Footwear and Leather Industries
Health & Safety
Committee

Why manage Health and Safety?

A Fact Sheet for the footwear and leather industries

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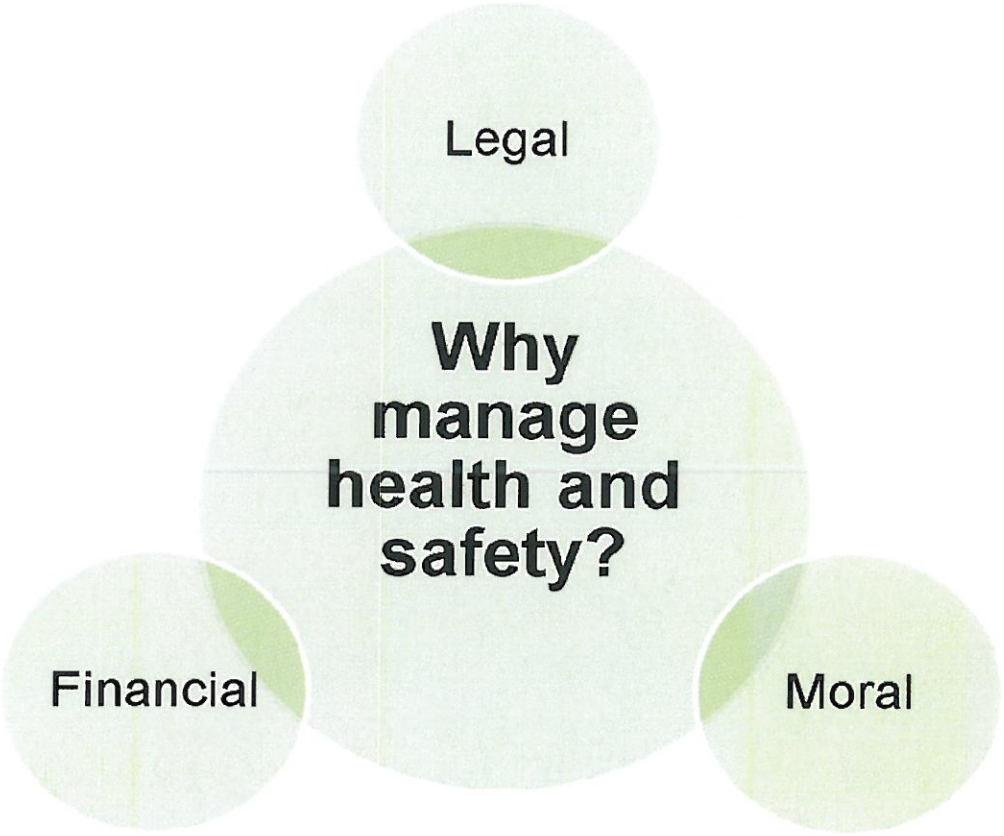
Why manage Health and Safety?

There are a variety of reasons why an organisation should manage the risks they and their employees face. These can be broadly grouped into legal, moral and financial.



Legal Considerations

In the United Kingdom, organisations have a legal responsibility to manage health and safety. Organisations legal considerations should include all risk management related legislation, codes of practice, guidance notes and accepted standards from both the UK and Europe.

The following Act and Regulation place a responsibility on organisations to manage health and safety.

The Health and Safety at Work etc Act 1974 – Section 2.3

Organisations who employ five or more employees must prepare a written health and safety policy detailing their general intent, organisation and arrangements for carrying out this policy.

The Management of Health and Safety at Work Regulations 1999 – Section 5 Health and Safety Arrangements

Every employer shall make suitable arrangements as are appropriate for the effective planning, organisation, control, monitoring and review of the preventative and protective measures.

Statutory Law – A criminal offence

Within the UK, the main health and safety legislation is the Health and Safety at Work Act 1974. This act is statue law and must be adhered to by all organisations within the United Kingdom.

The Health and Safety at Work Act 1974 is an enabling act and allows subsequent health and safety regulations to be introduced through the Secretary of State. Organisations that are in breach of the Health and Safety at Work Act 1974 and any subsequent regulation that supports this principle can face a criminal prosecution under statutory law.

Depending on the type of organisation you operate, health and safety legislation will be enforced through either the Health and Safety Executive (HSE) or your local authority by their Environmental Health Officers.

Organisations that are successfully prosecuted can be subject to the following penalties.

Summary offence (Magistrates Court) Up to £20,000 in fines and up to 12 months imprisonment

Indictable offence (Crown Court) Unlimited fines and up to 2 years imprisonment.

Health and Safety - Levels of Duty

Within health and safety legislation there are three levels of duty that organisations need to be aware of.

Absolute Duty – This is the highest level of duty within the UK and it must be complied with to achieve legal compliance.

So far as is Practicable (SFAIP) – If the technology exists to carry out a practicable requirement then it must be applied regardless of cost.

