

Site closure article

Article appeared in the June 4th
edition of Post Magazine



QBE

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Site closure

Site closures are a complex risk management operation at the best of times, but when triggered by the need to scale down a business they become even more problematic. Not only does a business need to guard against future liabilities relating to the site itself, but also people who are losing their jobs are far more likely to make civil claims.

Accordingly, ensuring that the right action is taken to manage the risks inherent in 'non-routine' activity such as the safe disposal, movement and storage of plant, equipment and process materials is only one, albeit key, part of the equation. Equally important is ensuring that both staff are dealt with in a manner that is likely to minimise claims and that the necessary records are created and retained to guard against a legacy of indefensible claims.

With these factors in mind, the first critical step in the process is to appoint an executive team with responsibility for creating a site closure strategy.

This team should have responsibility for planning, managing and monitoring the process, including all necessary internal and external liaison including early consultation with local and regulatory authorities and the company's broker and insurers, all of which can be a good source of advice.

Maintaining close contact with the company's broker and insurers should also continue to be a top priority throughout the site closure process as insurance covers will need to be altered, ceased and added as the status of the site changes.

Once the team is in place, there are a number of priority areas that it will need to consider.

Current site conditions

To prepare against future claims, the team should consider video recording and photographing the land, premises, processes, plant and equipment while the site is still conducting 'business as usual'. Particular attention should be paid to contentious processes or exposures that could have the potential for long-term liabilities. Typically these could include asbestos, vibration, noise or chemical exposures, quality control procedures, environmental processes or repetitive manual handling processes.

It also important to make sure that accident and incident monitoring, investigation and recording continues to be treated as top priority, even where minor events are concerned.

While this may sound straight forward, it can be difficult to maintain the momentum on normal routine activities when existing staff and management know they are facing redundancy. In order to ensure that sound health and safety and risk management practice is maintained not only during and after a site's closure, but also in the run up to the site being closed down, it may be necessary to appoint people from elsewhere within the business to carry increased responsibility for oversight of such activities.

The closure process

One of the key management challenges of site closures is that they involve non-routine activities which are unfamiliar to the business, many of which result in enhanced risk exposures. For example, the safe disposal, movement and storage of plant, equipment and process materials.

Equally, where processes or people are being transferred to another site within the same business, it is important to ensure that the new site has made the necessary arrangements both to ensure that those employees that are being transferred are trained and competent within their new environment and to cater for any additional exposures posed by new equipment and processes into that site.

Where employees are going to an external organisation, maybe as a result of a sale or a new outsourcing arrangement, legal advice is needed to ensure that all Transfers of Undertakings (Protection of Employment) Regulations (TUPE) obligations have been met and that all relevant present and future liabilities have been transferred.

From a liability point of view, it is also important to consider any cultural and human factors that might act as potential claims drivers. These range from the way in which a company treats staff and third parties both before and after site closure – generally the better they are treated, the less likely they are to make opportunistic claims - to the potential influence of trades unions during the closure process.

With this in mind, finding the right person to ensure close and sensitive control of the release of appropriate and timely information to media, employees, customers and suppliers should be treated as a key part of the plan.

Similarly, business continuity planning will be needed to ensure the business fulfils, or re-negotiates, existing customer contracts either via outsourcing or relocating its operations.

Post closure risks

An important starting point is to understand who owns the site. In the case of leasehold arrangements, particular attention should be given to who will bear which ongoing liabilities once a site has been mothballed.

Key risks centre on the safety, security and integrity of the land itself and of site structures and the potential for nuisance risks to local residents and businesses. The team will need to consider the duties posed by public, property owners, occupiers and environmental liabilities - for example, what steps need to be taken to protect visitors and the public? How will the site be secured against trespassers or arsonists? What is the potential for fire to spread to neighbouring buildings? What danger exists in terms of pollution? Are there containers which need to be maintained to avoid seepage? Where contaminants have been stored on site, have they been safely removed?

