

H&S Stage Two

Resources

ACTIVITY 9: - Management of health and safety at work regulations (MHSWR)

You should have access to the full MHSWR. In the unlikely event this is not so, the following provides a summary of the MHSWR

THE EMPLOYER'S DUTIES UNDER THE MANAGEMENT REGS
All employers must:

Carry out risk assessments – Regulation 3

The risk assessment is one of the key duties of the Management Regs. This is essential to any effective system for managing health and safety. The risk assessment forms the basis of a systematic approach towards the control of all workplace risks. It is the vitally important first step towards implementing measures to prevent accidents and diseases from occurring.

Risk assessment is basically a method of identifying the hazards and risks present in the workplace and then prioritising and setting objectives for hazard elimination and risk reduction.

It is an absolute legal duty for all employers to carry out an assessment of the health and safety risks to which their employees and others who are exposed by, or because of, their work process.

Follow the hierarchy of controls – Regulation 3

The Management Regs require employers when making health and safety arrangements, to follow the same hierarchy of controls that has been recommended by the union for years:

- Eliminate the risk as a first priority; control it as a second; if all else fails, use personal protection such as safety shoes, glasses, respirators and protective clothing.

Principals of prevention to be applied – Regulation 4

In deciding which preventive and protective measures to implement, a set of principles as laid out in the Regulations should be followed:

- If possible avoid the risk altogether, for example, by not using a hazardous substance or process.
- if it is not essential, or by redesigning the way in which work is done.

Combat risks at source. For example, if steps are slippery they should be cleaned or treated rather than merely putting up a warning sign.

Wherever possible, adapt the work to suit the individual and not the other way round. For example, workplace or equipment design and work methods should allow for maximum flexibility. Avoid monotonous work or work at predetermined rates that could cause health and safety problems.

Use technologies to improve work methods and reduce risks:

- Ensure that risk prevention measures form part of a coherent policy and approach with the aim of progressively reducing those risks that cannot be prevented or avoided altogether.
- Give priority to measures that protect the whole workplace and all who work there.
- Ensure an active safety culture. For example, through meetings, training of workers and management and the provision of adequate and relevant information.

Consult with Safety Reps – Regulation 4A

This schedule to the Management Regulations significantly extends the rights of trade union Safety Reps to be consulted on a wide range of health and safety issues. These consultation rights form Regulation 4A of the SRSC Regs and they were introduced when the SRSC Regs were amended in 1996.

Trade union appointed Safety Reps now have the right to be consulted in good time (before change takes place) about:

- The introduction of any new health and safety measures in the workplace.
- The arrangements for appointing the competent persons who advise the employer and who administer the evacuation procedures.
- Any health or safety information the employer gives to employees.
- The planning and organization of any health and safety training.
- The introduction of new technology.

The union's advice to safety Reps is that employers must consult in advance of any planned changes, allowing enough time to consider all relevant issues and to respond before any changes are incorporated into the workplace or process.

It is difficult to be too specific as to the exact time that employers should allow for consultation. If, for example, a serious accident occurred, new health and safety measures may need to be applied immediately, and there would be very limited time available for consultation. Generally, however, Management of Health & Safety At Work Regulations – Guide for Safety Reps there are reasonably long planning periods prior to changes being introduced in the workplace. In cases of consultation over issues where advance planning takes place, and over health and safety training issues, employers must allow sufficient time to ensure that Safety Reps can exercise their rights to become involved.

The role that Safety Committees should play has also broadened because of the duties on employers introduced under the Management Regs. It is important, therefore, that the Safety Committee should take an overall view of how health and safety is managed. Much of the work of monitoring and reviewing the safety policy and performance of an organization as well as the practical arrangements for managing health and safety can be done effectively by a good, proactive joint Safety Committee.

It may also be necessary to establish new committees or sub-committees to consider aspects of policy etc.

Make adequate health and safety arrangements – Regulation 5

The risk assessment is only the first step. Once problems have been identified, employers must make adequate arrangements for the "effective planning, organisation, control, monitoring and

H&S Stage Two

Resources

review of protective and preventive measures.” The exact nature of these arrangements will be determined by the finding of the risk assessment. Where this has identified a risk, then effective arrangements must be made to control that risk.

For example, in the poultry processing industry there may be a risk of RSI (repetitive strain injury) from constant twisting and forceful motions. Measures to eliminate or control this risk can include modifying the work process, including such things as job or task rotation, and reducing the speed of the production line.

The law states that both the risk assessment and the details of the health and safety arrangements have to be in writing where there are five or more employees. The union however, recommends that good practice is for the risk assessment to be in writing even where fewer than five people are employed. Many small businesses carry out some of the most hazardous operations. The risk assessment still has to be carried out in these circumstances and control measures implemented where fewer than five people are employed and recording it in writing clearly demonstrates that this has been done. It also allows HSE Inspectors and Safety Representatives to inspect the assessment and discuss the details. If an accident occurs and the details are not recorded, employers, however large or small leave themselves vulnerable punitive action from the HSE or even the police.

