



Wilkins Health & Safety Services

How is Health and Safety Law Enforced?

Enforcing Authorities for Health & Safety at Work

The task of ensuring that health and safety at work law is enforced is shared between the local authorities (LAs) and the Health and Safety Executive (HSE).

The LAs cover the mainly commercial activities, which include shops, warehouses, offices, hotels and catering, sports, leisure, consumer services (launderettes, hairdressers, undertakers, shoe repair, tyre and exhaust fitters), residential care homes and churches. Officers from each LAs Environmental Health Services look after these businesses.

The HSE covers the mainly industrial activities, factories, building sites, mines and quarries, agriculture, railways, chemical plant and offshore and nuclear installations. They also cover fairgrounds.

What Activities Do Inspectors Carry Out?

They seek to prevent workplace occupational accidents and ill-health by:

- Inspecting workplaces to make sure that risks are properly managed
- Investigating accidents, occupational ill-health and dangerous occurrences
- Investigating complaints about working conditions or work practices
- Making recommendations of good practice
- Helping people meet their legal responsibilities
- Acting as a source of advice on any aspect of health and safety
- Promoting awareness/knowledge of safety issues through campaigns, newsletters, seminars or training courses
- On occasions ensuring that certain actions are taken by way of formal notices
- Taking legal proceedings where it is the public interest to do so

How Do Inspectors Go About a Visit?

This depends on why the visit is being made and the type of workplace being visited.

General inspections are influenced by the extent of risk to both employees and the public. As a rule, places with more serious risks, or risks that have been poorly controlled in the past, will be visited more often.

All notifications of accidents, ill health and dangerous occurrences are assessed to see if a visit is needed. Decision factors will include the severity of the injury, potential for recurrence, extent of possible breaches of legislation, type of accident, the past record of the business and any remedial action taken.

Unannounced inspections are usually made. Where necessary the Inspector will make by appointment. They will probably want to talk to managers, supervisors, employees, health and safety representatives and other interested persons. In addition to looking around your premises, Inspectors will examine safety-related paperwork such as:

- health and safety policy statement (if applicable)
- written risk assessments (if applicable)
- plant maintenance and inspection records
- training records
- accident and health records

Inspectors are under a legal obligation to tell employees about issues affecting their health, safety or welfare at their workplace. This may be done verbally at the time of visit or by sending a copy of any correspondence to employees.

At the end of the visit the Inspector will outline what further action, if any, is going to be taken. In any correspondence we will seek to provide you with useful and relevant advice on what you need to do.

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What Happens If The Inspector Finds Something Unsafe or Against The Law?

Inspectors are trained to seek consistency in their actions and follow set procedures so that employers in similar circumstances should be treated in a similar way. At a national level consistency is promoted by the Health and Safety Commission through the Health and Safety Executive Local Authority Unit. National guidance is issued to Inspectors. An Annual Report on LA enforcement activity is produced.

The main aim of the Inspector is to help and advise but formal enforcement action may need to be taken. The Inspector will consider a number of factors in deciding what action to take, including:

- the degree of risk
- the seriousness of the legal contravention
- past record and general attitude to health and safety
- if there has been a blatant disregard for the law
- if there is sufficient evidence

Formal enforcement powers include the issue of Improvement or Prohibition notices:

- Improvement notices tell you what the problem is and require things to put right within a certain time. The Inspector would usually discuss the time limit with you and explain how to get it extended if there is good reason.
- Prohibition notices tell you what the problem is and require you to stop doing something until things are put right. These are only issued if it is considered that there is a risk of serious injury.

Notices will contain, or have attached, an explanation of what you must do to comply. You are often allowed to use a different but equally effective alternative. When notices are issued, a copy will be provided for any employees. The law requires some notices to be put in a register, which is open to public inspection. Failure to comply with a notice is a serious offence and is likely to lead to prosecution. If you appeal against an Improvement Notice it is suspended until the appeal is heard. A Prohibition Notice usually remains in force until the appeal is heard. An appeal form will be enclosed with either type of notice.

The Inspector can also decide to prosecute any company and/or individual breaking the law.

Prosecution is more likely where there:

- is a blatant disregard for the law (particularly for economic reasons)
- is reckless disregard for the health and safety of workpeople and others
- have been repeated breaches of legislation and management is neither willing nor structured to deal adequately with these
- has been a serious accident or a case of ill-health arising from a substantial legal contravention
- or where:
- a particular type of offence is prevalent in an activity or area
- a particular contravention has caused justifiable, serious public concern

The laws that Inspectors enforce take account of the costs of what you are required to do. This means that the action required must be in proportion to the risks concerned.

The leaflet, 'What to do when an Inspector calls' can be viewed on the HSE website. www.hse.gov.uk/pubns/hsc14.htm

What Powers Do Inspectors Have?

