

Claims Defensibility – health and safety



We can help your business to provide a safe environment for those who work for you and your visitors.

Identifying hazards and putting in place measures to eliminate or reduce and control risk is at the heart of providing a safe environment. This includes minimising the potential for accidents and incidents to occur.

These are the core elements in effectively managing health and safety:

- Leadership and management
- A trained and skilled workforce
- The creation of an environment where people are trusted and involved.

Plan, Do, Check, Act

You will need to adopt a systematic and sustained approach and your business should follow the [Plan, Do, Check, Act](#) approach. This will not only provide appropriate management systems and risk reduction measures, but should also help in the development of robust procedures and processes. This will in turn facilitate effective management of compensation claims against your organisation – i.e. claims defensibility.

Avoid falling short

Organisations can still fall short, despite using a [Plan, Do, Check, Act](#) approach, particularly, when it comes to providing evidence to demonstrate:

- Your organisation's approach to health and safety.
- That you have appropriate forums and facilities to consult and communicate with employees and their representatives.
- The arrangements for the identification of hazards, assessment and evaluation of risk and for the development and implementation of measures to control and manage risks.

- That you have procedures in place to manage risks that sit outside of usual operations, including for example, machinery and work equipment interventions (e.g. cleaning, maintenance, servicing and setting), site maintenance activities, and work away (e.g. including driving, delivery and collection, loading and unloading).
- That the hazards and risks to which non-employees (e.g. visitors, customers and contractors) are exposed have been considered and are being addressed.
- You have effective arrangements for supervision, monitoring and reviewing.
- There are adequate systems and procedures to assess training needs and for providing sufficient information, instruction and training to all employees (including any employees employed on a temporary basis, e.g. agency personnel). Including arrangements for refresher training and communication of control measures, through safe systems of work, method statements and risk assessments.
- There are emergency procedures (including first aid provision and coverage) have been established, communicated, tested and are subject to review.
- There are accident and incident recording, reporting and investigation procedures that focus on capturing the facts to establish what happened.
- And finally, that your organisation is learning lessons from previous near misses, accidents and incidents, taking corrective action or implementing additional controls. Evidence of inaction is always likely to prove problematic and that the potential for future accidents and incidents is recognised and considered.

Why you need to document systems and procedures

It's critically important that your formal documented systems, processes and procedures reflect the reality of your arrangements for health and safety.

For example:

- A documented safe system of work will carry no weight if doubts are raised about its implementation and application in practice, particularly if this is supported by evidence to suggest shortcuts have been condoned by management or others with health and safety responsibilities.
- If plans and policies identify requirements relating to supervision, information, instruction and training, you must follow up on these.
- If risk assessment reviews and other tools for monitoring health and safety performance identify a need for action or additional control measures, plans for follow-up and implementation must be formalised, with actions allocated and formally signed off on completion.
- Where a need for health surveillance is identified through risk assessment, it must be acted on, with adjustments and controls made if identified to be necessary.

- Disciplinary procedures relating to health and safety matters will be of limited value if reliable evidence indicates that they are not being followed or enforced. A disciplinary process that is communicated and implemented can support a proactive approach to risk management, and evidence that poor practice is not condoned.

Behavioural safety procedures that identify and reinforce safe behaviour and reduce and discourage unsafe behaviour are increasingly recognised as being key to improvements in health and safety performance.

Keeping evidence for claims defensibility

Here are some examples of evidence that you should look to keep:

- Safe systems of work (including permits to work) and / or method statements.
- An up to date Health and Safety Policy (that means reviewed at least once a year) that sets out your commitment to managing health and safety effectively, clearly identifies roles and responsibilities and arrangements that reflect the reality of your operations. The Policy should be signed and dated by the most senior person in the organisation.
- Risk assessments, including evidence of review (following a process change, accident or incident, changes in personnel and periodically – at least annually is suggested, for example) and formal communication that confirms understanding.

It is important that:

- all hazards are identified and evaluated;
 - appropriate controls are implemented for all activities, people, tasks, departments and areas of operation including work away from your premises;
 - less frequent activities including maintenance, repair and cleaning for example, are considered; and
 - the needs of vulnerable persons (young persons, people with a disability, inexperienced or temporary employees etc.) are considered.
- Training records that include the date(s) and extent of the information, instruction and training provided, the name and position of the person(s) giving the training. Any training certificate attained from an external training provider, or the employee's signed acknowledgement to signify that the objectives are understood and their responsibilities to follow the requirements of the training and any associated information and instruction should also be retained.

It is important not to rely on training matrices, with records that only illustrate the content of any training delivered, or those that attended, as these do not provide for confirmation of understanding. Registers listing attendees are also insufficient, in that they do not provide for confirmation of understanding.

Whilst sitting at the bottom of the hierarchy of control Personal Protective Equipment (PPE) may be one of a combination of control measures implemented. When it is, it is essential that information, instruction and training covers its use, maintenance, cleaning and arrangements for storage and replacement for example.

- Examples of records to evidence both active and reactive monitoring include:
 - Job or task safety observations
 - Workplace / premises safety inspections
 - Inspections (pre-start, shift change and as part of planned preventative maintenance for example) of work equipment, including guards, other protection devices, start and stop controls.
 - General work equipment, premises and fixture and fittings maintenance, servicing and inspections, including statutory inspections, inspections of racking systems and access equipment for example.
 - Cleaning and housekeeping records.
 - Health and safety bulletins and toolbox talks.
 - External health and safety inspections and / or audits.
 - Accident and incident investigation reports, including photographs and witness statements where appropriate.
 - Disciplinary or details of other corrective action taken in the event of non-compliance with health and safety rules and procedures.
- Occupational health surveillance records, where occupational health provision is identified to be appropriate based on risk assessment. Baseline assessments at to establish an employee's health status at the beginning of their employment may also be appropriate and a useful means of monitoring the effectiveness of control measures.
- Pre-qualification records relevant to the selection, appointment, control and supervision of contractors, including for example relevant job specific risk assessments and method statements, references relating to similar work, training records and evidence of competencies, site / premises induction training / site rules communication and details of Employers' and Public Liability insurance, with adequate limits of indemnity.
- Visitor induction training and communication of site rules.

Other hints and tips

- When an accident or incident does occur, it is critical to ensure that physical and digital evidence (CCTV footage, photographs etc.) are retained / secured. In some situations, (work in a public setting for example) photographs can also be useful to illustrate that a site or work location has been left in a safe condition.
- Timing is everything, both in respect of your own internal investigations, evidence gathering etc., and external agencies, including your insurance company. In the case of an accident / incident where there is potential for regulatory intervention, considerations such as legal privilege may require expert intervention, and early contact with your insurers through your insurance brokers can help ensure that timely decisions are taken.
- Delayed notification to insurers can bring with it multiple challenges further down the line, with potential for processes to change / evolve, witnesses recollection of the events to diminish or change over time, and in some cases it may be the case that witnesses and others with key information (work equipment and machinery maintenance, training delivery etc.) move on, before a thorough investigation has been completed.

- Ensure that arrangements for the reporting, recording and investigation of accidents include identification and communication of responsibilities for the collating of relevant information, documentation and other evidence, and communicating with relevant external agencies, including insurance brokers and insurers. It's a good idea to appoint suitable senior employees within your organisation for this purpose.
- Co-operate with claims investigators and / or legal representatives appointed in conjunction with your insurers.