

HEALTH AND SAFETY IN THE WORKPLACE

The Safety, Health and Welfare at Work Act 2005, which came into force on 1st September 2005, is one of the main piece of legislation that deals with health and safety in the workplace. The Act repealed and replaced the Safety, Health and Welfare at Work Act 1989 and was brought in to make further provision for the safety, health and welfare of persons at work. This Act clarifies and enhances the responsibilities of employer's, the self-employed, employees and various other parties in relation to safety and health at work. The Act also details the role and functions of the **Health and Safety Authority**, provides for a range of enforcement measures that may be applied and specifies penalties that may be applied.

General duties of the employer

Employers have an obligation,

- To ensure the safety, health and welfare at work of his or her employees.
- To manage and conduct work activities in such a way as to ensure the safety, health and welfare at work of all employees.
- To manage and conduct work activities in such a way as to prevent any improper conduct or behaviour likely to endanger employees.
- As regards the place of work concerned, the employer must ensure the design, provision and maintenance of:
 - a safe, risk-free place of work,
 - safe means access to and egress from it
 - plant and machinery that are safe and without risk to health.
- To ensure safety and the prevention of risk arising from the use of articles or substances or the exposure to noise, vibration, radiation or any other ionizing agent.
- To provide systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be safe and risk free.
- To provide and maintain facilities and arrangements for the welfare of employees at work.
- To provide information, instruction, training and supervision, where necessary.
- To implement the safety, health and welfare measures necessary for protection of employees, as identified through risk assessments and ensuring that these measures take account of changing circumstances and the general principles of prevention.
- To provide protective clothing and equipment where risks cannot be eliminated or adequately controlled.
- To prepare and revise emergency plans and procedures.
- To report accidents and dangerous occurrences to the relevant authority.
- To obtain where necessary the services of a competent person for the purpose of ensuring safety and health at work.

- To ensure that all safety measures take into account both fixed term and temporary workers and that any measures taken do not involve financial cost to his or her employees.

Provision of information to employees

- When giving information to employees, employers must:
 - Ensure that it is given in such appropriate form, manner and language that it is likely to be understood by the employees concerned,
 - Ensure that the information includes the workplace hazards and risks identified, the protective and preventive measures taken and the names of the safety representative and all other persons named in evacuation procedures etc.
- Where persons from other employment are engaged in work activities in an employer's undertaking, the employer must ensure that the person's employer receives the above information.
- The employer must ensure that the safety representative and designated competent persons have access to:
 - The risk assessment,
 - Information relating to reportable incidents and accident,
 - Information arising from protective or preventative measures.
- The employer must provide information relating to the following before a fixed term or temporary employee commences work:
 - Any potential risks,
 - Health surveillance,
 - Any special occupational qualifications or skills required,
 - Any increased specific risks which the work may involve.

Instruction, training and supervision of employees

Employers must ensure that:

- All instruction, training and supervision is provided in a manner, form and language that is reasonably likely to be understood.
- Employees receive, during time off from their work but without loss of pay, adequate health, safety and welfare training including, in particular, information and instruction relating to the specific task to be performed and measures to be taken in an emergency.
- The employee's capabilities in relation to safety, health and welfare are taken into account.
- In the case of a class or classes of sensitive employees or groups of employees exposed to risks expressly provided for in the relevant statutory provisions, the employees are protected against the dangers that specifically affect them.
- Training must be adapted to take account of new or changed risks in the workplace.
- Training must be provided:
 - on recruitment,
 - when an employee is transferred or tasks change,

- on the introduction of new or changed work equipment or work systems,
- on the introduction of new technology.
- All contractors etc, carrying out work in the employer's premises must receive relevant safety instructions.

Emergencies, serious and imminent dangers

The employer must provide adequate plans and procedures to be followed and measures to be taken in the case of emergency or serious and imminent danger.

These plans should:

- Provide measures for first aid, fire-fighting and premises evacuation taking into account of the nature of the work being carried out and the size of the place of work.
- Arrange necessary contacts with appropriate emergency services (first aid, emergency medical care, rescue work and fire-fighting).
- Designate employees who are required to implement these plans, procedures etc.
- Ensure that all designated employees have adequate training and equipment available to them.

In the event of an emergency or serious and imminent danger the employer must:

- Inform all employees of the risk and steps taken to protect them.
- Refrain from requiring employees to carry out or resume work where there is still a threat to their safety.
- Ensure that, in the absence of appropriate guidance or instruction, based on the employee's knowledge and technical means at his or her disposal, the employee must take appropriate steps to avoid the consequences of the danger.
- Take action and give instruction for employees to stop work and remove themselves to a safe place.
- Ensure that an employee who leaves the place of work in the case of emergency is not penalised because of such action.
- Ensure that access to specifically hazardous areas is restricted only to employees who have received appropriate training.