Introduce health surveillance – Regulation 6

The Management Regs state that health surveillance should be undertaken "....wherever this is appropriate having regard to risks to health and safety".

This could range from tests to see whether workers are suffering from health problems such as RSI or skin rashes, providing lung function tests relating to respiratory problems or taking blood or urine samples.

The risk assessment should identify the circumstances in which health surveillance for workers is needed, (or required under other regulations such as COSHH or the Working Time regulations) Health Surveillance does not, in itself, eliminate the risk, but gives an indication as to whether control measures are working, or whether further action to control the risk is needed.

Workers and their Safety Reps must be informed of the reasons why Health Surveillance is necessary before it is introduced. (this is reinforced by regulation 4A of the SRSC Regs - Safety Reps must be consulted 'in good time' i.e. before any changes are introduced.)

Appoint competent persons – Regulation 7

Employers have to appoint competent persons to conduct risk assessment and to assist them in ensuring that the health and safety measures identified as necessary by those risk assessments are implemented. It is preferable that the competent person comes from within the organisation rather than from outside because those working directly are likely to have more knowledge of the job. The Management Regs define a competent person as someone who "....has sufficient training and experience or knowledge and other qualities" to enable them to carry out his or her function.

The ACoP to the Regulations gives some further guidance on how the competence of health and safety specialists should be evaluated and what their contribution should be. The level of competence required is dependent upon the nature of the work being carried out and the knowledge needed to devise and apply the measures necessary to protect the workforce. Many larger organisations already have specialists or even a specialist department. In practice, however, many employers that do not directly employ a safety specialist will first have to consider training internal staff to carry out the job, then if levels of competence are still insufficient, enlist an external service or person. It is the responsibility of employers to ensure that whoever is appointed to assist them to comply with their legal responsibilities is capable of carrying out the task effectively. To decide whether an individual is competent, employers themselves need to know and understand:

- The work involved.
- The principles of risk assessment.
- Current legislation and safety standards.

The competent person will also need to have the capacity to:

- Apply his or her knowledge to the task required.
- Identify the health and safety problems.
- Assess the need for action.
- Design and develop strategy and plans.
- Implement these strategies and plans.
- Evaluate their effectiveness.
- Promote and communicate health, safety and welfare advances and practices.

Employers are required to consult Safety Reps over the appointment of competent persons.

Establish procedures for serious and imminent danger – Regulations 8 & 9

The health and safety arrangements must include procedures to be followed in the event of foreseeable emergencies and situations of serious and imminent danger. A sufficient number of competent persons must be appointed to implement these procedures. Employers must also ensure that any necessary contacts with external services are arranged, particularly regarding first-aid, emergency medical care and rescue work.

The written procedures should specify the circumstances in which workers can stop work and leave the area. It must be recognised, however, that in some emergencies a full scale evacuation may be required and that sometimes workers will need to stop the job and/or move to a safe area without waiting for instructions from a manager or supervisor. Designated competent persons and any staff who are required to carry out specific duties in an emergency (E.g. closing down a process) must be given sufficient training.

Provide information to employees – Regulation 10

The employer is required to provide employees with relevant and comprehensible information on the risks to their health and safety, the measures taken to control those risks as well as emergency procedures and the identity of the competent who have to implement them. This duty on the employer applies to all employees including trainees, part-timers and temporary workers.

To be comprehensible, information must be in a form that can be readily understood by all workers. This may mean providing special information for people with reading difficulties or whose first language is not English, for example.

Co-operate and co-ordinate with others – Regulations 11 & 12

These are important requirements under the Management Regulations. They are aimed at improving the ways through which health and safety is managed, where different employers

H&S Stage Two

Resources

(and the self-employed) share the same workplace. In such situations employers must cooperate with each other and co-ordinate their health and safety measures to ensure that all relevant health and safety legislation is complied with. All employers must communicate with each other to make sure that workers are not put at risk by each others. Management of Health & Safety At Work Regulations – Guide for Safety Reps. activities. Where there is no controlling employer, joint arrangements such as appointing a health and safety co-ordinator must be agreed.

These rules apply to a wide range of situations, for example, where maintenance workers or delivery drivers enter workplaces, or where agency or other temporary staff are employed alongside permanent employees.

Provide training – Regulation 13

Employees must be given adequate health and safety training when they are recruited. Training must also be provided when:

- Workers are exposed to new or increased risks because of a transfer or change to their responsibilities;
- New work equipment is introduced;
- There is a change in the use of existing equipment;
- New technology is introduced; and
- A new or changed system of work is introduced.

Refresher training should be given and adapted to take account of new risks.

All training should take place during working hours. Safety Reps have the right to be consulted about the training provided to employees that they represent before it is introduced, (see below).

Employees Responsibilities – Regulation 14

Every employee must use any machinery equipment, dangerous substance, transport equipment, means of production or safety device provided to him by his employer in accordance both with any training in the use of the equipment concerned which has been received by him along with the instructions provided by the employer.

