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Risk Assessment



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Risk Assessment

INTRODUCTION

This briefing paper introduces the concept of risk assessments, summarises the law in this area and gives practical guidance on the role of CSP safety reps in relation to risk assessment.

There has always been a duty on employers to assess the risks which may arise out of their work or business. This duty arises implicitly under the Health and Safety at Work Act 1974 (HASAWA) and the employer's duty under it to provide a safe and healthy working environment.

The duties of employers in this regard extend beyond those that they have towards employees; for example, employers within the health services also have legal obligations to contractors, voluntary workers, patients and visitors. However, for the purpose of this briefing, the focus is on the duties of employers towards their employees.

The implicit duties to undertake generic risk assessments mentioned above were made explicit and detailed for the first time by the implementation of the Management of Health and Safety at Work Regulations 1992 (MHSW) on 1 January 1993.

MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS –THE BACKGROUND

Increasingly in the last 20 years the driving force behind health and safety law has been the European Union (EU). The usual process is that an EU Directive is agreed; each member state then uses their own law-making processes to introduce a country-specific set of Regulations (often known as domestic or UK legislation).

As a result of an EU Health and Safety Framework Directive in the late 1980s, the Management of Health and Safety at Work Regulations – more commonly known just as the Management Regulations – were introduced in the UK as part of the "Six Pack". This six-pack contained a further five sets of regulations to do with health and safety at work, to be introduced alongside the Management Regulations. These other five are:

- Manual Handling Operations Regulations 1992 (MHO)
- Display Screen Equipment Regulations 1992 (DSE)



- Workplace (Health, Safety and Welfare) Regulations 1992 (WHSW)
- Personal Protective Equipment Regulations 1992 (PPE)
- Provision and Use of Work Equipment Regulations 1992 (PUWER)

The Management Regulations are often quoted as the most important of the six-pack as they introduced over-arching standards relating to how to manage workplace health and safety effectively.

The Management Regulations were amended and updated in 1999 and this briefing is based on this latest version.

MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS (1999) – THE DETAIL

The Management Regulations set down standards and requirements in a number of important areas, of which risk assessment is only one.

The 30 separate regulations are designed to cover many of the key areas which need to be addressed in order to provide a good system of health and safety management and to foster a positive workplace health and safety culture.

Other than risk assessment, some of the main areas covered include:

- Duties towards pregnant workers, including duties to assess the risks to them.
- Procedures for serious and imminent danger.
- Duties in relation to health surveillance.
- Health and safety information and training for employees.
- Duties in relation to atypical workers e.g. temporary and self-employed workers.
- Working on premises owned by other employers.

These and others are explained in more detail in the CSP's Safety Representatives Information Manual (Part I, Section 3). The remainder of this briefing focusses on assessing and reducing risks.



RISK ASSESSMENT AND RISK PREVENTION

Risk assessment and the prevention and reduction of risk is covered by Regulations 3 & 4 of the Management Regulations.

Regulation 3 – Risk Assessment

The regulation itself, which is the legally-binding, “letter of the law”, sets out important obligations, including

- Employers must undertake a suitable and sufficient assessment of the risks to the health and safety of their employees.
- Any assessment shall be reviewed when there is reason to believe it is no longer valid or when there has been a significant change in the area/issue covered by the original assessment.

As is often the case, the more useful, practical and detailed information can be found in the accompanying Approved Code of Practice (ACOP), which is the semi-legal expert guidance.

3a(i) Hazard and risk

The ACOP explains that a risk assessment should identify the hazards and evaluate the extent of the risk posed by them. Useful definitions are given:

Hazard: something with the potential to cause harm.

Risk: the likelihood of the potential harm being realised.

Extent of risk: to include factors such as the likelihood of harm, the potential severity of the harm and the population, which might be affected.

3a(ii) Suitable and sufficient

The ACOP clarifies this general requirement to some extent, making the following points:

- The level of detail in an assessment should be proportionate to the risk.



- Employers are expected to help themselves identify risk e.g. by looking at appropriate information, legislation, manufacturers' instructions, good practice examples etc.
- The risk assessment should identify the period of time for which it is likely to remain valid.

