

IOSH CHILTERN GROUP

H&S in a Covid-19 world: *are things really so different and how do we 'return to work' safely?*

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20 May 2020

1. Introduction
2. What are our H&S responsibilities in the workplace?
 - *Corporate and Individual duties*
3. Risk Assessments
4. PPE
5. RIDDOR reporting
6. Remote Working
7. The Regulators
8. Public Opinion
9. What should we do now?
 - *Top tips to return to work safely*
10. Conclusion / Q&A
11. Additional topic:
 - *Fire Safety – changes that might affect construction and management of buildings*

- It's Mental Health Awareness Week!
- Impact of Covid-19 on everyone – England, Wales, Scotland & Northern Ireland
- “Doom and Gloom” crew
- ‘Zoom’ call

What are our legal H&S responsibilities in the workplace?



Section 2

Duty to employees

Section 3

Duty to non-employees

Section 4

Duty of controller of premises

Duty to “ensure” the health safety and welfare of employees

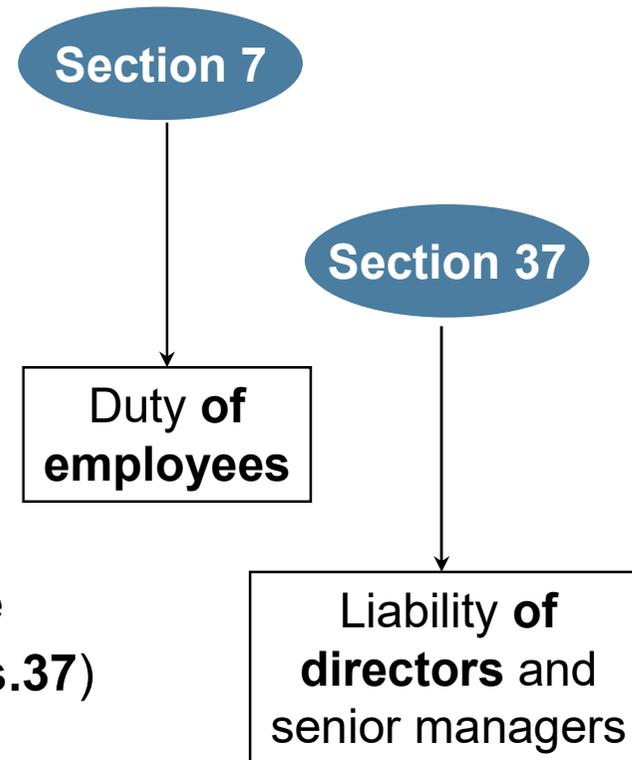
Duty to “ensure” the health and safety of non-employees

Duty of person who has, to any extent, *control* of premises to ensure premises, access and egress from premises and any plant or substance is safe and without risks to health

“So far as is reasonably practicable”

Duty to take reasonable care of self and others affected by work (**s.7**)

Where an offence... has been committed with the **consent**, **connivance**, or...attributable to any **neglect** on the part of any director, manager... or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence (**s.37**)



Accountability of employees **and** employers

- Back to basics – MHSWR 1999
- Necessary to revise, renew or create your relevant risk assessments dealing with COVID-19 to encompass the return to work
 - identify the hazards and set out mitigation measures
 - Dynamic / rolling / continuous
 - Do everything ‘reasonably practicable’ to protect from risks posed by the virus
- Publishing risk assessments online – more than 50 workers

- Do your employees need it?
- Personal Protective Equipment at Work Regs 1992
 - Provide suitable PPE
 - Face 'coverings' are different
 - Face fit / suitable and effective to prevent or control the risk
 - Provide sufficient training to employees on how to use PPE
 - Ensure adequate maintenance and cleaning
 - Take reasonable steps to ensure proper use

- RIDDOR (*The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013*)
 - Reporting incidents – dangerous occurrence / CV-19 diagnosis due to exposure to virus at work / workplace fatality due to exposure of CV-19 at work
- Symptoms are not enough – need medical diagnosis
- Do not report just because employee is at work – must be link between disease and work activity
- HSE: Expect employees to work at home or heed advice from Public Health England on social distancing and hygiene
- Whistleblowers at work

- DSE assessment
- “Temporary work” – *what does that mean?*
- In the 3rd month of homeworking – better to have a home workstation assessment
- Government advice – work from home wherever possible
- H&S obligations owed to homeworkers
- HSE website for further details on assessment for homeworkers and vulnerable workers

The Regulators

- Do what you have always sought to do – review risk, apply control measures and monitor guidance
- HSE – *“flexible and proportionate account of the risks” ... but.....*
- Reporting incidents to HSE – difficult to prove exposure at work?
- The Court’s position
- The TUC’s position
- Prosecution more likely if no or little mitigation of risk

- Jeremy Clarkson article in the Sun – “*we have Covid-19 because of H&S*”
- Relaxing the lockdown / returning to work too quickly?
 - Second wave potential
- Prioritise health over economy
- Funding available for businesses to return to ‘normality’ – bounce back loan

What should we do now?



