



HR
Solutions

**Health and Safety at Work:
Director's responsibilities in health and safety**
18th August 2022



Introductions

Presenters



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Senior Health, Safety & Environmental Mgt Consultant

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Health & Safety : Fire Safety : Food Safety

First Aid : Safeguarding : Mental Health



Technical support



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Marketing Manager
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A group of diverse people in a meeting, with one man raising his hand. The image is overlaid with a semi-transparent grey filter. The man in the center is wearing glasses and a grey cardigan, and has his right hand raised. Other people are looking towards the front of the room. There are bookshelves and plants in the background.

How to ask questions

GoToWebinar Housekeeping: Time for Questions



The screenshot shows the GoToWebinar interface. At the top, there is a menu bar with 'File', 'View', and 'Help'. Below it is the 'Audio' panel, which includes a 'Sound Check' indicator, a 'Computer audio' selection (radio button), and a 'Phone call' selection (radio button). A microphone icon is shown with the word 'MUTED' in red. Below this, there are dropdown menus for 'Transmit (Plantronics Savi 7xx-M)' and 'Receive (Plantronics Savi 7xx-M)'. A volume bar is also visible. At the bottom of the audio panel, it says 'Talking: Liz Davis'. Below the audio panel is a 'Questions' panel, which is highlighted with a red border. It contains a text input field with the placeholder text '[Enter a question for staff]' and a 'Send' button. At the bottom of the interface, there is a footer with the text 'Webinar Housekeeping', 'Webinar ID: 608-865-371', and the GoToWebinar logo.

Your Participation

- Please continue to submit your text questions and comments using the Questions panel





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Agenda

- The role of a Director
- Safety Laws
- Section 37
- HSE prosecutions
- What can Directors do?
- How we can help
- Next Webinar
- Training courses

Directors & Senior Officers responsibilities

- The HSE suggests that directors and boards need to:
- Review the health and safety performance regularly
- Ensure that health and safety policy statements reflect current board priorities
- Ensure that management systems provide effective monitoring and reporting procedures
- Respond to significant health and safety failures and of the outcome of the investigations into their causes
- Ensure that implications in respect of health and safety are addressed in all decisions
- Ensure that risk management systems for health and safety are in place and effective.
- Communicate with staff, stakeholders and workers on safety matters and train accordingly

Directors & Senior Officers responsibilities

- Understand and ensure that the implications and duties imposed by new Acts of Parliament, Statutory Instruments, H.S.E. Guidance Notes and Codes of Practice are brought to the attention of the Board of Directors.
- To bring company related health and safety matters to the attention of the Board of Directors at regular intervals.
- To ensure that good communications exist between employer and employees and are maintained.
- To liaise with the person appointed in the role of safety manager over the full range of their duties and responsibilities, with respect to inspections, audits, report recommendations, changes in legislation and advice obtained from other sources.
- Ensure adequate means of distributing and communicating health, safety and welfare information obtained for the H.S.E., Safety organisations and Trade associations regarding new techniques of accident prevention, new legislation requirements and codes of practice etc.
- Ensure that an adequate programme of training for health and safety is established and that the safety culture is encouraged amongst employees.
- Set a personal example at all times by using the correct personal protective clothing/equipment and following all safety requirements and procedures.

5 stage approach

➤ A Strategic Approach

Director's safety role in agreeing and driving forward strategy. An opportunity to explore the benefits of a 'beyond compliance' approach

➤ Core Actions at Board Level

Consideration of the essential principles of planning for health and safety, reflecting the importance of the topic as a corporate governance issue. Implications of Corporate Manslaughter and Homicide Act

➤ Delivering the Message

Exploration of directors' and senior managers role in building health and safety into the organisation; adequate resources, access to competent advice, worker involvement at all levels

➤ Monitoring and Review

Significance of adopting a practical approach to ensure health and safety issues are addressed competently and systematically

➤ Inputs, Outputs and Outcomes

Review of case studies, where the health and safety equation has been balanced.

What laws do I need to be aware of?

