments, preventative and protective measures and the identity of the competent person outlined above. Be aware of communication issues such as language differences.
- Make arrangements for the safety of employees of other companies on site and provide appropriate instructions and information.
- You should note that if fellow workers are injured as a result of another worker carrying out work for which he is untrained, the business owner can be liable.
- Provide safety training at induction, or upon transfer to a new job or

area, or when new equipment is introduced. (Keep training records as evidence of this.)

- Employees are required to report any shortcomings in safety arrangements to their employers.
- Following an accident, the employer is required to complete an accident investigation (and record the findings).
- Keep records that you have undertaken all of the above.

The Workplace (Health, Safety and Welfare) Regulations 1992

These state that your premises should not be, or create, a risk to your workforce. This is not restricted to the building itself but covers four main areas:

- **Working environment:** includes temperature, ventilation, lighting and emergency lighting, room dimensions and space, suitability of workstations, seating and outdoor workstations.
- **Safety:** includes safe passage for pedestrians and vehicles. Windows and skylights must be capable of being opened, closed and cleaned safely. Transparent doors and partitions must be marked and made of safe material. There should be safety devices on doors, gates and escalators and floors must be constructed safely and be free from hazards such as slipping, tripping and obstructions. Falls from heights, dangerous substances and falling objects should be prevented by guards or safety rails. Warning signs should be placed where necessary.
- **Facilities:** there must be suitable and sufficient lavatories, washing facilities and changing areas together with storage areas and lockers for clothing. There should be adequate rest facilities and areas for eating and drinking. Drinking water must also be provided.
- **Housekeeping:** your workplace must be kept clean and maintained at all times. Spillages must be cleaned up immediately and provision must be made for the removal of waste material. You must keep housekeeping, repair and maintenance records.

The Provision and Use of Work Equipment Regulations 1998 (PUWER)

These state that in the course of carrying out their jobs, workers must be provided with machinery and equipment that is safe to use. It is important to note that employers are responsible for any injury sustained by a worker as a result of defective machinery, even if the defect arose during the manufacture of the machinery.

Work equipment is broadly defined under these regulations. It includes everything from a small screwdriver to a major plant (e.g. an oil refinery) but excludes construction sites, which are dealt with in other regulations. The general duties of an employer are to:

- consider the risks in the workplace before buying new equipment;
- provide adequate training, information and instruction on the equipment (and document as much as possible);
- ensure that the equipment is properly maintained (and keep maintenance and repair logs);
- protect the user from dangerous parts of the machinery (e.g. by fitting guards and emergency stop controls);
- reduce the danger caused by specific hazards;
- ensure the stability of the equipment, provide adequate lighting and make warnings and markings clearly visible. See chapter 3 for further information.

The Manual Handling Operations Regulations 1992

The regulations require the employer to:

- assess manual handling tasks in the workplace by way of a risk assessment (and keep copies of the assessments including post-accident assessments);
- avoid manual handling in so far as is reasonably practicable;
- mechanise the task if possible;

- reduce the risk of any injury to the lowest level reasonably practicable;
- train staff in safe methods of lifting if necessary and document all the training and information given to staff. (see chapter 3, section 2 for further information);
- provide information to staff as to the weight, or heaviest side, of the load;
- have regard to the physical suitability of staff; their clothing and footwear; the personal effects they are wearing; and their knowledge and training.

The Health and Safety (Display Screen Equipment) Regulations 1992 (DSE)

These regulations cover screens and workstations. They require the employer to:

- analyse the workstations to assess and reduce risks, and to keep copies of the assessments;
- plan work to ensure adequate breaks;
- provide information and training to users of equipment and keep documentation relating to this;
- consult on software design and selection (see chapter 3, section 4 for further information).

The Personal Protective Equipment at Work Regulations 1992 (PPE)

Personal protective equipment (PPE) is all equipment designed to protect against risks to health and safety and includes most types of equipment not covered in other legislation. PPE must be used only as a last resort, where another safer system of work cannot be implemented. If PPE is needed, it must be provided free by the employer. See chapter 2, section 8 for further information.

The Reporting of Injuries, Diseases and Dangerous Occurrence Regulations 2013 (RIDDOR)

The reporting of certain accidents and ill-health at work is a legal requirement. This is dealt with in detail in chapter 4, section 1.

The Control of Substances Hazardous to Health Regulations 2002 (COSHH)

These are often referred to as COSHH and they require an employer to:

- assess all the substances held in the workplace which are, or may be, hazardous to health (see chapter 3, section 5 for further information);
- ensure that all hazardous substances are labelled correctly with the appropriate signs;
- undertake separate assessments for PPE (see chapter 2, section 8 for further information);
- provide instruction and training in relation to PPE and training in general;
- conduct health surveillance if necessary.

The Noise at Work Regulations 1989 and Control of Noise at Work Regulations 2005

The employer is under a general duty to arrange for an adequate noise assessment and to reduce the risk of damage to the lowest level which is reasonably practicable. Special risk assessments must be undertaken. See chapter 3, section 9 for further information.

The Health and Safety (First Aid) Regulations 1981

These regulations place a general duty on the employer to make adequate first aid provision for their employees if they become injured or ill at work. See chapter 2, section 2 for further information.

The Waste Management and Environmental Protection Act 1992

This Act demands certification from an employer of all waste removed from a site. The purpose of the Act is to ensure the safe disposal of all waste in a proper and safe manner to an appropriate disposal site. This includes the effective disposal of waste which may seep through soil and enter the water table, as well as the removal of hazardous materials and liquid.

The Safety Representatives and Safety Committees Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996

Although it is unlikely to apply to a small business, if you do have union representation you must consult them on health and safety matters and in prescribed cases, appoint a safety representative and/or safety committee.

In any event, you must consult your employees on issues regarding changes affecting health and safety and the provision of information and training.

The Health and Safety Information for Employees Regulations 1989

These regulations require information relating to health, safety and welfare to be given to employees by means of posters or leaflets in the approved form. Copies of the posters and leaflets can be obtained from the HSE (see chapter 2, section 2 for further information.)

Other regulations

Other regulations which deal with health and safety issues include the Electricity at Work Regulations 1989, the Safety Signs Regulations 1996, the Lifting Operations and Lifting Equipment Regulations (LOLER) 1998 and the Work at Height Regulations 2005 which came into force on 6 April 2005.

If you are a builder or at all involved in construction, you will need to look at the Construction (Design and Management) Regulations 2007 (refer to chapter 3, section 14 for further information).

This list is not exhaustive. It is advisable to obtain full copies of the most relevant and up-to-date regulations to ensure that you comply with them. Copies can be obtained from the HSE's website at www.hse.gov.uk. It is possible to obtain some of their leaflets and publications free of charge.