

QBE HAVS Risk Management Workshop

Introduction

Hand Arm Vibration Syndrome (HAVS) continues to pose problems to many employers, reflected in new cases being reported under RIDDOR as well as both new and exacerbation Personal Injury claims being made. Whilst many of those cases relate to a historical legacy exposure, many employers continue to operate processes which present a foreseeable risk of HAVS injury and falling short of the requirements of recent legislation; The Control of Vibration at Work Regulations 2005.

QBE's experience reflects this in the intake of HAVS claims received. From 1995 to 2003 the average intake rose from 100 per month to over 200 per month before falling back to some 50 claims per month currently. Over a similar timescale, average costs of HAVS claims have risen 5-fold from under £2000 to over £8500, with extreme cases of HAVS injury attracting awards well into 6 figures. Notwithstanding the claims picture, the organisational, personal and often hidden financial costs of those injuries continues to rise.

Given the accumulative nature of Hand Arm Vibration (HAV), it may be some time before breach of duty under the new regulations is alleged and this is QBE's experience thus far. We nevertheless recognise that there exists a potential gap between what clients do to satisfy current legislation and Best Practice advice, and what the civil courts' interpretation of those same standards might be when retrospectively determining future compensation awards for HAVS injuries.

In recognition of that potential gap, QBE ran a HAVS Workshop on 13 September 2007 where the UK's leading experts on the subject of HAVS presented to QBE clients. They set out what employers need to do in order to demonstrate, to the satisfaction of both the criminal and civil courts, that all reasonable steps were taken to both prevent the development of HAVS and minimise the impact where HAVS symptoms were presented by employees.

Presentations

Giles Quartly, Employers' Liability Portfolio Manager, QBE

Giles gave an objective overview of the insurance impact of HAVS claims, looking at defensibility and claims costs before finally emphasising the importance of capturing symptoms at an early stage to prevent its onward progression into a disabling condition.

Dr Chris Nelson, HM Specialist Inspector (Noise and Vibration), HSE

Chris described how the HSE expects employers to identify and control the risks, providing practical examples and dispelling some common myths.

Jayne Adams, Barrister, The Ropewalk Chambers, Nottingham

Jayne highlighted common shortcomings in employers' HAVS management systems with her presentation, "5 easy ways to lose a HAVS claim"

Bob Mitchell, MD, RH Mitchell & Associates LLB

Bob looked at vibration risk assessments and considered what satisfies "suitable and sufficient", manufacturers' data, the variability of measurements and how that collective information should be used by the employer to establish a safe system of work

Dr Roger Cooke, Consultant in Occupational Medicine

Roger provided his views on the occupational health aspects of HAVS looking at symptomology and reporting, applicable standards, arrangements companies should make for identifying and dealing with HAVS and the potential flaws in these systems

David Wilson, Group HSEQ Manager, HSS

David delivered a Client Case Study sharing HSS's experience of managing the maintenance of its Hire Tools. He suggested ways in which organisations may be able to improve their own Planned Preventative Maintenance and documentation arrangements, being a key component of an effective HAVS Risk Management approach.

Matthew Harrington, Senior Litigation Partner, Cartwright Black

Matthew discussed the financial pitfalls of failing to deal sensitively and appropriately with employees made disabled by their work. He looked particularly at the significant increase in value of the Personal Injury claims and also the uninsured awards associated with a Disability Discrimination Act tribunal.

The key message from each of the presenters was that prevention is better than cure and that a risk managed approach to HAVS will achieve this aim. Furthermore, should injury occur, employers will be better placed to demonstrate they had done all that was reasonable.

The presentations from the day can be viewed and downloaded from QBE's Liability Risk Management website:

http://www.qbeeurope.com/insurance-europe/insurance/uk-corp-employers-liability/lrm/lrm_sep_2007.htm

The HAVS Workshops

Part of the day involved dividing delegates into workshop groups to consider one of 3 scenarios and report back their collective findings for discussion and debate by the wider group. Delegates were encouraged to discuss particular aspects of their current HAVS risk management strategies that they felt were either problematic or conversely, seemed to work well.