Health & Safety at work Act 1974

The Management of Health and Safety at Work Regulations 1999 (MHSWR)

Fire Safety Reform Order 2005

CDM The Construction (Design and Management) Regulations 2015

Quote from the HSE

- ◆ **According to figures from the Health and Safety Executive (HSE), the number of directors and managers prosecuted in recent years has more than doubled. In stark contrast with this increase, the number of employees being prosecuted by the HSE is dramatically falling.**

Section 37: Prosecuting senior management for OH&S offences committed by someone else

- Offences by Directors and Senior Officers, Managers and Company Secretaries)
- Section 37 of the Health and Safety at Work, etc Act 1974 (HSWA) is the principal provision governing personal liability of senior company personnel. It provides that where a health and safety offence has been committed by a company with the consent or connivance or because of the negligence of a director, company secretary or senior manager, such an individual is guilty of an offence as well as the company, and so can be liable to prosecution

Section 37: Prosecuting senior management for OH&S offences committed by someone else

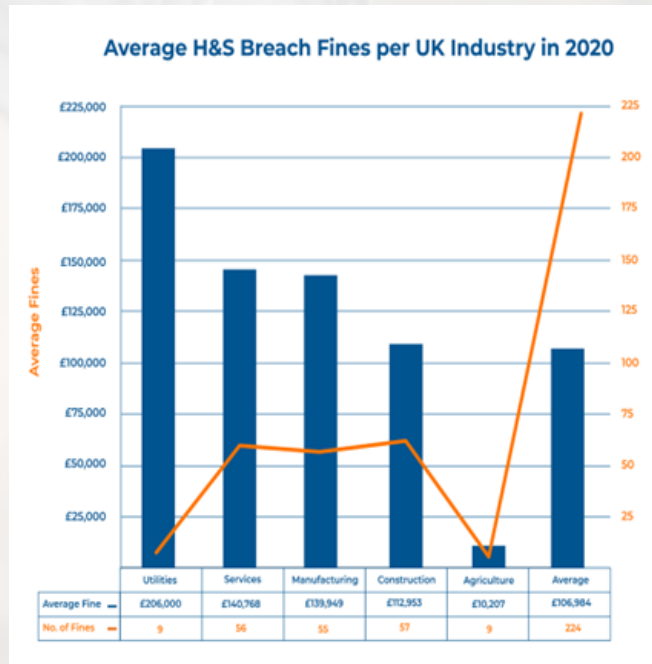
- Section 37 also contains a power to disqualify directors as a potential sentence as well as convicting and imprisoning for up to 2 years.
- The people at the very top of the company need to be aware of the potential for individual fines and imprisonment if breaches are made to health and safety with their consent, connivance or neglect.
- The most important thing that directors and senior managers can do is to ensure that health and safety is a priority at all levels and that any issues and risks are reported to the highest level and acted on swiftly.
- It's too late to act after the accident, put prevention measures in before and avoid being challenged on your legal, moral and contractual duties under the health and safety law.



Do you feel that your
Directors understand the
Health & Safety
responsibilities they have?

How can this affect you?

- £26.9 million in fines were issued to duty holders found guilty of health and safety offences in 2020/21
- The average fine per case was **£145,000**.
- In 2019/20r, this was £107,000, representing an increase of 35%.



HSE Prosecutions

Company and director fined after worker sustained life-changing injuries

A manufacturer of concrete architectural elements and garden ornaments, and its director, have been fined after an employee sustained life-changing injuries when his arms became trapped in a cement mixer.

Nottingham Crown Court heard that the employee was using the cement mixer at the company's premises to prepare the concrete mix for the ornamental castings. The employee attempted to stop the machinery to retrieve something. However, when he reached inside, his arms came into contact with the mixing paddles, and he was dragged almost entirely into the mixer. He managed to pull himself out but was seriously injured. As a result of the incident his left arm was amputated at the upper arm level and his right arm had to be amputated at the mid forearm. He also sustained injuries to his ribs, face, back and shoulders

An investigation by the Health and Safety Executive (HSE) found that David Sharp Studio Limited had failed to take sufficient steps to guard against the risks of entrapment and injury posed by the cement mixer.