3a(iii) Risk assessment in practice

This section sets out some general practical advice and particularly useful points include:

- The risk assessment process should be practical and take account of the views of employees and their safety reps.
- It should involve management even if advisers or consultants assist with the detail.
- It should ensure that **all** aspects of the work activity are reviewed.
- The assessment should be systematic in the identification of hazards and their relation to risk. For example, assessments may need to be done by subject (electrical, transport etc) or by geographical area.
- It should take account of the way in which work is organised.

It also sets out a sensible step-by-step process:

- Identify what the hazards are.
- Identify who might be harmed and how.
- Evaluate the risks arising from the hazards.
- Consider existing measures to reduce and control risks.
- Observe what is actually happening in the workplace.

3a(iv) Recording

Records of risk assessment are important and useful documents and this section of the ACOP says:

- The record should be an effective statement of the hazards and risks which then leads management to take relevant action to protect health and safety.
- The record should be retrievable by managers and safety reps.
- The record should include the protective and preventative measures in place to control risks.



- The record should include any further action which needs to be taken to reduce risks sufficiently.

3a(v) Review and revision

The ACOP usefully reminds readers that risk assessment should not be viewed as a “once-and-for-all” activity and also makes the following points:

- As the nature of work changes hazards and risks may change.
- Risk assessments may become invalid after e.g. a confirmed case of an occupational disease.
- Any adverse events should trigger a review of the original assessment.
- In most cases it is prudent to plan to review risk assessments regularly.

3a(vi) More specific assessments

The final part of the ACOP states that an assessment under the Management Regulations (a generic risk assessment) may identify the need for a more specific assessment under another set of Regulations e.g. Manual Handling Operations Regulations, COSHH Regulations.

3b) Regulation 4 – Principles of Prevention

This important regulation takes the risk assessment process further and addresses preventive and protective measures. Some very important principles are set out:

- Wherever possible, risks should be avoided altogether.
- Risks that cannot be avoided should be evaluated by doing a risk assessment.
- Risks should be combated at source, rather than using palliative measures.
- Work should be adapted to the requirements of individuals.
- Advances in technology should be used to full advantage.
- Risk prevention measures should be part of a coherent policy and approach.
- Priority should be given to measures, which affect the whole workforce and workplace and therefore have the greatest benefit.
- Employers should ensure that workers understand what they must do.
- Employers should foster a positive health and safety culture.



THE ROLES OF RISK ASSESSORS

Who should carry out risk assessments?

In the context of public health services the chief executive of the organisation has the overall statutory and operational responsibility for managing health and safety. According to NHS Employers a board member (ideally an executive director) should be allocated clear responsibility for overseeing health and safety risk management across the whole organisation. They believe this will show the board's commitment to the health and safety of staff, patients and visitors, and to the effective management of risk. The appointed director working on behalf of the chief executive and board should ensure appropriate risk management strategies and systems are in place, and that properly trained health and safety advisers are employed. Regular reports should be made to the board giving details concerning health risks and health and safety performance, noting emerging trends and recommending action as necessary.

Regulation 5 of the Management Regulations provides for employers to appoint "competent persons" to assist them in meeting their legal obligations. These are people who act on behalf of management and are appropriately trained for the role. Most medium-sized and large organisations will co-ordinate their risk assessment programmes through the Risk Manager or Director of Human Resources. So, for example, an NHS Trust Board can delegate some of its health and safety responsibilities to a team of trained risk assessors (i.e. competent persons) across the workplace. While there are no legal restrictions relating to how senior risk assessors should be in an organisation's management hierarchy the Department of Health did accept the National Audit Office recommendation in 2003 that all NHS employers should aim to have competent persons, accredited by the Institute of Occupational Safety and Health (IOSH) where they are responsible for the day to day health and safety of their organisation.

NHS Employers recommend the following when Trusts are looking at appointing their 'competent persons' to undertake risk assessments:

- They may be employees or outside consultants
- They must be familiar with the work of the NHS and with the special problems associated with managing a 24-hour, 365-days a year service.
- It is advisable for NHS employers to have their competent health and safety advisers in-house rather than buying in services from external organisations that have little experience of the NHS.
- There must be sufficient competent people to carry out the work



- They must be given adequate time and resources to carry out their functions, as well as adequate decision-making authority.

NHS Employers conclude “trusts will be able to achieve this by working in partnership with IOSH”.¹

Assessors need to be in a position of authority, able to make most decisions without reference elsewhere. Also to make representations at Board level when necessary, and have some budgetary access so that recommended action can be taken promptly. In physiotherapy the ideal level of risk assessors to be appointed is either at physiotherapy manager level, or employed at band 8, although band 7 physiotherapists might be involved in large departments.