So far as is Reasonably Practicable (SFAIRP) - This is a balance between cost and risk. If the cost (money, time and effort) of the precautions required were insignificant in relation to the risk, then an organisation would be expected to carry these out these precautions as this would be acting SFAIRP

The Health and Safety at Work etc Act 1974 (HASAWA 1974)

The HASAWA 1974 was as a result of Lord Robens Report in 1972, this report formed the basis for this act. The act focuses on a goal setting principle with the responsibility being placed on organisations to implement the required controls to ensure they manage health and safety effectively and adhere to the sections of the act.

The majority of the act is based on the level of compliance being "So far as is reasonably practicable" This level of compliance is based on assessing the level of risk in proportion to the cost (time, effort, money).

If an organisation is being prosecuted for a breach of HASAWA 1974 then the organisation will be required to proof that the controls they had in place were reasonable practicable and the costs of any further controls would have been grossly disproportionate to the risk.

Main sections of the Act relevant to organisations

Section 2 – Employer responsibilities to their employees

2.1 It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees.

This section is so all encompassing that it can be applied to every unsafe practice or unsafe condition in an organisation.

2.2 In particular, this duty extends, so far as is reasonably practicable, to

- The provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health.
- Arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances.
- The provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees.
- So far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks.
- The provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

2.3 Health and Safety Policy – an employer must

- If they have five employees or more, prepare a written statement of his general health and safety policy.
- Set down the organisation and arrangements for carrying out the policy.
- Revise and update the policy as necessary and bring the statement and any revision of it to the notice of all of their employees.

2.4 – 2.7 Safety Representatives and Safety Committees

The employer must

- Consult with safety representatives on the arrangements for co-operation on safety measures.
- When required and requested to establish a safety committee

Section 3 – Employer responsibilities to other persons
It shall be the duty of every employer to conduct his undertaking in such a way as to ensure , so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

Section 4 – Landlords responsibilities
It shall be the duty of each person who has to control of a non domestic premise, to ensure that access, egress, plant and substances in the premises present no risk to the health of anyone who may not be an employee of theirs but are working on the premises.

Section 7 – Employees responsibilities
It shall be the duty of every employee whilst at work to

- Take reasonable care for the health and safety of themselves and other persons who may be affected by his acts or omissions at work.
- To co-operate with their employer in order to enable his employer to comply with any statutory health and safety requirements.

Section 8 – Everyone's responsibility
Everyone has a duty not to interfere with or misuse anything provided with in the interests of health and safety or welfare, as a result of legal requirements.

Section 9 – Employer responsibilities
No employer may charge employees for health and safety measures carried out as a result of specific legal requirements.

Section 36 – To encourage a breach in law
If a person commits an offence under health and safety legislation, but the offence is due to the act or default of some person, then that other person is also guilty. E.g. a manager instructs an employee to commit an unsafe act.

Section 37 – Offences by the corporate body
Where an offence, under any health and safety legislation, is committed by a body corporate with the consent or connivance of a director or manager, or can be attributed to any neglect on the part of the director or manager, then he shall be liable to prosecution along with the body corporate.

Other Legal Considerations

Corporate Manslaughter and the Corporate Homicide Act 2007
Corporate Manslaughter and the Corporate Homicide Act 2007 came into effect on the 6th April 2008. The act applies to companies and other corporate bodies within the private and public sector and was introduced so these can be held liable for manslaughter where there was a gross failure in the management of health and safety that has subsequently caused a death.

For companies to be found guilty of this offence, it has to be proven that the Senior Management have failed to manage or organise their work place activities and this failure resulted in a gross breach.

For a gross breach to apply, it must be proven that the organisation's breach had fallen far below what could have been reasonably expected of the organisation in the circumstance. The case is heard within a Crown Court and is considered a criminal offence under statute law. Penalties that can be imposed if an organisation is found guilty include:

- **Criminal fines -** sentencing guidelines suggest a minimum fine of £500,000 and these can be unlimited depending on the wealth of the organisation.

- **A Remedial Order** – Organisations will be instructed to remedy the breach in their health and safety management and subsequent failings.

- **A Publicity Order** – The organisation will be required to publicise that it had been convicted of the offence and state the specified particulars of the offence that include their failings, how they will remedy these and the amount of fine that was imposed on them.

In addition to a prosecution under the Corporate Manslaughter and the Corporate Homicide Act 2007, individuals can also face prosecution for subsequent breaches of the Health and Safety at Work Act 1974 under Sections 7, 33, 36 and 37.

Manslaughter by Gross Negligence
When a death in the workplace occurs, the police will investigate in addition to the health and safety enforcing agency. If the Police investigation finds sufficient evidence, they have the power to arrest and charge individuals with the offence of manslaughter by gross negligence.

This offence is a criminal offence and comes under common law and is not enforced by the HSE but falls under the jurisdiction of the Crown Prosecution Service (CPS). Individuals that are found guilty of this offence can face up to life imprisonment depending on the particulars of the case.