The employee had been exposed to the risk of serious injury by requiring him to operate the mixer with the lid open whilst standing next to it. There was a failure to provide guards or to interlock the operation of the mixer in order to reduce the risk of accidental entrapment or foreseeable misuse. There was also a failure to train, instruct and supervise the employee to ensure that he was aware of, and followed, safe procedures for working on or near the mixer whilst it was in operation.

David Sharp, pleaded guilty to a charge under Section 37 of the Health and Safety at Work etc. Act 1974. He was fined £2,000, disqualified from being a company director for seven years and ordered to pay full costs of £30,802.35.

HSE Prosecutions

The recent sentencing of a company director from Buckfastleigh in Devon in relation to failing to ensure the health, safety and welfare of his company's employees underlines the importance of compliance with health and safety legislation. It also serves as a reminder that individuals can also be prosecuted for health and safety failings.

What did the court decide?

The Director of Celtic Rock Services Limited (CRS), pled guilty to breaching section 37 of the Health and Safety at Work Act 1974, and received a suspended 12 week sentence and a 12 week curfew together with a requirement to pay his employees' legal costs of £3,560.

What went wrong?

Both the director and the company failed to prevent three company employees from developing hand arm vibration syndrome (HAVS).

The work conducted by the three employees included using heavy drilling and hammering machinery, often using the tools horizontally on cliff side sites.

Risk assessments completed failed to identify the level of exposure to the vibrations that led to HAVS and used data which was not up to date.

Employees were not informed about the risks of HAVS nor was there a system to monitor the health of its employees until 2016, at which point HAVS was diagnosed among employees when an occupational nurse was employed by the company. At the point of identification, however, the company failed to take action to prevent further harm.

HSE Prosecutions

What does the law say?

Section 37 of the 1974 Act states that if certain health and safety offences are committed by a company, then the director, manager, secretary or similar officer within that company may also be guilty of that offence, together with the company - if the officer consented or connived to the offence or if their negligence contributed to the offence's occurrence.

The company was found guilty of breaching their duty to ensure the health, safety and welfare at work of their employees under section 2(1) of the 1974, and fined £36,667 and costs of £3,560. The company director was consequentially found criminally liable for his part in this breach.

The prosecution of individuals alongside corporate health and safety prosecutions has grown rapidly in the last ten years. Although individual liability has long been examined in the most serious of cases it is now routine for the role and potential liability of individuals to be considered during investigations into workplace safety breaches.

HSE Prosecutions

Director and companies fined for failing to manage the risk of asbestos

Two engineering companies and their director have been sentenced for failing to manage the risks from asbestos to employees within the workplace. A large quantity of asbestos containing materials, including asbestos insulating board, were identified during an HSE inspection at factory premises in Kidderminster.

The company of Stourport Road, Kidderminster, pleaded guilty to breaching Regulations 4 (10), 6 (1) and 11 (1) of the Control of Asbestos Regulations 2012. The company was fined £51,000 and ordered to pay costs of £30,000.

The Director, pleaded guilty to several counts under Section 37 of the Health and Safety at Work etc Act 1974. These related to his individual failing as a Director respect of the offences committed by the Companies under his control. Mr Parkes was given a 12 month suspended prison sentence, fined £9,000 and ordered to pay costs of £14,000.

HSE Prosecutions

Director Jailed for 8 months and Company Fined £700,000 After Worker Killed

A Liverpool based waste and recycling company has been fined, and its Director jailed after the death of a 39 year-old worker in a crushing incident involving a baling machine.

The Consequences to the Director and the Company
In October 2018, the punishments handed down were:

The Company of Foster Street, Liverpool pleaded guilty to breaching Section 2 (1) of the Health and Safety at Work etc. Act 1974. The Company was fined £700,000.00 and ordered to pay costs of £99,886.57.

