

# Scottish Construction Safety Group

## Legal update - Stress and Fatigue

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# Introduction

- **Stress**
  - Background
  - Legal obligations
  - Compliance and good practice
  - Enforcement
  
- **Fatigue**
  - Background
  - Legal obligations
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# STRESS

# Health priority plans

- HSE have three health priority plans in place
  - Occupational lung disease
  - Musculoskeletal disorders
  - **Work-related stress**
- In relation to work-related stress, HSE are hoping to see employers take a more significant role

# Mental Health – 2017/18 Statistics

- Impact of stress, depression or anxiety
  - Most commonly reported cause of work-related ill health with 600,000 cases – 44% of all cases
  - 12.8 million working days lost – 57% of all working days lost due to ill health
  - Contrast with the 4.7 million working days lost due to workplace injuries
- Causes of stress, depression or anxiety
  - Excessive workload - 44%
  - Lack of support – 14%
  - Violence, threats of bullying – 13%
  - Changes at work – 8%.

# Mental Health – Construction

- More than one construction worker a day takes their own life
- 3 times higher than the UK rate for men
- Possible causes:
  - Working away from home and family
  - Long hours
  - Drink, drugs and online gambling
  - Unforgiving culture
  - Job insecurity

# What is Occupational Health and Wellbeing?

- Occupational health
  - A branch of medicine that focuses on the physical and mental wellbeing of employees in the workplace.
  - The aim is to encourage safe working practices, monitor the health of the workforce and support the management of sickness absence.

# What is Occupational Health and Wellbeing?

- Wellbeing
  - No single definition of what is meant by wellbeing.
  - In a recent report, the British Safety Council adopted a working definition of:
    - *“A description of an individual’s ongoing state which enables a person to thrive or not”*
  - However, the BSC also warned that wellbeing is becoming a “ubiquitous catch-all term” which may become nothing more than “incoherent programmes of free bananas.”

# Legal Obligations

- Employers are subject to a number of obligations under health and safety law.
- Health and Safety at Work Act 1974 s.2(1)
  - *“It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.”*
- This is a general obligation which is supplemented by regulations.

# Legal Obligations

- Management of Health and Safety at Work Regulations 1999
  - Regulation 3
    - Every employer shall make a suitable and sufficient assessment of ... the risks to the health and safety of his employees to which they are exposed whilst they are at work

# Legal Obligations

- Management of Health and Safety at Work Regulations 1999
  - Regulation 5
    - Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

# Compliance and Good Practice

- HSE Guidance:
  - HSE Management Standards
  - Tackling Stress Workbook
  - Template Risk Assessments
- Going above and beyond:
  - Wellbeing initiatives
  - Health monitoring (carrying out regular health checks where there is no legal requirement)

# HSE Management Standards

- HSE's Management Standards establish a framework to help employers tackle work-related stress and reduce the incidence and negative impact of mental ill-health.
- They cover six key areas that, if not properly managed, are associated with poor health, lower productivity and increased accident and sickness absence rates:
  - Demands
  - Control
  - Support
  - Relationships
  - Role
  - Change

# HSE Action on Mental Health

- The HSE has updated its guidance for line managers on dealing with employees who experience mental health difficulties. Their guidance includes:
  - Talking to employees as soon as line managers notice they are having difficulties
  - Concentrating on making reasonable adjustments rather than understanding the diagnosis
  - Advice on coping strategies and advance statements (where people explain how they want to be treated should they become ill)

# HSE Action on Mental Health

- HSE's health priority plan proposed conducting pilots in sectors with high reports of work related stress and promotion of the Management Standards
- In the meantime, HSE has updated its guidance on first aid to include mental health in the first aid needs assessments that employers must carry out. However, a recent HSE report raised doubts about the effectiveness of this first aid.

# HSE Enforcement on Mental Health

- So far, there have been few signs of HSE using its enforcement powers to deal with mental health in the workplace
- Mental health problems are not reportable under RIDDOR, so HSE will not be aware in most (though not all) cases

# New Operational Guidance

## Reporting a concern

- Employer
- ACAS
- Equality and Human Rights Commission
- Equality Advisory and Support Service
- Police
- HSE
  - A number of staff experiencing work-related stress or stress-related ill health

# France Telecom

- Bullying and harassment used by senior management to encourage workers to quite or accept reassignment
- 19 suicides, 12 attempted suicides, 8 cases of acute depression and stress
- Prosecuted under French employment law
- Senior Execs given prison sentences and fines
- France Telecom given a multi-million pound fine
- UK next?

# ISO Guideline on Psychological Health and Safety in the Workplace

- A new guideline is due to be published on 24 February 2021
- There is already a BSI code of practice in place on the same topic
- Not legally binding – but will inform best practice

# FATIGUE

# What is fatigue?

- The decline in mental and/or physical performance that results from prolonged exertion, lack of quality sleep or disruption of the internal body clock. The degree to which a worker is prone to fatigue is also related to workload
- Consequences – reduced alertness, poor and slow perception and sleepiness, errors and accidents

# Impact of fatigue?

- Implicated in 20% of accidents on major roads
- Costs £115-£240 million per year in terms of work accidents.
- Studies show that accidents are more prevalent at the end of shifts, and at the end of tours of shift work.

# Legal Obligations

- **Working Time Regulations 1998**
  - Limits average working week to 48 hours – opt out available
  - Night work – shifts limited to 8 hours, free health assessments
  - Rights to rest, days off, rest breaks and leave
- **Sector specific rules**
  - Sea and air transport, fishing,, railways, mobile workers in inland waterways, and hauliers

# Legal Obligations (2)

- **Health and Safety at Work etc Act 1974**
  - Employers
  - Section 7 duty?
- **Management of Health and Safety at Work Regulations 1999**
  - Assess the risk posed by the number of hours worked and the way that working time is scheduled and take measures to reduce those risks.

# Compliance and Good Practice

- **Managing Shiftwork (HSG256)**
  - any work pattern other than 8 hours between 7 am and 7 pm
- **Consider risks and benefits**
- **Establish system to manage risks**
- **Conduct risk assessment**
- **Mitigate risks**
- **Review arrangements**

# Compliance and Good Practice (2)

- **Workload** – mental and physical demands
- **Work activity** – variety is key
- **Shift pattern** – avoid permanent nights, rotating schedules – forward if possible, every 2-3 days
- **Shift timing** – night shifts are hardest, consider transportation for early mornings/late finishes
- **Shift duration** – limit to 8 hours

# Compliance and Good Practice (3)

- **Rest breaks in shift** – frequent short breaks
- **Rest between shifts** – 11 hours, days off
- **Physical environment**
- **Management issues** – supervision, training, comms
- **Welfare** – occupational health and lone working

# HSE Fatigue and Risk Index Calculator

- Rotating shifts, split shifts and on call working
- Fatigue index – probability of high levels of sleepiness
- Risk index – relative risk of an incident
- Use to compare work patterns or to look for duties with a higher risk of fatigue
- HSE use it after accidents!

# Driving

- **HSE Guidance – Driving at Work**
- **RoSPA Guidance**
  - Safer Journey Planner
  - Driver Fatigue and Road Accidents
- **Problem areas**
  - Long journeys on monotonous roads
  - 2 am to 6 am
  - 2 pm to 4 pm
  - After long work hours, especially night shift

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