



COMPANY DIRECTORS:

WHAT YOU NEED TO KNOW ABOUT OCCUPATIONAL HEALTH AND SAFETY

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There would be an expectation that all organisations are run on a foundation of good corporate governance. That means being transparent, ethical, accountable and operating with honesty and good moral values; compliance with the law is a significant component of that good governance effort.

This may seem like an obvious statement but the record shows that even large organisations can get caught out by workplace accidents, when noncompliance with the law results in someone getting hurt or something getting damaged.



An example of this was seen back in 2005 at the UK Buncefield fuel storage depot which suffered a devastating hydrocarbon vapour cloud explosion from an overfilled petrol storage tank. Fortunately no one was killed but the event was recorded as the largest explosion in peacetime Britain since the Second World War. One shocking finding from the investigation report was that “In summary: the Board of HOSL [the site operator] did not grasp its COMAH responsibilities;”¹

COMAH is the UK legislation for the Control of Major Accident Hazards and these regulations applied to the site as a major hydrocarbon storage facility. For top management at Board level not to know what it was doing managing a major hazard site is remarkable but this is what can happen in the real world. Whether they did know but didn't care or were ignorant of their responsibilities under the law is almost irrelevant. The fact is that they were responsible, and should have known and acted appropriately.

To that end, here is a brief overview of the main OHS legislation that is the starting point to understanding what business owner's obligations are in Ireland.

For compliance with occupational health and safety (OHS) law in Ireland, top management need to have [an understanding of what their legal obligations are](#) and to provide the necessary resources and commitment to ensure compliance with them. Of course, employers may also have to comply with many other regulations as part of the day to day activities of running a business such as financial, tax and employment law and no doubt others if the business work scope requires it, perhaps for the environment, food safety or the management of biological agents. For occupational health and safety, the primary requirements for both employers and employees sits with two pieces of legislation; Safety, Health and Welfare at Work Act 2005 and the Safety, Health and Welfare at Work (General Application) Regulations, 2007 (as amended).

The 2005 Act is an enabling act to transpose the following EU Directives into Irish law and “...to give further effect to council directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work and council directive 91/383/EEC of 25 June 1991 on measures to improve the safety and health at work of workers with a fixed- duration or temporary employment relationship...”. The 2005 Act is the legislation under which Ireland complies with these requirements. In the Safety, Health and Welfare at Work Act 2005, the clause relating to General Duties includes an overall declaration that in law “8.—(1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.” Understanding this fundamental requirement is essentially the starting position for all business owners and top management.

A brief explanation on the difference between an Act and a Regulation is important here just to clarify as the terms can cause confusion as they are often used interchangeably which is incorrect.

For the 2005 Act, it is the primary legislation that enables general arrangements to be put into place

to manage occupational health and safety, such as the setting up of statutory bodies, defining the authority of inspectors, specifying fines and penalties and other similar administrative and enforcement provisions. It also sets out general requirements which must be met in the workplace such as those for employers and employees. In addition, the 2005 Act provides for the provision of regulations (sometimes referred to as secondary legislation) to be provided.

Regulations detail how specific occupational health and safety issues are to be managed, for example control of noise exposure and vibration, managing display screen equipment, manual handling and many others.



Whilst Acts are voted on in the Oireachtas, regulations are dealt with by individuals or state bodies who have been given legislative authority to pass them. In the case of regulations under the 2005 Act, this is done by the Minister for Enterprise, Trade and Employment with the competent authority which in Ireland is the Health and Safety Authority (HSA). There is also confusion between the use of terms of compliance and conformity, also used interchangeably but again incorrectly. There may be variations or other ideas out there but for our purposes, conformance relates to meeting standard and procedural arrangements but compliance relates to meeting legal and regulatory obligations. Knowledge of the Safety, Health and Welfare at Work Act 2005 is fundamental to understanding the basic legal requirements for both employers and employees, especially for those in positions of top management such as Directors and Board members.

The principle sections that apply are Part 2 through to Part 4, these cover:

Part 2 - General Duties

Chapter 1 – General Duties of Employer

Chapter 2 – General Duties of Employee and Persons in Control of Places of Work

Chapter 3 - General Duties of Other Persons

Part 3 - Protective and Preventative Measures

Part 4 - Safety Representatives and Safety Consultation

Part 3 is an often overlooked section, mainly because of a lack of knowledge on what a useful tool it really is. It is essentially the principle hierarchy of control methodology that should be used when assessing and evaluating how to control hazards in the workplace.

The [requirement for a Safety Statement](#) is covered within clause 20 of Part 3 and is a legal requirement for all businesses; 20.—(1) *Every employer shall prepare, or cause to be prepared, a written statement (to be known and referred to in this Act as a “safety statement”), based on the identification of the hazards and the risk assessment carried out under section 19, [Hazard identification and risk assessment] specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed.”* In the general sense, it is a document which shows how risk is managed in the workplace and what arrangements are in place to manage all of the regulatory requirements that apply to your own place of work, which includes issues such as the provision of first aid and welfare facilities, fire safety and emergency measures.

