

# *MacWilliam Associates*

*Established 1993*

***Health & Safety – Fire Safety – Food Safety – HR***



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Welcome to our spring newsletter, its been a long winter but Easter almost merges with The Royal Wedding and brighter days ahead where the risk of slipping on snow and ice melts away for another year (we hope) to be replaced by the pot holes and tripping hazards the frosts have left behind.

The Government have slashed their funding to the HSE and banned all safety campaigns including the award winning "Hidden Killer" campaign initiative. Now it seems the number of safety inspectors are likely to be cut. While this may delight those who think we live in a "Nanny State" and refer to "Elf and Safety" its likely to increase the amount of serious accidents in the workplace

Look out for some new recommendations on the control of E.Coli 0157 which may require the purchase of extra equipment such as slicers and mincers if you are currently using them for cooked and raw foods.

Subjects covered in this newsletter include -

- Potential changes to RIDDOR
- Where Manual Handling is still a cause for concern
- New guidance on the management of E Coli 0157 Control
- Further news and comments on HSE cutbacks
- Case studies on safety issues
- The law on employment health questionnaires

If you have any questions or queries on topics discussed in this edition please do let me know

Keep safe!

*Tim MacWilliam*

## Potential Changes to RIDDOR



The Health and Safety Executive (HSE) has published a consultative document with proposed amendment to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) A change that was posited in Lord Young's *Common Sense, Common Safety*. If adopted, the period of incapacitation after which an injury must be reported to the enforcing authority will change from over three to over seven days. Internal records of over three day accidents would remain.

Although this may lead to less paperwork and the number of reports not everyone is in agreement. Roger Bibbings from ROSPA argues that the effect on a small firm would be to stretch the average period between having to make a RIDDOR report from 45 months to 15 years.

The time saved would be small compared with the administrative effort still required in the wake of most accidents. Additionally, by making absence-based RIDDOR reporting a rare event for most businesses, the change may serve to increase the work necessary for familiarisation with the new requirements.

Instead the following was suggested -

A more radical approach, focusing on the internal recording and investigation of ill health and serious incidents

Restriction of direct reporting to the HSE to fatalities, major injuries and dangerous occurrences

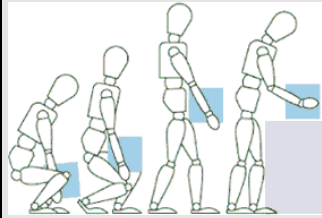
A major updating of the notifiable dangerous occurrences list periodic HSE sample survey to ascertain the prevalence and causes of accidents and ill health

At this stage the potential changes are just at a consultative level and you can still have your say on this by contacting the HSE or ROSPA.

Further information will be released once an opinion has been gathered

We would also love to hear your views on this matter [tim@macwilliam.co.uk](mailto:tim@macwilliam.co.uk)

## Manual Handling Shock Statistics



Lifting and carrying of loads continues to cause a significant number of injuries throughout industry and more than thirty per cent of food and drink manufacturing injuries occur because of poor manual handling?

Lifting and handling products may sound straightforward, but the reality is that around well over fifteen hundred serious injuries are sustained annually as a result of manual handling within this one industry alone. That figure doesn't include slips, trips and falls, transport accidents and machinery-related injuries. The human and financial cost of accidents can have a severe and prolonged impact on any organisation.

- Stacking and un stacking wheeled containers
- Pushing wheeled trolleys
- Handling Containers
- Packing Products
- Cutting or boning food products

Consider also the implications of noise and repetitive strain injury within a busy environment where lifting and carrying take place and the likelihood of injury increases again

Although risk can never be eliminated entirely, it can be managed and controlled successfully with the right tools through training and a thorough understanding of the benefits that regular risk assessments can bring.

## **The Health and Safety Executive (HSE) is proposing to reduce unannounced workplace inspections by a third**

A leaked letter from the HSE outlines plans to withdraw inspections from entire sectors of industry, including some where "significant risk" remains.

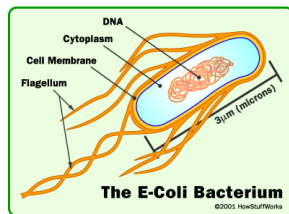
The organisation is facing a 35% cut in its government grant, leading to concerns for workplace safety. The HSE said no final decision had been made.