Common Law – A civil offence (Tort or wrong)

Common law is unwritten law and is based on case law where judges set precedents. These precedents are used and quoted by solicitors and lawyers to proof their clients claim has validity.

Common law duty of care imposes a duty on all of us to avoid injuring each other. This common law duty is based on acting reasonably.

Employers must not subject employees to unnecessary risk by providing

- Competent employees
- Safe plant and equipment
- A safe working environment
- A healthy working environment
- Safe systems of work

- Training and supervision

If an employer breaks this common law duty of care, employees can sue their employer for negligence or a breach of statutory duty and can seek compensation for damages.

Civil law has a lower burden of proof than criminal law, the burden of proof in this case is the "balance of probabilities" For a civil tort/wrong of negligence to be satisfied, the claimant must satisfy the following conditions

- A duty of care was owed
- A duty of care was breached
- A loss or injury occurred as a result of that breach

For an employer to successfully defend a claim, they would have to proof that the above conditions were not owed or breached or if they were, they acted reasonably in the provision of their common law duty of care.

Employers must also consider and remember that they are vicariously liable for the actions of their employees whilst they are at work. This vicarious liability means that employers can be sued by an employee or non employee if they were injured as a result of their employee's actions.

Negligence claims can be very difficult to defend due to the lower burden of proof and the requirement for the organisation to proof they acted reasonably in preventing the injury.

Moral Considerations

No person should expect to go to work or a place of work and be injured. Organisations have a legal duty to look after the health, safety and welfare of their employees and others but they should also consider their moral duty for this provision as well.

Organisations need to value their workforce, it has been shown in various studies that if employees are looked after and are involved in their own destiny, they will tend to work more effectively.

An unsafe working environment can have a detrimental effect on an organisation. It has been accepted that organisations with a poor health and safety management as a result will also have a poor health and safety culture.

These factors can result in an organisation having

- A lack of employee commitment
- A increase in employee turnover
- An increase in accidents

- A increase in employee sickness and absenteeism
- A decrease in employee productivity
- A loss of the company image

All of the above factors can result in an organisation expenditure increasing and a loss of business resulting in a reduction is their income. These circumstances can then lead to redundancies leaving a once prosperous organisation to reduce or stop their operation.

Good health and safety is good business, if organisations can understand the importance of health and safety management and why this should be done. They will be able to demonstrate their commitment to their employees and how they are valued within the workplace which in turn should result in a reduction in staff turnover, absenteeism and the associated costs.

In addition, organisations will also be able to demonstrate their commitment to their customers and clients by operating professionally, meeting service deadlines and improving their image which should then encourage new and repeat business.

Financial Considerations

The financial stability of an organisation is important as this allows investment and development within the business to ensure the organisation remains successful. Poor health and safety management can have a huge effect on the financial stability of an organisation through criminal fines and damages paid through compensation claims.

The financial consequences of having poor health and safety that an organisation should consider can be best identified through their insured and uninsured costs.

Insured Costs

These costs are predominately covered by the sum of those insurance premiums or risk transfer payment made by an organisation to their insurers to offset financial losses arising as a result of unmanaged or poorly managed risks.

These premiums may stay consistent with good health and safety management but organisations that suffer with poor health and safety management can expect an increase in premiums as a result of a growing number of compensation claims made by their employees and third parties.

In addition, organisations that demonstrate poor health and safety management may be required to implement additional controls as a prerequisite for their insurance company providing the cover.

Uninsured Costs

The uninsured costs should be established by an organisation and can be far higher than the insured costs. The uninsured costs can include

1. Fees for Intervention – This is currently charged at a rate of £124 per hour (Correct at the time of publication)

2. Fines as a result of a criminal prosecution (These cannot be insured against)
3. Medical and first aid treatment
4. Accident investigation and administration
5. Loss time of the injured person and other employees
6. Replacement labour costs
7. Loss of production and business interruption
8. Repair to damaged plant and equipment
9. Marketing campaigns to rebuild the company image
10. Loss of investment by stakeholders

Through effective health and safety management, an organisation will be able to reduce their insured and uninsured costs. There will be associated costs to an organisation in managing health and safety effectively.

However these costs can be expected to be significantly less in the long term than the potential costs of doing nothing especially when you consider the powers of the courts to issue unlimited fines for serious breaches.

Fees for Intervention

The Health and Safety Executive (HSE) introduced fees for intervention (FFI) on the 1st October 2012. FFI was introduced so companies that now have material breaches of health and safety law will have to pay the HSE for the time taken to identify the material breach, assisting you to put breach right, carrying out any investigations and taking any enforcement actions against the company.

The total fee is calculated by multiplying the total number of hours by the hourly rate (This is currently at £124.00 per hour). The HSE will invoice the company and companies will have 30 days to pay the fee outstanding.

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This document will be available on the following websites:

British Footwear Association – **www.britishfootwearassociation.co.uk**
UK Leather Federation – **www.ukleather.org**
Community – **www.community-tu.org**