The 2005 Act also makes provision for Codes of Practice (COP). These are guidance documents created and published by the Health and Safety Authority to provide assistance to business when managing certain occupational health and safety issues. They have been distilled from many years of experience, including learnings from accident and incidents, are sometime made from collaborations with trade organisations or trade unions and provide an excellent basis for any business to manage any occupational health and safety issue

that they cover. The UK uses the term Approved Code of Practice (ACOP) which is equivalent to the Irish Code of Practice but that particular term is not used in Ireland. COP's are often overlooked by business owners but they are useful in a couple of important ways:

- Codes of practice are recognised in law and can be used as evidence in criminal prosecutions of either compliance or noncompliance with the relevant Act.
- If an organisation meets the requirements of a particular Code of Practice, they are meeting their legal requirements under the law.

The range of Codes of Practice is surprising, covering a wide range of issues some of which may cover subjects many business owners may not even be aware of currently but may need to be informed about. COP's are available to download free of charge in PDF format from the HSA website.

Examples of current documents currently available include:

Code of Practice on the Prevention of Workplace Bullying

Code of Practice for Working in Confined Spaces (2010)

Code of Practice for Chemical Agent Regulations (2011)

Code Of Practice for Biological Agents (2013)

Code of Practice for Access and Working Scaffolds (2008)

The HSA also publishes guidelines on a range of occupational health and safety issues but these are not Codes of Practice and often state that they are not a legal interpretation of the regulations to which they apply. Normally the purpose of guidelines is to provide an understanding on the implementation of the regulations and of the responsibilities that are detailed within them. Nevertheless, these are useful documents to have and help business owners to remain informed on current legislation and are useful as an internal assessment or measure against an organisations own current practices.

For top management, there is no doubt that having

a good basic understanding of the principle Acts, their regulations and associated Codes of Practice where they are relevant is an essential.

It is also recommended that every organisation should establish an OHS library which has the Acts, regulations, Codes of Practice and guidance documents that cover their activities for occupational health and safety matters.

Communications is an important element of effective safety management and just the fact of being better informed is a very positive step that is easy to undertake at virtually no cost.

The legislation establishes the framework but that is only the beginning. OHS needs to be integrated into an organisations overall business model and dealt with as with other management functions and therefore there are certain attributes that top management need to bring to the OHS table if an organisation is to be successful in managing these. This primarily relates to management commitment we will see just how important this is.



We have discussed the importance of legal compliance and the main Act's and regulations for occupational safety and health in Ireland that underpin this. We also looked at examples where meeting legal compliance had not been a priority for top management and the disastrous consequences that can follow when that happens.

For top management, there is one aspect in their approach to business management that provides the cornerstone for how successful or not a [safety management system](#) is in managing risk, protecting workers and the important contribution these make

to having a sustainable and successful business; all of these come from management commitment. What do we mean by management commitment? It can be defined as:

“...both the desire and obligation of top management to ensure that the safety management system is fit for purpose by being visible, accountable, communicative and resourceful in order to meet or exceed safety policy objectives.”

It provides for both leadership and for a corporate direction within which a safety management system can develop to effectively manage the risk profile of the organisation, and the desire to have concern for the well-being of employees and respect for them as important contributors in the success of an organisation.

The use of the term ‘top management’ has been deliberate, designating those at the very pinnacle of an organisation structure whether those are company directors or Board members. It is their top down attitudes, desires and motivations that will ultimately be the engine that drives any organisations management systems, including that of safety. The use of the words desire and attitude is key here. It is a simple process to create a safety policy statement that talks about the commitment of top management, but the day to day reality of running a business can be very testing and relentless.

Policy statements of myriad organisations around the globe today will expound that the company’s management is committed to a safe working environment but the reality can often be at odds with such claims. If we were to examine the health and safety policy statements of the companies involved in the majority of major industrial accidents, all will likely state to some degree that management commitment was a fundamental part of their safety philosophy. However, we know from hard experience that words written on a piece of paper will not protect us.

If the desires and attitudes to succeed are purely focused on the financial success of a business, safety management can become separated from other management functions and when that happens, the risk profile of an organisation increases.

When bonded laminated materials are well made, they are strong with each layer making its own contribution to the strength of the whole but when these materials are allowed to degrade, the layers can separate or delaminate and the whole becomes weaker.

The entirety of an organisation’s various management systems are no different from this and it is this important adhesive of management commitment that keeps this all together. How does effective management commitment translate to the real world?

VISIBILITY

Visibility can take a number of different forms. One of the most common is that of a signed and dated safety policy statement which is not only signed by top management but has an explicit statement of management commitment. By itself, it is an empty statement but when combined with all of the other elements we are discussing, this is an excellent starting point that is easy to communicate and is available to everyone within and outside an organisation.

Visibility also refers to top management being seen to make a contribution to the safety management system such as attending periodic safety meetings, being a part of inspection and audit teams, undertaking site visits and making the effort to be a part of other routine safety management activities. In effect leading by example, engaging with employees and not becoming detached from the everyday safety functions of the organisation for which they are responsible.



ACCOUNTABILITY

Top management need to define both responsibility and accountability for safety within line management job descriptions and should ensure that a position within top management has a stated responsibility and accountabilities for safety.