The law gives Inspectors a wide range of powers, including the power to:

- enter premises at any reasonable time
- carry out examinations and investigations
- take measurements, photographs and samples
- take possession of an article (telling you why and giving you a receipt)
- have articles dismantled and tested

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- require information and take statements
- inspect and copy documents

What Standards Can You Inspect From Inspectors?

They will:-

- be courteous
- be fair and consistent
- tell you their name, show you a 'Certificate of Appointment' or ID card when they visit
- tell you their name when speaking on the phone
- give help and advice whenever required

The Regulation of Health & Safety

The **HEALTH AND SAFETY AT WORK ETC. ACT 1974** is the basis for British health and safety law. The Act sets out general duties which employers have towards employees and others, and employees have to themselves and others.

The principle of 'so far as is reasonably practicable' qualifies these duties. This means that the degree of risk in a particular workplace or work activity needs to be balanced against the:

- time
- trouble
- cost
- and physical difficulty

of taking measures, to avoid or reduce the risk.

What the law requires is what good management and common sense should lead employers to do anyway - to look at what the risks are and then take sensible (control) measures to tackle them.

The **MANAGEMENT OF HEALTH AND SAFETY AT WORK REGULATIONS 1999** generally make more explicit what employers are required to do under the Health and Safety at Work etc. Act 1974. Like the Act, they apply to all work activities. The main requirements are to:

- carry out a risk assessment
- make arrangements for implementing the health and safety measures identified as necessary by the risk assessment
- appoint a competent person to keep you up to date with your H&S requirements
- set up emergency procedures
- provide information and training to employees
- co-operate with other employers sharing the same workplace

Risk assessment forms the basis for most recent health and safety law.

Some of the main regulations generally apply, are:

- Workplace (Health, Safety and Welfare) Regulations 1992
- Health and Safety (Display Screen Equipment) Regulations 1992
- Personal Protective Equipment (PPE) Regulations 1992
- Provision and the Use of Work Equipment Regulations 1998
- Manual Handling Operations Regulations 1992
- Health and Safety (First Aid) Regulations 1981
- Health and Safety Information for Employees Regulations 1989
- Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 1995

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- Electricity at Work Regulations 1989
- Control of Substances Hazardous to Health Regulations 2002
- Employers' Liability (Compulsory Insurance) Regulations 1969

Note: these Regulations are not all qualified by 'reasonable practicability'.

Where existing arrangements need to be supplemented, there are three main options for the Health and Safety Commission or Executive:

Guidance

It can be specific to the health and safety challenges of a whole sector or of a particular process in a number of sectors. The main purposes of guidance are to interpret the law, to help people comply with the law and to give technical advice. Following 'guidance' is not compulsory and employers are free to take other action. However, following guidance will normally be enough to comply with the law.

Approved Codes Of Practice (ACoPs)

These offer practical examples of good practice and give advice on how to comply with the law. They have a special legal status. If employers are prosecuted for a breach of health and safety law, and it is proved that they have not followed the relevant provisions of the ACoP, a court can find them at fault unless they can show that they have complied with the law in some other way.

Regulations

Regulations are law, approved by Parliament. Some risks are so great, or the proper control measures so costly, that it would not be appropriate to give employers discretion in deciding what to do about them. Regulations identify these risks and set out specific action that must be taken.

Employment

Health and safety law is often concerned with the relationship between employers and employees, essentially arising out of the 'contract of employment' agreed between them. There is no simple test for establishing whether a person is working under a contract of employment or not. In general terms however, the existence of a contract of employment should be gauged by reference to several criteria:

- whether a person for whom the work is being done controls the way in which the work is done;
- whether a worker is, in essence, working as part of the other person's business, integrated into the organisation of the business;
- whether, there are signs that the worker is trading in his/her own right (i.e. as a self-employed person) e.g. whether s/he takes a degree of financial risk, is insured, provides his/her own tools/equipment etc. or provides his/her own assistants.

Safety Duties And Liabilities

There exists the possibility of both criminal and civil liability.

Criminal liability arises from the commission a breach of a statutory duty. Statutory duties are found in Acts of Parliament such as the Health and Safety at Work etc. Act 1974 and Regulations made under it. The proof of evidence required is 'beyond reasonable doubt'.

Civil liability arises from an act or omission recognised in law as giving one individual (or company) the right to pursue a legal claim against another. In health and safety this will principally involve negligence and/or breach of statutory duty. The duty of care required by common law is that a person takes 'reasonable care' if he is in a situation where, if he were to fail to take such care, it can be foreseen that somebody else might suffer injury or loss. Negligence can therefore arise out of a positive act or, alternatively, an omission or failure to act. Cases are decided on the 'balance of probability'.

Criminal or civil cases can expose a business to significant financial loss directly or through damage to reputation. This may threaten its survival.

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More information, including what business must do by law, can be found in free leaflets on the [Health and Safety Executive Web site](#).