The scenarios and summaries of the various discussions are set out below along with the conclusions that each group made. Consequently, this represents the groups' interpretation of what constitutes Best Practice for each of the scenarios described, in the context of injury prevention, statutory compliance and claims defensibility:

Scenario 1

Within your factory, several spot welding machines have been used for the last 6 years, which requires the operator to use the palm of the dominant hand to push a component through the welding machine, during which, vibration is transmitted into the palm. Typically, this would be the only duty undertaken by those operators, throughout an 8 hour shift. Following a complaint to the Safety Committee when one employee reported HAVS symptoms to his GP, a search of available data from the machinery manufacturers, various websites and engineering trade groups' literature, indicated a likely A(8) of 2.3 m/s². No further symptoms have been reported by the complainant nor have any similar reports been made throughout the time that these machines have been in use. For the purposes of this exercise, assume that the operation is business critical and that current technology does not offer an alternative machine for undertaking the task at reduced A(8) exposures.

1. *Very briefly outline what actions are required to comply with the Control of Vibration at Work Regulations 2005. NB. This is NOT a test of in-depth knowledge. A brief outline only is required of the key requirements.*

2. Do you consider the above scenario presents a foreseeable risk of injury that is potentially compensatable and if so, outline what actions would be prudent to support a defence against such future claims?
3. List the departments or functions that will need to interact closely for this to be effective.

Responses and Discussions

Outline the actions required to comply with The CVW Regulation 2005:

- Review existing systems, policies, tools, risk assessment, exposures etc, to ensure compliance with the minimum standards set out in L140: Hand-arm vibration: Control of Vibration at Work Regulations 2005.
- Reduce risk to the lowest level as is reasonably practicable (the ALARP principle).
- If not possible to get below action level, review control systems and take a hierarchical approach to control methodology (Schedule 1, Management of Health & Safety at Work regulations 1999).
- Measure and review the reliability of readings.
- Training for operators.
 - a. Warning of hazard and risks
 - b. Correct use of tools
 - c. Symptomology – recognition and reporting
- Occupational Health facilities: Pre-employment questionnaires, surveillance, monitor ongoing exposures.
- Alternative tools, jigs, etc if elimination not possible.
- Job rotation as a last resort
- PPE - there is no PPE proven to reduce the vibration transmitted to the hand.

Is there a foreseeable risk of injury that is potentially compensatable and if so, outline what actions would be prudent to support a defence against future claims?

- Given the variability of data readings, (measured or otherwise), 2.3m/s^2 is sufficiently close to the Exposure Action Value (EAV) to be treated as being at or above the EAV and hence action is required.
- Manufacturers' data has been found to underestimate true exposure by up to a factor of 2, 3 or more. It is prudent to undertake tool measurement to more accurately determine the A(8) values, though ultimately, this doesn't change the need for urgent action to reduce exposure.
- The Competence of the Risk Assessor is paramount and may be challenged in the civil courts. Assessments should be done by a credible and experienced expert who is familiar with your activities/equipment and carries out such assessments on a sufficiently regular basis.
- In many cases, it would be beneficial to use external consultants to periodically audit, and thus validate internally-derived measurements.
- From a claims perspective, the courts' rule of thumb is that exposure below 1m/s^2 A(8), there is unlikely to be risk of injury. Where exposure is greater than 1m/s^2 A(8), there is an increasingly foreseeable risk of injury; hence potentially compensatable.
- Inter-departmental liaison is critical – see below
- Good documentation to prove what was done – see Scenario 3.

List the departments or functions that will need to interact closely for this to be effective

- Internal: occupational health, human resources, Unions and/or Workers' H&S Representatives, manufacturing production and engineering, management, procurement.

- External: Insurance Company, solicitors, engineers, HSE, contractors, customers, suppliers.

Scenario 2

Following a recent increase in orders and consequent increase in demand for skilled labour, your organisation is advertising vacancies in the local press. There are several activities routinely undertaken where the operator would be exposed to high levels of Hand Arm Vibration (HAV), above the Exposure Action Value of 2.5m/s^2 , determined using Manufacturers' published data. There have already been individual reports of Hand Arm Vibration Syndrome (HAVS) symptoms via the organisation's external Occupational Health function.

1. *Specifically in relation to detecting the onset or worsening symptoms of HAVS, outline the arrangements that should be in place.*
2. *What, if any, additional arrangement would you consider when recruiting new employees?*
3. *List the departments or functions that will need to interact closely for these strategies to be effective.*

Responses and Discussions:

Specifically in relation to detecting the onset or worsening symptoms of HAVS, outline the arrangements that should be in place.

- Occupational health pre-employment questionnaire
- Periodic repeat Questionnaire for existing employees.
- Training of both the workforce and management tiers in HAVS risk, symptomology and reporting arrangements
- HAVS Policy in place and communicated to workforce
- If the civil courts consider that exposure of $>1\text{m/s}^2$ is compensatable, then it follows that Health Screening should be arranged for all employees routinely exposed to $>1\text{m/s}^2$ A(8)
- In line with L140 recommendations regarding redeployment of personnel whose condition has deteriorated to Late Stage 2 (Stockholm scale), a robust Redeployment Policy needs to be in place and fully communicated to all potentially affected by it
- Records to reflect each of the above

What additional arrangements would you consider when recruiting new employees?