Many property insurers have a standard clause regarding non-occupancy of premises and stipulate conditions of cover such as turning off mains service, emptying water tanks, removing combustible materials, boarding ground floor windows and letterboxes and generally taking all reasonable precautions to secure the buildings against unauthorised entry (validated by regular documented inspections).

It is also a sensible measure to nominate appropriate 'learned' contacts with the knowledge and expertise to take both immediate and long-term responsibility for liaising with insurers, local and regulatory authorities and the regarding issues relating to the site's legacy.

Keeping it on the record

Managing an organisation efficiently while retaining all crucial documents can be a major challenge at the best of times, but it is an essential part of the risk management equation. Poor document storage, access, retention and disposal practices can expose organisations to risks of legal liability not because they have done anything wrong, but because they do not have the necessary proof to show that they were doing things right.

Consequently, it is essential to ensure that all site closure documentation - including relevant past health, safety, environment, property, insurance, training and occupational health records, contracts and claims documentation - is captured and appropriately stored.

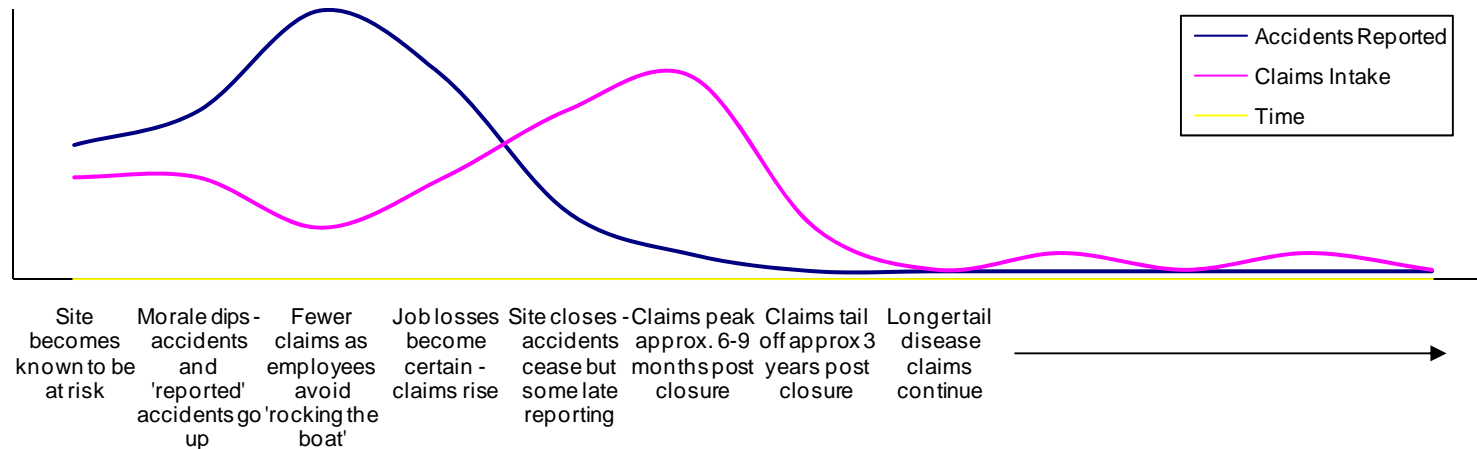
Just as important, the documents need to be easily identifiable and promptly retrievable when they are eventually required. Simply put, all the good quality documentation in the world is of little use in a claims situation if it has been stored in a manner that means it is going to take days to dig through endless papers to find the relevant information. At all times the documentation mantra should be 'creation, retention, retrieval'.

And finally ...

In summary, when planning a site closure, there is a clear business case for designating financial and management resources to planning and properly implementing a strategy and action plan which considers the key issues, identifies priority risks, considers how they should be addressed and determines how information and documentation will be captured and archived in an effective and easily retrievable manner.

