

HS Broadcast 02 – The Framework

A number of people I meet have very little understanding of the framework of Health & Safety. “How does it work?”, “what is required?” and “when all goes wrong, who will prosecute?” are just some of the questions I am regularly asked. So, I thought I would give an overview of the Health & Safety framework.

The legal objectives for health and safety are given in statute law which details steps to be taken and carries the threat of prosecution and other enforcement action as a consequence of failure to comply; this is criminal law where the onus of proof is, “beyond all reasonable doubt”. Civil law allows injured workers to claim compensation and the threshold here is much lower: “on the balance of probabilities”. To look at the risk in terms of numbers, to be prosecuted for a breach of the Health & Safety at Work Act the onus of proof is something like 95% or above and the penalties could include a jail sentence or a hefty fine. In terms of civil actions, the threshold is much lower at 51% or above and the penalties are dealt with in terms of compensation to the injured party.

An accident in its simplest form is an incident plus its consequences. It can be defined more fully as an undesired event which results in physical harm and/or property damage. An accident usually results from contact with a source of energy above the ability of the body or structure to withstand it.

A hazard means the inherent property or ability of something to cause harm. A risk is the chance or probability of loss, and evaluation of a potential for failure. It is very easy to confuse the terms hazard and risk and often the terms are incorrectly used and sometimes interchanged. A simple way to remember the difference is a hazard describes potential for harm, where risk is the likelihood that harm will result in the particular situation or circumstance.

A risk assessment therefore is simply an assessment of the chance or probability of a loss.

Risk assessments are carried out to enable control measures to be devised. We need to have an idea of the relative importance of risk and to know as much about them as we can in order to take decisions and apply controls which are both appropriate and cost effective. A risk assessment should be carried out by a “competent person”. There are many definitions of “competent person” but I have always liked the definition of my lecturer from year’s back who used to say that a competent person is an individual who has done the job and is still doing it! The competent person should document all hazards and make an assessment of them.

Risk assessments should be undertaken in all businesses, examining the risk attached to every hazard in the workplace. Significant findings must be recorded where five or more people are employed. This number of five will include directors who are employees of the organisation. The management of health & safety at work regulations code of practice insists that the records should contain statements on the significant hazards identified, the control measures in place and the extent to which they control the risks. It is allowable to cross reference the risk assessments to other manuals and other documents and indeed the population exposed to the risk.

In simple terms, “an assessment of risk is nothing more than a careful examination of what, in your words, could cause harm to people so that you can weigh up whether you have taken enough precaution, or should do more”. The test of assessments is that they should be both suitable and sufficient. The test is a simple one – does the assessment and the method chosen to carry it out pay enough attention to detail (this means that it is neither too much or too little).

The process should include some method of weighting hazards. This is often done on a scale of 1 to 4 where catastrophic has a value of 1, critical has a value of 2, marginal has a value of 3 and

negligible has a rating of 4. To do this there must be a probability of this problem occurring. This is usually done in 4 stages where probable has a rating of 1, reasonably probable has a rating of 2, remote has a rating of 3 and extremely remote has a rating of 4. The two numbers are then multiplied together. So a hazard that is negligible has a rating of 4 and the chances of this hazard occurring could be very remote which again has a value of 4 and so $4 \times 4 = 16$ which would equate to a very low risk assessment and a brief assessment is suitable. On the other hand a catastrophic hazard with a probable chance of occurring would have a value of $1 \times 1 = 1$, which would mean that the risk assessment must be done in some detail. There are many variations on this theme, do not worry too much as to the ranking, it is managing the risk that is vital.

There may be circumstances in which hazards cannot be eliminated and elements of risk remain associated with the task. One of the risk assessment indicators is the case that a safe system of risk is required. This means that some operations such as cleaning and maintenance operations, work done in emergencies, control of activities of contractors in the work place, for example, will all need a document to show how this work will be undertaken safely.

Business premises can be inspected at any time. This is usually done by either the Health & Safety Executive (HSE) or a Local Enforcement Officer who is under the control of the local authority.

Their objectives are two-fold.

1. To identify hazardous conditions and start the corrective process
2. To improve operations and conditions. In addition there may be a number of internal inspections by people such as myself or senior managers and supervisors.

Prosecutions are usually undertaken by either the HSE or the local authority (In Scotland the Procurator Fiscal), when there is a severe breach of health and safety responsibility.

I have always found Health & Safety Inspectors very reasonable and helpful, however be aware that have a great deal of power so I would always promote working with the Inspector, after all they are there for the right reasons to ensure the workplace is a safe place and isn't that what we all want?

Feel free to give Andy Tomlinson a call if you would like any further general advice or would like to discuss something more specific.

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