HSE inspectors and their counterparts in local authority environmental health departments carry out thousands of visits to business premises each year.

The unannounced "knock on the door" has traditionally formed a key aspect of the HSE's approach to regulation, and is credited with helping to prevent accidents and reduce the number of workplace deaths, which currently stand at an all-time low.

A number of safety organisations have reacted with alarm to the news and insist lives maybe at risk. The British Safety Council have demanded a full debate on the issue

## New Guidance on E Coli 0157



The Food Standards Agency has issued guidance to clarify the steps that food businesses need to take to control the risk of contamination from the food bug E.coli 0157.

Serious outbreaks of E.coli in Scotland in 1996 and Wales in 2005 resulted in serious illness in some individuals and, in a few cases, death. These outbreaks were attributed to cross-contamination arising from the poor handling of food. This guidance has been developed to remind food businesses what they should be doing to protect their customers from the serious consequences of E.coli food poisoning.

Many businesses will already be following the steps contained in the guidance but it is intended to provide reassurance that they are doing everything they can to prevent cross-contamination.

However, Roger Kelsey, chief executive of the National Federation of Meat & Food Traders said his organization had been disappointed with the consultation process. Kelsey told Meat Trades Journal: "The actual report and the implications of the recommendations are draconian.

The guidance will be used by local authority food safety officers when inspecting businesses in their area

*it is stated in the guidance that complex equipment such as vacuum packers, slicers and mincing machines should never be used for both raw foods and ready-to-eat foods. This could have an immediate impact on businesses using such expensive items of equipment.*

*Separation of staff handling raw and ready-to-eat foods – if staff have to do both, they must ensure that they have separate aprons, cleaning materials, even pens for jobs involving raw meat preparation.*

*Effective cleaning and disinfection – prescribed standards for sanitizers which must meet BS EN 1276:1997 or BS EN 13697:2001 but they must be applied to visibly clean surfaces, in the correct dilution and left on for the necessary contact time.*

*Personal hygiene measures and hand washing –this means you need to check that your basins are properly stocked (anti-bacterial hand wash is recommended, but not mandatory). There must be a procedure to make sure that hands are not re-contaminated after washing by contact with dirty taps – this could be another capital expenditure if foot or elbow operated or infra-red taps are to be installed.*

Although E.coli 0157 is the key focus of this guidance, the measures outlined will also help in the control of other bacteria, such as campylobacter and salmonella.

Most strains of E.coli are harmless, but the strain called *E.coli O157* can cause severe illness. E.coli 0157 (and other similar toxin-producing E.coli) are transmitted through eating, drinking or contact with undercooked minced beef and milk that is unpasteurised, hasn't been pasteurised properly, or has been contaminated after pasteurisation. Great care should also be taken with vac packs.

It's also possible to become infected by direct contact with people or animals that are infected, or with land contaminated with animal faeces.

EHO's have been told they **must** intervene "in circumstances where it is identified that critical cross-contamination controls are inadequate". So it is very important that businesses read the guidance and carry out an internal check to make sure that they are complying – if you would like further information please e mail [tim@macwilliam.co.uk](mailto:tim@macwilliam.co.uk)

## News in brief

*Here are two case studies that involve hazards of varying types all contain their own warning. Good safety management and procedures are an absolute "Must" in any workplace.*

### **Restaurant pays the penalty after ignoring safety advice**

An inspector from South Derbyshire District Council was left with no option but to prosecute a restaurant proprietor who ignored advice to control trip hazards in the workplace.

During a routine visit an environmental health officer issued an Improvement Notice requiring a restaurateur to remove tripping hazards from a storeroom. The notice was complied with, but the proprietor was further advised to ensure that the premises were kept free from such hazards.

Another visit seven months later revealed that the inspectors advice had been ignored, as serious tripping hazards were seen, such as an electrical cable trailing across a step and an untidy storeroom regularly accessed by staff to obtain items such as toilet paper and the highchair provided for customer use.

