

QBE INSURANCE ISSUES BRIEF

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QBE
European
Operations

THE SOUND OF SILENCE? THE CONTROL OF NOISE AT WORK REGULATIONS 2005

From the 24 October 2005, the 'European Week for Health and Safety at Work' has its focus on noise in the workplace. The Health and Safety Executive (HSE) in partnership with the Institution of Occupational Safety and Health (IOSH) recently held a major conference at Earls Court in London titled 'Sound Off'. The former has also been working with the Engineering Employers Federation to deliver a series of noise and vibration roadshows across the country. This Issues Brief has been released to coincide with, and support the objectives of, 'European Week for Health and Safety at Work' in advance of the impending new legislation



BACKGROUND

It is well known that exposure to loud noise can cause permanent hearing damage. The HSE estimates that around 170,000 people in the UK suffer deafness, tinnitus or other ear conditions as a result of exposure to excessive noise at work.

Whilst employers should in particular be aware of the requirements and duties of the Noise at Work Regulations 1989, the Management of Health and Safety at Work Regulations 1992 (as amended 2002), and the Provision and Use of Work Equipment Regulations 1998, stricter new legislative controls are on their way.

CONTROL OF NOISE AT WORK REGULATIONS 2005

New legislation replacing the Noise at Work Regulations 1989 comes into effect on the 6 April 2006, following the adoption of European Directive 2003/10/EC. The government has until that date to transpose the Directive into UK Law as the Control of Noise at Work Regulations 2005. Earlier this year the Health and Safety Commission (HSC) published a consultative document entitled 'Proposals for the Control of Noise at Work Regulations Implementing the Physical Agents (Noise) Directive'. The consultation ended on the 25 June 2004 and relevant amendments were made. The draft regulations are now written and ready to take effect. The music and entertainment sector will have a two year transitional period until the 6 April 2008 to comply with the same regulations and further guidance will be issued by the HSE in order to meet its legal requirements before then.

NEW ACTION VALUES AND EXPOSURE LIMIT VALUES

The main, but not exclusive, impact of the new regulations will be the lowering of existing Exposure Action Values (EAVs). Under the 1989 regulations the current first and second action levels are 85 dB(A) and 90 dB(A) respectively. These will be lowered under the new regulations to 80 dB(A) and 85 dB(A).

These new values will be known as the Lower and Upper Exposure Action Values. The regulations will also introduce a new value known as the Exposure Limit Value (ELV). This will be a set daily or weekly personal noise exposure (LEP,d or LEP,w) of 87 dB(A) and peak noise (LCpeak) of 140 dB(C). If the limit is exceeded the employer must take immediate action to bring the exposure to below this level.

There will be two significant changes from the 1989 regulations in relation to the way noise levels can be measured:

1. Where noise exposure varies from day to day the employer can average out the exposure over a one week period instead of the current eight hour period. This will be helpful to employers where exposure varies from day to day
2. When applying the Exposure Limit Value only, employers will be allowed to take account of protection offered by personal hearing protection

RISK ASSESSMENT AND CONTROL METHODOLOGY

One of the main aims of the regulations is to encourage employers to move on from noise measurement and to take appropriate action to control the risk. The requirement for a noise risk assessment carries through into the new regulations although the principle and methodology to be applied is more prescriptive. For example, specific reference is made to the hierarchy of controls in Schedule 1 to the Management of Health and Safety at Work Regulations 1992 (as amended 2002) i.e. to eliminate risk at source and, where elimination is not possible, then the employer must reduce risks down to as low a level as is reasonably practicable. Where employees are likely to be exposed to noise at or above the Upper Exposure Action Value, employers will need to implement a programme of organisational and technical measures, excluding the use of hearing protection, to reduce exposure to as low a level as is reasonably practicable.

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HEALTH SURVEILLANCE

While already an implicit requirement under the Management of Health and Safety at Work Regulations 1999 (amended 2002), under the Noise at Work Regulations 1989, employers only have a duty to carry out health surveillance when the noise level reaches 95 dB(A). Under the new regulations, the requirement for health surveillance is directly related to risk assessment i.e. where the risk assessment indicates a risk of health to employees who are, or are liable to be, exposed to noise. It is therefore implied that employees regularly exposed to noise levels of 85 dB(A) or higher must be subject to health surveillance, including audiometric testing. Where exposure is between 80 dB(A) and 85 dB(A) or where there is sporadic exposure above the Upper Exposure Action Value, health surveillance will be required if the employer has knowledge that an employee may be particularly sensitive to noise induced hearing loss.

QBE EXPERIENCE

With the general decline in traditional industries like shipbuilding, mining and manufacturing it might be thought that Noise Induced Hearing Loss (NIHL) claims would continue to decline. While this certainly was the case, QBE have experienced an upturn in claim intake from a low in 2001. This is due to a combination of factors including:

- Ongoing employee exposure due to employer apathy and a relaxation of controls
- The evidential problem of proving that hearing loss was not caused at work
- Growing sophistication in claimant solicitor marketing

IMPACT

Many more employers will now need to take action. The HSE estimates around three quarters of a million additional workers will be exposed to noise levels above the new Lower Exposure Limit Value. New industries will have to take action that have not necessarily done so before.

The entertainment industry employs over half a million people in bars, clubs and other entertainment venues. The entertainment sector may potentially be the greatest area for undiagnosed deafness. Given that potentially lower and upper action levels could be breached, employers need to look at control measures. In other industries noise is an unwanted by-product, whereas for the music and entertainment sector it can be the whole point of the exercise. The challenge of protecting workers while still delivering the same experience will be immense.

Inevitably an increase in claims, and second generation claims in particular, is expected. As the thresholds are lowered, the eligibility to make claims will rise. As employers' awareness will be raised, those of the unions and claimant solicitors will also increase. As the new regulations highlight and promote audiometric testing and encourage employee consultation, they will also serve to raise awareness amongst employees.

SUMMARY

The new Control of Noise at Work Regulations will become part of UK health and safety law in April 2006. Action values will be lowered and a new exposure limit introduced, above which employers are obliged to take immediate action to reduce exposure. The requirements for risk assessments, control measures and health surveillance have been updated and many more employers will have to act.

The new lower action values will certainly increase the statutory legal duties on employers and the concurrent potential implications for civil liability claims. It is common sense that compliance with the new regulations should result in less people being exposed to, or affected by, harmful noise in the workplace. QBE would anticipate seeing an associated positive effect on civil claims. Indeed, although the action values will drop by only 5 dB, this actually represents a 70% reduction in noise exposure.

QBE believe that those employers who are effectively managing and meeting their duties under the existing regulations with robust and documented systems in place for noise management will be best placed to reduce the impact of the legislative change. QBE would strongly recommend that employers consult the draft regulations and review their existing risk assessments and hearing conservation policies; with a view to investigating the probable impact on their business and identifying further measures and controls required to meet their new statutory and civil obligations.

FURTHER INFORMATION

More information can be found on the HSE website: www.hse.gov.uk and the published regulations can be found on the HMSO's web page at: <http://opsi.gov.uk/si/si2005/20051643.htm>.

QBE will be issuing further practical and liability focussed guidance in the New Year before the new regulations take effect.

Please speak to your Liability Risk Manager, Claims Inspector or regular QBE contact should you require further information.



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