Employees' duties under section 7 of the HSW Act include co-operating with their employer to enable the employer to comply with statutory duties. Under these Regs. employer need to be informed without delay of any work situation which might present a serious and imminent danger. Employees should also notify any shortcomings in the health and safety arrangements, even when no immediate danger exists, so that employers can take remedial action. These duties do not reduce the responsibility of the employer to comply with duties under the law. In particular employers need to ensure that employees receive adequate instruction and training to enable them to comply with their duties.

Temporary Staff – Regulation 15

This covers temporary workers, i.e. those employed on fixed-duration contracts and those employed in employment businesses, but working for a user company. The use of temporary workers needs to be notified to health and safety staff in the organisation – (under regulation 7(4) (b)).

Under Regulation 15 employees on fixed duration contracts also have to be informed of any special occupational qualifications or skills required to carry out the work safely and whether the job is subject to statutory health surveillance Reg. 10.

Regulation 12(4) deals with the provision of information by a first employer to a second employer, whose employees are working on the premises, this includes an employment business. The employment business and the user employer both have duties to provide information to the employee. The user employer has a duty under regulation 12(4) to check that information.

Management of Health & Safety At Work Regulations – Guide for Safety Reps provided to an employer is received by the employee. In addition regulations 15(1) and (2) require that information on qualifications, skills and health surveillance are given directly to employees in an employment business. The same applies to Self-employed people

Protect new and expectant mothers – Regulation 16

The Management Regulations were amended with effect from 1st December 1994 to incorporate the European Directive on Pregnant Workers. The Regulations now specifically require employers to take particular account of risks to new and expectant mothers when carrying out their risk assessments.

This should also be taken into account where an organization includes women of childbearing age.

The phrase a "new or expectant mother" means a worker who is pregnant, who has given birth within the previous six months or who is breastfeeding. "Given birth" is defined in the Regulation as: "...delivered a living child or after 24 weeks of pregnancy, a stillborn child". Once employers have been informed in writing by a worker that she is pregnant, they must assess the risks arising from the work activity to the woman, unborn child or child of a woman who is breastfeeding. If the risk assessment shows that there is a substance, work process or working conditions that could damage the health or safety of a new or expectant mother or child, action must be taken to ensure that they are not exposed to any significant risks.

Management of Health & Safety At Work Regulations – Guide for Safety Reps.
Employers must:

- Bear in mind that there could be different risks depending on whether workers are pregnant, have recently given birth, or are breastfeeding.
- Tell female employees of childbearing capacity about the potential risks if they are, or could in future, be pregnant or breastfeeding.
- Explain what they will do to ensure that new and expectant mothers are not exposed to risks that could cause them harm; and
- In the first instance, remove the hazard or seek to prevent exposure to the risks involved. If this is not feasible the risks should be controlled.

If the risks cannot be avoided by these means, employers must take the following steps to remove any new or expectant mother from them:

- Step 1** Temporarily adjust her working conditions and/or hours of work;
- Step 2** Offer her suitable alternative work;
- Step 3** Give her paid leave for as long as necessary to protect her safety or health and that of her child.

H&S Stage Two

Resources

If a woman is offered alternative work (Step 2 above) the HSE guidance states that the work "....must be suitable and appropriate for her to do in the circumstances." And "....on terms and conditions no less favourable than her normal terms and conditions." If paid leave is given (Step 3 above) she is entitled to her normal rate of pay or salary for the duration of the leave. Employers must also keep the risks under review. Although any hazards may remain constant, the possibility of damage to the unborn child can vary according to the stage of pregnancy.

In addition to the above, if a new or expectant mother works at night and has a medical certificate stating that night work could affect her health or safety, her employer must either:

- Offer her suitable alternative daytime work, if any is available;
- Or, if that is not reasonable, give her paid leave for as long as is necessary to protect her and her child's health and safety.

Further guidance on new and expectant mothers is contained in "New and expectant mothers at work: A guide for employers".

"DTI Booklet PL705 Suspension from work on medical or maternity grounds".

Young workers – Regulation 19

The employer needs to carry out the risk assessment before young workers start work and to see where risk remains, taking account of control measures in place, as described in regulation 3. For young workers, the risk assessment needs to pay attention to areas of risk described in regulation 19(2). For several of these areas the employer will need to assess the risks with the control measures in place under other statutory requirements.

19(2) No employer shall employ a young person for work-

- (a) which is beyond his physical or psychological capacity
- (b) involving harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health
- (c) involving harmful exposure to radiation
- (d) involving the risk of accidents which it may reasonably be assumed cannot be recognized or avoided by young persons owing to their insufficient attention to safety or lack of experience or training
- (e) in which there is a risk to health from: extreme cold or heat, noise or vibration

When control measures have been taken against these risks and if a significant risk still remains, no child (young worker under the compulsory school age) can be employed to do this work. A young worker, above the minimum school leaving age, cannot do this work unless:

- (a) it is necessary for his or her training and
- (b) she or he is supervised by a competent person and
- (c) the risk will be reduced to the lowest level reasonably practicable.