The inspector successfully prosecuted the restaurant for the health and safety offence using the Workplace (Health, Safety and Welfare) Regulations 1992 and for food hygiene offences. The case was heard by a District Judge who stated that the safety of employees is imperative. He said the tripping hazards, particularly the trailing cable, were 'an accident waiting to happen'. The proprietor was fined £1000 for the health and safety offence, with lesser fines given for the Food hygiene offences. Full costs were also awarded to South Derbyshire District Council.

### **A Cook becomes Asthmatic after inhaling flour**

A 46-year-old school cook developed breathing problems after working with flour in the school kitchen. The room was small with poor ventilation. Her breathing problems became so severe that she could hardly walk. She had to sleep sitting up. Her daily job included dough making in a large mixer. There were no controls for the flour dust.

The cook contacted her union, which supported her with a compensation claim on the basis that decent working conditions were not provided. The council admitted that it had not taken sufficient action over the problem despite repeated complaints. HSE was not involved.

The cook became severely asthmatic. She had to retire early on health grounds, and the courts eventually awarded her £200,000 in damages. But the money will not bring back her health. While she was able to move out of town, she rarely leaves the house. She faces a very restricted lifestyle.

Suitable health checks, ventilation and where appropriate masks should be issued by an employer whatever the cause of dust

## **Employment Law**

### **Employers can no longer ask applicants pre-employment health questions.**

The Equality Act 2010 came into force on 1 October 2010. While it is largely a consolidation of existing law, it does include some significant changes. In particular, the Act includes a general prohibition on employers asking pre-employment health questions. There are several exceptions to the prohibition and it remains to be seen exactly how it will work in practice as the provisions leave some scope for interpretation by courts and tribunals. What is clear, however, is that the new provisions are likely to have a significant impact on the role of OH professionals in the recruitment process.

In this article, we consider some of the key issues surrounding the Act, focusing on how OH professionals can ensure compliance and how it might affect confidentiality obligations.

### **Background**

The provision prohibiting pre-employment health questions was inserted into the Equality Act at a fairly late stage of its progress through Parliament. It was included following significant pressure from disability pressure groups, which maintain that the area in which discrimination is most common (as well as being hardest to detect) is during the recruitment process. It was felt that employers often made unfair decisions on recruitment on the basis of health issues disclosed at an early stage, particularly in relation to mental health. According to RADAR, the Disability Network, the regulation of pre-employment medical questionnaires would probably be "the single biggest difference and improvement that could be made" for disability rights through the new equality legislation. The provisions took various forms as they passed through Parliament, but the final version, which came into force on 1 October, is broader than many had anticipated.

### **Prohibition**

Section 60 of the Act provides that, other than in certain circumstances, employers must not ask about the health of job applicants before making a job offer.

This means that employers should not ask applicants to complete medical questionnaires at an early stage of the recruitment process - and should certainly not be asking OH professionals to get involved in assessing an employee's health or fitness until a job offer has been made, other than where a specific exception applies.

This "freestanding" legal requirement has a complex interface with discrimination law.

Asking prohibited questions will not, in and of itself, amount to discrimination against a job applicant. However, if inappropriate questions are asked, the burden of proof will fall on the employer to show that no discrimination took place as a result or that the candidate was rejected because of the consequences of a disability rather than because of the disability itself. The former might be justifiable, the latter is not. In addition, the Equality and Human Rights Commission may independently investigate and take enforcement action against employers that are in breach. This is most likely to happen to persistent offenders.

### **Adjustments during the application process**

Employers are permitted to ask questions about health if it is necessary to do so in order to establish whether or not any adjustments need to be made during the recruitment process. For example, do any special access arrangements need to be made for an applicant to attend an interview? If applicants have to carry out any kind of assessment as part of the recruitment process, do particular allowances or arrangements have to be made to ensure that a candidate is not put at a disadvantage?

Ideally, information in this regard should not be requested at the initial application stage and should be sought only once a candidate has been selected to attend for interview. Candidates should be asked if there are any adjustments required, not whether or not they have a disability. When the information is requested, employers should try to ensure that the information is not made available to the people

making the recruitment decision. Clearly, in some circumstances this will simply not be practicable (for example, if a candidate uses a wheelchair or has another readily apparent condition). In such cases, - employers must be careful not to let the knowledge of the fact that an applicant needs adjustments influence the recruitment decision.