It is essential that those taking on risk assessment duties of other staff should be properly trained and comfortable with their role. The training if not provided by IOSH should be comparable with that institution ensuring at least awareness of relevant legislation, pertinent local policies and practical guidelines as well as the work areas they will be expected to assess and the risks they will be assessing e.g. stress, manual handling. Therefore a one off three- hour session is most unlikely to meet the necessary requirements.

THE ROLE OF SAFETY REPS

As a result of the rights conferred on them by the Safety Representatives and Safety Committees Regulations 1977 (SRSC), safety reps have the right to be consulted in good time over all matters which significantly affect the health and safety of their members at work.

Therefore, safety reps should be consulted at all stages of risk assessment planning and implementation, including:

- The numbers and appointment of risk assessors.
- Training of risk assessors.
- Planning of risk assessment priorities and programmes.
- Invitations to attend risk assessments.
- Receiving copies of the written records.
- The arrangements for monitoring and review of assessments.

¹ Chapter 30: “Managing Risk”, page 4 from “The Healthy Workplaces Handbook: The NHS Reference Guide to Staff Well-being”, NHS Employers 2008



Ideally, these arrangements and therefore the consultation with safety reps should be through the trust or hospital Safety Committee.

The CSP's policy is that safety reps should not themselves be risk assessors for the following reasons:

- Risk assessment is a legal obligation of the employer; risk assessors are assisting the employer in fulfilling these obligations and are acting as representatives of the employer (management).
- On the other hand safety reps are independent, elected representatives of employees and their role is to represent their members' views **to** management and to ensure that management fulfil their legal obligations.
- Safety reps often have a role in assessing the adequacy and competence of risk assessments, which cover their members' work; this becomes impossible if they also conduct the assessments.
- CSP members should approach their safety rep for help and advice if they are unhappy with the outcome of an assessment or if risk assessments are not being done; they will not be able to do this with confidence if the safety rep is also the risk assessor.
- Risk assessors are often required to work within set budgets, while safety reps are often responsible for campaigning, (with and on behalf of members), for increased funding for health and safety measures, including risk assessment and reduction.

It can therefore present serious and direct conflict for a safety rep also to be a risk assessor. In addition, members who already have significant management roles, such as undertaking risk assessments, should not become CSP safety reps if they wish to continue in their roles as risk assessors. This will apply to most members who have as a primary responsibility managing (i.e. hiring and firing) of physiotherapy/support staff. Members who are uncertain about this issue may want to ring CSP Employment Relations and Union Services for advice.

ORGANISING RISK ASSESSMENTS

Planning and implementing a risk assessment programme from scratch is a daunting task for any organisation. However, it is now over a decade since the Management of Health and Safety at Work Regulations were implemented and risk management programmes should be an integral part of every organisation's health and safety strategy.



A number of factors should be taken into consideration when organising risk assessments, for example:

- Priority may need to be given to high risk areas
- Programmes may be risk-based e.g. manual handling risk assessments may be conducted throughout the organisation before moving on to another topic, such as stress.
- Alternatively, programmes may be organised by department or geographical location, looking at a range of areas of risk e.g. manual handling, stress, loneworking, light and space.
- Some risk assessments e.g. manual handling, will primarily involve observation of the work process while others e.g. personal safety for domiciliary staff will involve discussions with staff rather than direct observation.

Risk assessment is not a difficult concept and should not be over-complicated. It is a logical process of identifying hazards and putting in place sensible measures to prevent or control them.

Physiotherapy departments will usually have a number of risk assessors, the number varying with the size and structure of the department. All of these assessors should be appropriately trained and therefore competent to conduct risk assessments; they should also understand clearly that they are undertaking management duties and may have responsibilities as a result.



CHECKLIST FOR SAFETY REPRESENTATIVES

1. Are Management consulting you over risk assessment planning & implementation?
2. Are competent persons being identified and trained?
3. Are there enough risk assessors, and is their training adequate/appropriate?
4. Are you and your members being given adequate notice of risk assessments and being invited to attend them?
5. Are you receiving the written record of risk assessments?
6. Are you and your members happy with the actions being recommended following risk assessments?
7. Are agreed actions actually being implemented?
8. Are risk assessments being monitored and reviewed regularly?