People take notice when these are clearly stated and they are held accountable for them and so this is a good incentive to motivate top management for ensuring that safety performance criteria are met.

COMMUNICATION

Any message will be lost without effective communication and so the means by which this is achieved will depend upon the size of the organisation, its organisational structure and its geographical spread, i.e. whether it has a single facility or multiple work locations.

It is essential for top management to clearly communicate and actively promote the importance of safety within the organisation and to all external stakeholders and to develop effective means to communicate through all levels within an organisation, both for 'top down' and 'bottom up' communications.

The requirements of top management of their overall expectations and safety performance deliverables of line management and

employees are clearly understood within all levels of an organisation and that relevant safety issues are regularly brought up at top management level. The message that top management are committed to safety must be shown to be true; management cannot fool employees into believing it when it is obvious in day-to-day operations that actual commitment does not exist.

PROVISION OF RESOURCES

Resources are vital to ensure that risk is effectively managed and top management must provide suitable and sufficient resources to meet safety policy objectives. The allocation of resources for the medium to long term depends upon objectives and targets being set by top management to measure how the safety management system operates and where improvements are required. The removal of resources is rarely considered as a risk management issue but this can have a profound impact when resources are reduced or re-allocated without consideration of their potential risk impact.

Management commitment must ensure that in circumstances where resources need to be reduced, that their impact is properly evaluated and assessed. After all, does it make sense to have a documented change management process for assessing risk where it relates to safety but not when it relates to changes in the finances for safety?

How a lack of management commitment can lead to disaster...

The Texas City explosion in 2005 has been one of the most closely examined major industrial accidents in recent times and was the initiating event for the post-accident Baker Report published in 2007, an almost forensic examination of BP's corporate mind-set in terms of BP's oversight of its corporate safety management structure and function, examining in detail how they operated in the period from the late '90s through to 2005 when dealing with their U.S. refinery operations.

From an outside perspective, both the accident investigation report and the Baker Report provides us with interesting micro and macro views of a major industrial accident, enabling us to see how events at Texas City were being fashioned from afar prior to 2005 by deficiencies in a corporate organisation and how tragically these deficiencies were allowed to trickle down into Texas City without any significant correction.

The issues with BP's senior management's lack of commitment to process safety in the U.S. generally had potentially very far reaching affects across all of their refineries. The Baker Report inferred that to some extent, BP's other four refineries in the U.S. also had similar weaknesses in process safety that had existed at Texas City at the time. That is why this incident is the perfect illustration which shows that without effective management commitment, serious weaknesses can develop which can start to corrode safety margins not just at one location but at others as well.

Although the accident occurred at Texas City in 2005, in their Toledo plant prior to this accident a lack of management commitment was already recognised by employees. The Baker Report stated, *"Of course, it is not just what management says that matters, and management's process safety message will ring hollow unless management's actions support it. The U.S. refinery workers recognize that "talk is cheap," and even the most sincerely delivered message on process safety will backfire if it is not supported by action.*

As an outside consulting firm noted in its June 2004 report about Toledo, telling the workforce that "safety is number one" when it really was not only served to increase cynicism within that refinery."² and "Those individuals [BP's executive management] must demonstrate their commitment to process safety by articulating a clear message on the importance of process safety and matching that message both with the policies they adopt and the actions they take."³

In a hazardous and high risk industry that should be regarded as unacceptable.

The 'Herald of Free Enterprise' ferry capsized disaster in 1987 was the direct result of the ferry leaving the port of Zeebrugge in Belgium with her bow doors open, allowing water to enter and flooding her car decks.

It is such an astonishing occurrence that it would seem that those crew members on board the vessel at the time surely had to be totally responsible for such a huge omission but when the accident investigation was undertaken, it soon became apparent that these high potential events, i.e. vessels sailing with their bow doors open, had actually happened before and was a known issue within the company.

Written warnings from a number of vessel Masters to the company's top management prompting them to take steps to prevent these potentially catastrophic events had been ignored. The report stated that *"...a full investigation into the circumstances of the disaster leads inexorably to the conclusion that the underlying or cardinal faults lay higher up in the Company. The Board of Directors did not appreciate their responsibility for the safe management of their ships."*⁴

In both of these disasters, it was obvious to workers that management lacked commitment, whether it was obvious to management themselves is another question.

Management commitment is not an abstract concept; it is real and has the potential for **driving both excellence and failure** depending upon the approach taken.

It's important because it **impacts upon all elements of safety management** elements such as resources, learning from mistakes and most importantly, it impacts upon the continual improvement process.

1 - COMAH – Buncefield: Why did it happen? The underlying causes of the explosion and fire at the Buncefield oil storage depot, Hemel Hempstead, Hertfordshire on 11 December 2005, para 90, p28

2 - The Report - The BP U.S. Refineries Independent Safety Review Panel, January 2007. Corporate Safety Culture, p61

3 - The Report - The BP U.S. Refineries Independent Safety Review Panel, January 2007. The Panels Recommendations, p XVI

4 - Herald of Free Enterprise investigation Vol 2, para 14.1, p14



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