

Workplace Transport Best Practice

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- and what happens if you don't adopt it!

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27 November 2008

Introduction

- Civil Law requirements
- What does that tell us about best practice?
- Case Study: “Man on mobile scissor lift.”
- Criminal Law requirements
- Case studies:
 - Side-loaders and Traffic routes
 - Loads and unloads
- Corporate Homicide (briefly!)

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Problem, what problem?

- HSE figures signify the content and significance of it.
- Your premiums are affected.
- You are liable to incur fines.
- Your reputation and brand can be damaged.

And it may be that your Company is in the dock!

Civil liability and how to avoid it

A. Main statutory provisions:

- Workplace (Health Safety & Welfare) Regulations 1992

S. 17

- (1) Every workplace shall be organised in such a way that pedestrians and vehicles can circulate in a safe manner.
- (2) Traffic routes in a workplace shall be suitable for the persons or vehicles using them, sufficient in number, in suitable positions and of sufficient size.

- Workplace (Health Safety & Welfare) Regulations 1992 (cont'd...)

- (3) Without prejudice to the generality of paragraph (2) traffic routes shall not satisfy the requirement of that paragraph unless suitable measures are taken to ensure that –
 - (a) pedestrians or, as the case may be, vehicles, may use a traffic route without causing danger to the health or safety of persons at work near it;
 - (b) there is sufficient separation of any traffic route for vehicles from doors or gates or from traffic routes for pedestrians which lead onto it; and
 - (c) where vehicles and pedestrians use the same traffic route, there is sufficient separation between them.
- (4) All traffic routes shall be suitably indicated where necessary for reasons of health or safety.
- (5) Para (2) shall apply so far as it is reasonably practicable to a workplace which is a new workplace...

- Workplace (Health Safety & Welfare) Regulations 1992 (cont'd...)

- The duty imposed by 17(2) applies to “old” workplaces, i.e., those already in use as at 01/01/93 to the extent that compliance is reasonably practicable.
- The duty extends only to persons at a workplace who are there at work, or for the purposes of work.

Donaldson v Hays Distribution Services Ltd
(2005 ISC 523)

Visitors?

Occupiers Liability (Scotland) Act 1960

- Provision and Use of Work Equipment Regulations 1998

Reg 4 Suitability of work equipment:

- (1) Every employer shall ensure that work equipment is so constructed or adapted as to be suitable for the purpose for which it is used or provided.
- (2) Every employer shall ensure that work equipment is used only for operations for which, and under condition for which it is suitable.

Reg 26 Warnings:

- (1) Every employer shall ensure that work equipment incorporates any warnings or warning devices which are appropriate for reasons of health and safety.
- (2) Without prejudice to the generality of para (1), warnings given by warning devices on work equipment shall not be appropriate unless they are unambiguous, easily perceived and easily understood.

- Provision and Use of Work Equipment Regulations 1998 (cont'd...)

Reg's 25-30 Mobile work equipment:

e.g.,

- nobody to be carried unless suitable, and incorporates features reducing risks to lowest reasonably practicable level.
- minimise risk of rolling over.
- where drivers direct field for vision is inadequate to ensure safety, adequate devices for improving his vision so far as reasonably practicable.

Caddy Cars for Caddies?



- Construction (Health, Safety and Welfare) Regulations 1996

- Apply to “Construction work”: wide meaning.
- Apply to employer whose employees are carrying out construction work, and self-employed persons.

Reg 5 General duty, so far as reasonably practicable, to provide safe place of work, and safe access and egress thereto/from.

Reg 15 Every construction site shall be organised in such a way that, so far as is reasonably practicable, pedestrians and vehicles can move safely and without risk to health.

Reg 17 Suitable and sufficient steps shall be taken to prevent or control the unintended movement of any vehicle.

Applying much same duties to “construction sites” as are applied to “workplaces”.