Employers will need to remember that this exception applies only where the questions asked are "necessary" for establishing if adjustments must be made. If there are no particular issues involved in the recruitment process, it may simply be unnecessary to make enquiries about adjustments at this stage. Employers may look to OH to advise on this.

### **Monitoring diversity**

Employers can still ask questions about applicants' disabilities to monitor the diversity of their workforce. Diversity monitoring forms should be kept separate from other recruitment documents and should ideally not be made available to any decision-makers in the recruitment process.

It is acceptable to ask if the candidate can perform functions that are intrinsic to the role. The exception that is likely to be relied upon most heavily is the provision that allows employers to ask pre-employment health questions that are "necessary" to establish whether or not a candidate "will be able to carry out a function which is intrinsic to the work concerned".

The obvious question surrounds the meaning of the words "necessary" and "intrinsic". When does an important part of a job become intrinsic? And when is it actually necessary to ask questions? Unhelpfully, the legislation does not provide answers to these questions and, although some official guidance has been published, this is likely to be the subject of a large amount of litigation. This is an area where employers and OH advisers can usefully work together to determine an appropriate approach in relation to particular roles. OH professionals can assist employers in establishing the key duties for a particular role and targeting appropriate questions accordingly.

In most office-based jobs, the functions that are truly intrinsic to the role are likely to be few and far between. For example, in a secretarial role applicants would need to have secretarial skills (typing, word processing, etc). Establishing candidates' ability to carry out those parts of the role need not involve asking health questions. Employers can ask individuals to carry out typing tests (subject to any reasonable adjustments being made, for example, adjustments to speed requirements for RSI sufferers), provide certificates as evidence of qualifications and ask for references from previous employers to establish their suitability for the role. If a candidate can get through a selection process in this way, it is fair to assume that any disability for which reasonable adjustments might need to be made will not prevent him/her from carrying out the role and it would be unnecessary for employers to ask health questions.

If, on the other hand, a candidate is applying for a job on a building site in which it is necessary to climb onto scaffolding, an employer may consider it necessary to ask a candidate whether he/she has any condition that would hinder such activity. The issue then becomes - how can an employer most safely frame the question? Should they ask "Do you have any problems that would prevent you from climbing scaffolding?" or should they ask about a number of specific conditions that they are aware may affect his/her ability to carry out the role?

The guidance to the Act indicates that, even in this kind of situation, the employer should focus on the relevant skills rather than a possible disability - for example, by asking candidates whether they have experience of climbing scaffolding in previous jobs rather than by focusing on health issues that may prevent them from doing so. While this seems an over-cautious approach and the guidance is not actually binding, it may provide some insight into the approach that tribunals will take.

As a rule, questions about current health are much more likely to be considered "necessary" than questions about past health. Employers should avoid asking questions that start with: "Have you ever suffered from..."

### **Conditional job offers**

Employers are still permitted to make job offers conditional on satisfactory health checks. Therefore, employers may still ask health-related questions and require employees to undergo medical checks once a job has been offered.

However, care should still be taken in relation to how any information obtained is used. Employers should consider carefully why they are asking each question and what they will do with the information they receive. If questions or a medical check reveal a condition that will affect an individual's ability to carry out the role for which he/she has been recruited, the employer will need to consider reasonable adjustments. This may require cooperation between the employer and OH, including discussions around how certain adjustments will assist the individual.

If there are no reasonable adjustments that can be made, it is possible for the employer to withdraw the job offer. Withdrawing an offer should always be an absolute last resort and employers should give careful consideration, in discussion with OH, to possible adjustments to accommodate the individual and/or avoid claims.

### **Confidentiality of information**

The Act has not made any change to the previous position in relation to confidentiality of patient information between OH advisers and the employer. OH will not often be involved at the early stages of recruitment under the new provisions, and may not have been in the past in some organisations. However, given the additional protection available to disabled employees under the Act, employers should be turning to OH for fuller advice during the later stages of the recruitment process more regularly. *Source Personnel Today*

*Information Sources ROSPA; CIEH; RSPH; HSE; IOSH Personnel Today*

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