Top Tips – returning to work safely

- Follow Government guidance – including the “5 step approach”
- Engage with the workforce
- Proactive H&S culture
- Accountability at all levels – senior management but also employees
- Review of company documents and risk assessments – taking government guidance into account
- Incident Response Protocol – applies to Covid-19

- 5 steps to working safely
- Follow the relevant guidance for your sector:
 - Construction and outdoor work
 - Factories, plants and warehouses
 - Labs and research facilities
 - Offices and contact centres
 - Other people's homes
 - Restaurants offering delivery or takeaway
 - Shops or branches
 - Vehicles
 - Educational and childcare settings
 - Public transport operators

- Vulnerabilities?
 - Pregnancy, sex, ethnicity, age, any underlying conditions
- Consultation, collaboration, communication!
- Test, track, isolate – *does that work for your sector?*
- What if an employee refuses to return to work?

Attitude:

- What do the staff think & what would they say to an HSE inspector?
- How seriously does the organisation take health and safety post Covid-19? Evidence?

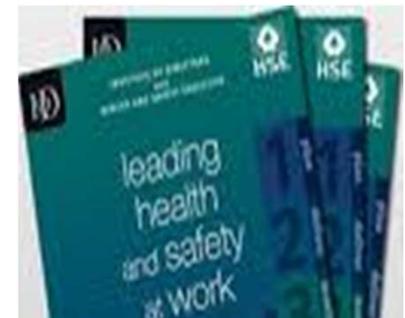
Systems & Accepted Practices:

- Do written systems reflect what actually happens?
- Better interaction between relevant departments (including safety team – internal or external consultants)
 - level of communication and co-operation?

Selection and supervision of contractors / advisers / consultants:

- Accreditation / competence
- Working with others

- **Need to understand the importance of ‘setting the right tone at the top’**
- Senior executive offence of **neglect** (*not as proactive as someone in their position ought to have been*)
- Corporate manslaughter offence in the UK requires **senior management** failing, particularly if poor “**attitudes, policies, systems or accepted practices**”
- Understanding relevance of **IOD / HSE Guidance** (Leading H&S at Work) - <http://www.hse.gov.uk/pubns/indg417.pdf>



How does it apply?

- Strong and active leadership from the top
- Board members should be seen on site, following all H&S measures themselves and addressing any breaches immediately
- Appraisals of senior managers should include safety issues
- Board must ensure adequate resources for H&S in light of Covid-19
- Celebrate good safety performance

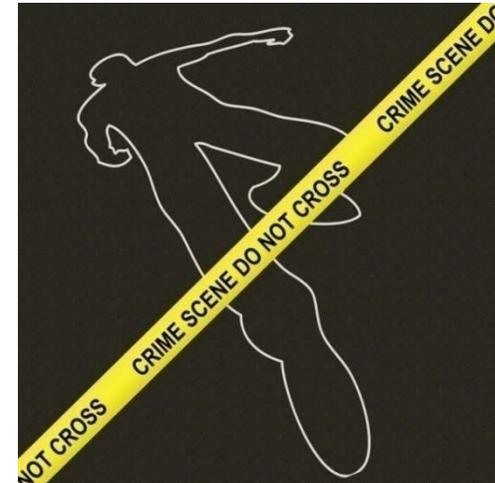
Legal Review of Company Documents

- **H&S Policy** – are all associated documents found on the company's intranet page? Management to be familiar with contents of the policy
- **Policy Statement** – remove common hostages to fortune
- **Roles and responsibilities document** – remove common hostages to fortune
- **Incident / Accident response protocol** – procedure to obtain legal privilege over incident investigation reports and to support employee interviews

The last line of defence so TAKE CONTROL!!!

Should cover:

- Escalating incidents internally
- RIDDOR reporting
- Accident investigations / emails etc
- Managing requests for documents
- Effective communication between employers/employees/contractors/visitors
- Local Authority /police interviews (voluntary, compulsory and PACE) – how are they undertaken during Covid-19 period?
- Managing communications with third parties (e.g. press)
- Notifying insurers – what is covered for the company?
- Appointing specialist regulatory criminal lawyers



- Nothing should go back to normal.....
-but let's do more of what we have always done (or tried to do)
- Follow the 5 steps to working safely:
 - Risk assessment, enhanced hygiene and cleaning procedures, help people to work from home, social distancing and manage transmission risk
 - Best way to meet guidance requirements and legal responsibilities
- Learn from others in your sector
- Collaborate, communicate, consult with staff:
'we are all in this together'



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