The Director from Cheshire pleaded guilty to breaching Section 37 of the Health and Safety at Work Act 1974. He was sentenced to eight months in prison.



Is Health & Safety on the agenda at Board Meetings and Senior Team meetings?

Why is it Important for Directors to be interested in Health & Safety?

- Morally & Ethically its the right thing to do!
- Law! No choice
- To create a positive culture and lead from the top
- Management regs require policy/process & risk assessments
- Win business – Tenders are asking for document suites and proof of management, training and development
- Funding – to attract investors and partners – demonstrate commitment to H&S
- Accident profile – increasingly being asked for by insurance companies
- Positive PR / Good reputation and public image
- Staff turnover – staff work and feel better in a safe environment



Guidance for Directors

- The HSE recommends in their publication NDG4 *Leading Health and Safety at Work: Actions for Directors, Board Members, Business Owners and Organisations of All Sizes*
- Directors and boards should set the direction for health and safety management
- Health and safety should appear regularly on the board meetings, Senior Meetings and Management
- The presence on a board of a health and safety director should be a strong signal that the issue is being taken seriously
- Health and safety should be integrated into key governance structures, including board subcommittees such as remuneration and audit
- Health and Safety arrangements are adequately resourced

Health and Safety Offences, Corporate Negligence Manslaughter and Food Safety and Hygiene Offences Definitive Guideline

DEFINITIVE GUIDELINE

New sentencing guide

- New sentencing guidelines for health and safety manslaughter came into force in February 2016.
- In 2018, new guidelines were issued to judges which increased prison sentences for people convicted of negligence manslaughter in a workplace setting.
- Now based on company turnover
- Possibility of not being insured if found negligent
- Section 37 of the Health and Safety at Work Act 1974 for Prosecution of Company Directors & Senior Officers
- Section 37 also contains a power to disqualify directors if potential sentence as well as convicting and imposing a fine up to 2 years

Consequences of HSE prosecution

- Big fines!
- Directors being struck off
- Poor PR/image
- Loss of business/contracts/tenders
- Loss of funding
- Insurance premiums rise
- Social media/News

What can Directors do to improve Health & Safety

- Talk about H&S – agenda items
- Set goals and targets
- Visibility in the business by talking to workers and visiting sites
- Engaging the workforce in the promotion and achievement of safe and healthy conditions
- Setting examples on Health & Safety behaviors, creating a culture and being vigilant
- Site Audits/Inspections
- Reviewing performance
- Reporting near misses
- Encourage and sign off training

Health and safety statistics

Key figures for Great Britain 2020/21

- Key figures for Great Britain (2020/21)
- 1.7 million working people suffering from a work-related illness, of which
- 822,000 workers suffering work-related stress, depression or anxiety
- 470,000 workers suffering from a work-related musculoskeletal disorder
- 93,000 workers suffering from COVID-19 which they believe may have been from exposure to coronavirus at work
- 2,544 mesothelioma deaths due to past asbestos exposures (2020)
- 123 workers killed at work (2021/22)
- 441,000 working people sustained an injury at work according to the Labour Force Survey
- 51,211 injuries to employees reported under RIDDOR

What can you do?

- Appoint a competent person in Fire & Safety
- Develop a Health & Safety policy and promote a positive culture
- Lead from the top!
- Involve all levels of staff
- Develop a Health & Safety Management System
- Review all of your Statutory Compliance
- Make sure you have the correct permits/tickets or certificates for your industry
- Undertake Risk Assessments for all tasks and activities
- Train staff in all Safety measures
- Develop Safe Systems of work
- Look at the culture in your organisation
- Emergency procedures
- Investigate Accidents, Incidents and Near misses
- Look at Equipment / Chemicals / Processes & people
- See it as a positive!



Are you concerned that you are not doing enough to influence Health & Safety in your organisation?

Here's how we can help!