- To an extent this will be governed by the specific peculiarities and dynamics of the local labour market. However, the Company's policy for managing HAVS should be sufficiently robust to ensure new employees' benchmark status is established and that they are automatically included in the Occupational Health programme for managing HAVS. The pre-employment interview process and pre-employment medical arrangements should be tailored to ensure this is addressed by considering past work history, past HAV exposure and any known medical condition or symptomology. Hence no additional arrangements are necessary per se.
- If additional arrangements need to be made, then that in itself is indicative that the primary Policy is flawed in its detail or its execution and should be amended accordingly
- Full documentation of the above arrangements.
- Consider obtaining a signed mandate to access new employees' GP records to satisfy concerns where previous symptomology is reported.

List the departments/functions that will need to interact closely for these strategies to be effective

- HR
- H&S
- Occupational Health
- Line Management
- Production Planners
- Workers' Representatives.

Scenario 3

Your organisation is about to begin implementing its Hand Arm Vibration (HAV) Management Strategy, which has full Board support and is being rolled out across all locations.

1. Create a list of documents and records that might be useful for demonstrating to interested parties, e.g., the HSE, how you manage HAV exposure.
2. How do you think these records should be archived such that they are accessible and useful in assessing any future personal injury claims?
3. List the departments, functions and systems that will need to interact closely for this to be effective.

Reponses and Discussions

Create a list of documents and records that might be useful for demonstrating to interested parties how you manage HAV exposure.

- Risk assessment
- Ergonomic study
- HAVS policy
- Measurement results/data
- Work Instructions relating to safe tool usage (Safe System of Work)
- Tool selection criteria
- Tool purchasing policy
- Planned Preventative Maintenance schedule and records of the maintenance undertaken
- Tool specific training documents
- HAVS training documents
- Record of job rotation by individual
- Occupational Health Policy and arrangements
- Occupational health records:- pre employment, regular checks, focused referrals, any symptomology and redeployment advice, etc
- Training:- On a general point, it would be prudent to record the syllabus content for any training provided, i.e. what training was delivered, along with evidence of the competence level attained, e.g. post-training test to validate understanding, etc.
- Workplace inspections and/or behavioural observations to demonstrate adherence to the "safe system of work"

How do you think these records should be archived such that they are accessible and useful in assessing any future personal injury claims?

The groups considered:

1. Security – theft, malicious damage, trespass, vandalism
2. Fireproof container
3. Environmentally/climatically secure
4. Retention Period, minimum of 40 years recommended
5. Easily retrievable, by task, location or individual
6. Indexed to aid easier retrieval
7. Site Closure – record retention needs to be properly owned and resourced

Two general points were made;

- If records are not readily retrievable, then they are unlikely to be of use to Claims Inspectors who have a very limited time frame in which to investigate a claim and arrive at a decision on liability, i.e. to either admit or deny liability
- BS ISO 15489 and BS 5454 will be of interest when considering the design parameters for an archiving and document retrieval system

List the departments, functions and systems that will need to interact closely for this to be effective

- IT
- HR
- H&S
- Occupational health.
- Management.
- Unions.
- Insurers
- Maintenance.

Conclusions

Hand Arm Vibration continues to pose a number of challenges to employers and their insurers. The Control of Vibration at Work Regulations 2005 will serve to focus employers' attention on managing HAV exposure such that future disease incidence and severity will be reduced – a move that has to be welcomed by all.

The new regulations replace implicit actions with explicit duties but the associated liabilities placed on companies remain essentially unchanged in principle, albeit lower action levels and thresholds have been introduced.

In order to prevent HAVS and to be in a better position to defend any future personal injury claims, employers need to have:

- Risk assessments that accurately indicate likely exposure
- Systems of work that minimise exposure
- Employees properly trained in HAVS risk control
- Work equipment; suitable for the task, properly maintained and properly used
- Health monitoring for all those at risk
- Effective record retention & archiving protocols

Organisations that adopt such an approach will see a reduction in their incidence of HAVS and accordingly, will present themselves as a more attractive risk to liability insurers.

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Further advice and guidance is available on QBE's Liability Risk Management website or alternatively, by contacting your QBE Liability Risk Manager, Claims Manager or Underwriter.

www.QBEurope.com/LRM