- Management of Health and Safety at Work Regulations 1999

Reg 3 Duty to make suitable and sufficient assessment of the risks faced by employees at work and by other persons arising out of the Conduct of the employers undertaking.

Reg 4 Identifies that “hierarchy” of principles upon which preventative measures are to be implemented is as per Schedule I.

- Avoiding risks.

- Evaluating risks that cannot be avoided.

Reg 7 Employer to appoint one or more competent persons to assist him in undertaking measures he needs to take to comply with requirements under these and any other relevant statutory provisions.

Reg 10 Obligation to provide employees with information relevant to risks, procedures and preventative measures where risk is identified.

B. Best practice:

- Risk assess, by competent person.
- Update and keep a record of risk assessments.
- Communicate instructions to employees.
- Ensure that employees operating modes of transport are properly trained, competent and where appropriate, certificated.
- Systems of maintenance and repair, properly documented.

C. Liability?

- All Regulations give rise to Civil Liability for breach.
- What can the result be?

Case Study: “Man on scissor lift.”

- Pursuer’s Employee (fitter) of First Defender’s operating mobile scissor lift in loading bay, 8.30 am
- Loading bay on Second Defender’s premises having work carried out to replace plastic curtains at entrance to loading bay.
- Lorry belonging to First Defender’s reversed in, with defective reversing alarm, colliding with extended platform of scissor lift.

C. Liability? (cont'd...)

- Pursuer thrown from platform sustaining serious injuries.
- No properly operating permit to work system in operation, and no suitable risk/assessment undertaken by employer or occupier.
- Pursuer carrying warning cones and not wearing safety harness

Result: Everybody took an equal share of the blame, including the Pursuer.

It cost everybody a lot of money!

Moral of story: Risk assess, communicate, instruct, maintain.

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Criminal Law Requirements

A. 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.
- (2) Provides some “particulars”, e.g.,
 - (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
 - (b) arrangements for ensuring, so far as is reasonably practicable, safety.. in connection with.. transport of articles..;

A. Health and Safety at Work Act 1974 (Cont'd...)

- (c) provision of instruction, supervision and training to employees;
- (d) maintenance of safe means of access and egress to and from place of work; and
- (e) safe working environment.

S.3

- (1) It shall be the duty of every employer to conduct his undertaking in such a way to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not exposed to risks to their health and safety.

B. Ramifications

- Summary Conviction: Fine > £20,000.
- Indictment: unlimited!
- Publicity.
- Attention of the HSE.
- Brand damage.

C. Case Studies

1. Fatality in timber yard

- Employee struck and killed by side-loader.
- Rows of high stacks of timber, and restricted view of driver.
- Lack of enforcement of instructions to drivers re amount of timber on side-loaders.
- Lack of Traffic Management regarding the separation of vehicles and pedestrians. Improvement Notice, 2 years earlier, had required introduction of risk assessments arising from workplace transport activities.
- Led to risk assessments that related generally to the site rather than specific to side-loaders.
- Fined £10,000 (and led to civil claim settled for £42k.)

C. Case Studies (cont'd...)

2. Loading and Unloading: Fatality at delivery point

- lorry driver killed by falling steelwork.
- at construction site
- Employers of deceased and steel manufacturers who had loaded steel onto lorry, prosecuted on indictment.
- S3 charge alleged loading of steel beams in unstable manner, without vertical packing, and without sufficient risk assessment.
- Insufficient assessment of risk, and method statement and instruction for the off-loading of the steel.
- Fine of £30k imposed on steel fabricators/loaders, and £7.5k on haulage company.

C. Case Studies (cont'd...)

3. Corporate Homicide (as it is known in Scotland!)

- Briefly!
- Corporate Manslaughter and Corporate Homicide Act 2007.
- Into effect 6 April 2008. Not retrospective.
- Not individuals, only organisations.
- Death of somebody caused by a gross breach of a relevant duty of care owed to that person.
- Unlimited fines and has to be on indictment.
- Stigma: Publicity orders.
- Who will be first...?

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