Without these fundamental risk management steps, a business could find that it has gone through all the tough decisions necessary to preserve its short-term position, only to open itself up to liability issues which undermine its long-term strength.

The claims dynamic



Site closures have a fairly typical accident and claims pattern which in large part reflects the reactions of employees to the situation. Reports suggesting the site may be at risk – and therefore jobs may be lost – are usually followed by an upswing in accidents as morale drops, often accompanied by a reduction in severity because more minor injuries are both occurring and being reported. However, in the short term absence rates may actually improve - and fewer accidents may convert into claims - as staff who are worried about their job security seek to stay off the corporate radar screen.

Once job losses become certain, the conversion rate of accidents to claims typically rises as staff become more proactive. On sites where a union is active, this effect can be magnified both as a result of employees being encouraged to report all injuries, however minor, and of staff being offered advice on how to pursue claims both prior to, and after, termination of employment. Accordingly, although accidents should cease once the site is closed, employers should be prepared for late and speculative reporting to continue. The upswing in claims intake normally peaks within 6 to 9 months of a site's closure and accident claims normally tail off after some three years, although longer tail disease claims from cumulative historical exposures can still be expected.

Site closure risk register

- Appoint an executive committee or team to create the site closure strategy
- Document the condition of the site whilst still fully operational
- Inform - and consult with - local and regulatory authorities, your broker and insurers
- Where the site is leased, not owned, confirm ongoing responsibilities once closed
- If the site is owned, consider how to protect your asset - revise fire and security arrangements
- If the site is to be sold, ensure relevant present/future liabilities are transferred to the buyer
- If employees are being transferred with the sale of a site check position under TUPE
- Identify and assess 'non-routine' or enhanced risk exposures flowing from closure activities
- Ensure risk assessment, safe system of work and training procedures are being maintained
- Ensure robust monitoring, investigation and recording of incidents/accidents, even if minor
- For employees being transferred internally, arrange appropriate training for new environment
- Consider cultural and human factors as potential claims drivers, especially where jobs are lost
- Ensure controlled communication with employees, customers, suppliers and the media
- Reassess business continuity planning in light of new arrangements
- Ensure your brokers and insurers update insurances for changing liabilities and exposures
- Appoint 'learned' legacy contacts for liaising with insurers, local and regulatory authorities etc
- Ensure relevant documentation is captured and stored so that it will be promptly retrievable

The human factor

Employers who fail to follow proper procedure with their redundancy programmes expose themselves to the risk of successful unfair dismissal claims. Just as important, however, experience also shows that most people facing redundancy would far rather focus on getting another job than making a claim.

Incorporating some form of outplacement service into a redundancy programme can prove to be a wise investment which helps to maintain a more positive relationship, so helping to support morale, reduce accidents and minimise spurious claims. Examples include coaching sessions or career transition advice that helps people to identify skills acquired through work, hobbies and other personal activities which could now be applied to wider job opportunities.

Equally, when focusing on those who are leaving, it can be all too easy to forget about the employees who are staying - even though these people are the future of the organisation. Plans for keeping the remaining employees engaged are needed, so rebuilding the psychological contract with the organisation.

That said, as part of good risk management procedure, the employers should also ensure that the work histories of those being made redundant contain sufficient information to clearly identify the roles and jobs those individuals were engaged in, the periods involved and, where possible, the primary department or work area in which the employee was deployed.

A full history of the range and details of an employee's training from induction onwards – both internal and external – should also be retained. Detailed content of any generic induction and specific job training can be kept on a single reference in combination with individual employee records that are suitably referenced and dated. Ideally, records will include the employee's signature and that of the trainer or relevant supervisor/manager for each element of training.

In terms of potential occupational health issues arising from exposure to high risk substances, processes or materials, employers should ensure they have a clear record of how they complied with their statutory duties in respect of employee health and workplace monitoring arrangements.

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