- Statutory Compliance Audit
- Site audits
- On Site Health, Safety & Fire Audit
- Fire Risk Assessments
- Level 2 Health & Safety Training
- Level 2 Fire Safety Training
- Competent Person
- Risk Assessments – support in completion & creation
- Documents & Checklists
- Digital H&S Platform

Director Training

NEBOSH HSE Certificate in Health and Safety Leadership Excellence

The NEBOSH HSE Certificate in Health and Safety Leadership Excellence has been designed to help you become a better influencer of health and safety in your business. The course content covers the following topics:

- What health and safety leadership means,
- The moral, legal and financial reasons for good health and safety leadership,
- The links between health and safety leadership and culture,
- What the different leadership styles are,
- How human failures can impact performance and culture,
- The HSE's model of effective health and safety leadership,
- How leaders can build effective relationships with the workforce.
- 7 taught hours and approximately 3 hours of private study.

Director Training

IOSH Safety for Executives and Directors

The IOSH Safety for Executives and Directors course is essential for those in corporate positions looking to display exemplary understanding in health and safety.

The course is designed to help those at the top of a company recognise the importance of health and safety and how their attitudes can trickle down the company ladder and positively influence your business.

- The moral, legal and financial reasons for good health and safety leadership,
- Plan, Do, Check, Act
- How to monitor health and safety performance,
- How to successfully plan for a health and safety upgrade
- How to improve health and safety performance,
- How to implement the health and safety system and have it improve your business.



UPCOMING WEBINARS

Health and Safety at Work: Fire Safety & Law
25 August, Thursday | 12pm – 1pm

Managing a successful return to in-person work social events
15 September, Thursday | 10am – 11am

Safeguarding in the workplace
29 September, Thursday | 12pm – 1pm

Managing an effective redundancy programme: preparing for change
13 October, Thursday | 10am – 11am

Working with Trade Unions
10 November, Thursday | 10am – 11am

Save your spot!

www.hrsolutions-uk.com/upcoming-webinars



UPCOMING MANAGEMENT COURSES

ILM Level 3 Award in Leadership and Management (Online)

ILM 3 Session 1: 07 September, Wednesday | 9.30am – 1pm

ILM 3 Session 2: 14 September, Wednesday | 9.30am – 1pm

ILM 3 Session 3: 21 September, Wednesday | 9.30am – 1pm

ILM 3 Session 4: 28 September, Wednesday | 9.30am – 1pm

ILM 3 Session 5: 05 October, Wednesday | 9.30am – 1pm

ILM 3 Session 6: 12 October, Wednesday | 9.30am – 1pm

Save your spot!

<https://www.hrsolutions-uk.com/training-courses/>



UPCOMING MANAGEMENT COURSES

ILM Level 5 Award in Leadership and Management (Online)

ILM 5 Session 1: 8 September, Thursday | 9.30am – 1pm

ILM 5 Session 2: 15 September, Thursday | 9.30am – 1pm

ILM 5 Session 3: 22 September, Thursday | 9.30am – 1pm

ILM 5 Session 4: 29 September, Thursday | 9.30am – 1pm

ILM 5 Session 5: 3 November, Thursday | 9.30am – 1pm

ILM 5 Session 6: 10 November, Thursday | 9.30 am – 1pm

ILM 5 Session 7: 17 November, Thursday | 9.30am – 1pm

ILM 5 Session 8: 24 November, Thursday | 9.30am – 1pm

Save your spot!

<https://www.hrsolutions-uk.com/training-courses/>



UPCOMING HEALTH AND SAFETY COURSES

LEVEL 2 FIRE SAFETY/FIRE MARSHAL

Date: 30 August, Tuesday

Time: 9:30am - 4:00pm

LEVEL 2 MENTAL HEALTH FIRST AID

Date: 4 October, Tuesday

Time: 9:30am - 4:00pm

LEVEL 2 HEALTH & SAFETY

Date: 22 November, Tuesday

Time: 9:30am - 4:00pm

Save your spot!

<https://www.hrsolutions-uk.com/training-courses/>





Further questions?

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YOUR

FEEDBACK

MATTERS

TO US

After the webinar, we shall be sending a short survey to capture your feedback, it would be appreciated if you could complete this survey so that we can constantly improve.



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