Duties of Employees

Employees are compelled to:

- comply with all relevant statutory provisions,
 - take reasonable care to protect the safety of themselves and others who might be affected by their acts and omissions,
 - ensure they are not under the influence of an intoxicant or in such a state that they might be a danger to themselves or others,
 - submit to reasonable, appropriate testing, if reasonably required by the employer
- The Act gives scope for Regulations to be made that provide for employees to be

required to undergo tests for intoxicants to be carried out by or under the supervision of a registered medical practitioner. However at the time of writing these Regulations are yet to be developed and until they are made, an employer may not require such testing although local agreements may apply. The employer may, however, prevent an employee from working if it is apparent that he or she would be a danger to themselves or others.

- co-operate with his or her employer so far as is necessary to enable compliance with the relevant statutory provisions,
- not engage in any improper conduct or dangerous behaviour,
- attend training and undergo such assessment as may be necessary,
- make correct use of any article or substance provided for use or for the protection of the employee, including protective clothing and equipment,
- report to his or her employer as soon as practicable:
 - any work being carried out which might endanger themselves or others
 - any defects in the place of work, the system of work, any article or substance which might endanger themselves or others
 - any contravention of the relevant statutory provisions of which he/she is aware,
- notify the employer or the employer's nominated registered practitioner if they become aware that they are suffering from any disease or physical or mental impairment which affects their performance of work activities that could give rise to risks to the safety, health and welfare of persons at work. The duty is on the employer to protect themselves and others.

An employee may not:

- mis-represent himself or herself to an employer with regard to their level of training,
- interfere, misuse or damage anything provided for the safety, health and welfare of employees,
- place at risk the safety, health and welfare of persons in connection with work activities.

Protective and Preventive Measures

The employer must:

- Appoint an adequate number of competent persons to perform the functions relating to the protection of employees and give them adequate time and means to perform those functions.
- Make arrangements for co-operation between the competent person and the safety representative.
- Give preference to competent persons within their employment when appointing a competent person.

Hazard identification and risk assessment

The employer must:

- Identify all hazards in the work place
- Keep a written assessment of the risks associated with each hazard (known as a risk assessment)
- Review the risk assessment if:
 - There is a significant change to the matters it relates to or
 - There is any other reason to believe that it is no longer valid
- Implement any control measures or improvements which are identified by the risk assessment

The Safety Statement

Employers must have a written safety statement, based on the hazard identification and risk assessment carried out, which specifies how they are going to manage and secure the safety, health and welfare of all employees at work.

The safety statement should specify:

- The hazards identified and risks assessed.
- The protective and preventive measures taken and the resources provided.
- The emergency plans and procedures.
- The duties of the employees.
- The names, job titles and positions of anyone assigned with safety responsibilities.

The safety statement should be brought to the attention of:

- Employees at least annually or when there is any changes.
- Newly recruited employees upon the commencement of employment.
- Other persons at the place of work who may be exposed to any specific risk.

The employer must review the safety statement if:

- There is a significant change to the matters it relates to.
- There is any other reason to believe that it is no longer valid.
- An inspector directs the statement to be amended.

Every employer must ensure that:

- All contractors providing services to the employer have an up to date safety statement.
- A copy of the safety statement is kept available for inspection at or near the place of work.

If an employer who employs 3 or fewer employees is engaged in an activity for which there is a code of practice for that type of activity, they can fulfil their duty in relation to safety statements by complying with such code of practice.

Duty of employers to co-operate

Where employers share a place of work, they must:

- Co-operate in complying with and implementing the relevant statutory provisions
- Co-ordinate their actions in relation to prevention and protection of employees
- Inform each other, respective employees, safety representatives etc. of all risks, including the exchange of safety statement and relevant extracts relating to hazards and risks.

Health Surveillance and Medical Fitness to Work

Employers are required to ensure that health surveillance appropriate to the risks that may be incurred in the place of work is available to all employees. The Act requires an assessment of the medical fitness to work of employees involved in certain work activities or occupations.

These activities and occupations will be detailed in Regulations that have not been agreed at the time of writing. Employees are required to inform their employer or their employer's Registered Medical Practitioner if they are unfit to carry out a prescribed work activity. If an employer is notified of the unfitness of the employee they must immediately take appropriate action to comply with the general duties of employers to ensure the safety, health and welfare of all employees at work.

Safety Representative

The employer must:

- Agree with the safety representative the frequency of inspections to take place
- Consider any representations made to him or her by the safety representative and so far as reasonably practicable take any action that he or she considers necessary or appropriate with regard to those representations
- Allow the safety representative such time off from their work, without loss of pay, as is reasonable to enable the safety representative to acquire the knowledge and training and time to discharge their functions
- Inform the safety representative when an inspection is taking place
- Give the safety representative a copy of the written confirmation, required under the Act and sent to the inspector, that an Improvement or Prohibition Notice has been complied with.

Consultation and participation with employees

Employers are required to:

- Consult with employees for the purpose of making and maintaining safety arrangements
- Consult with their employees and safety representatives in good time regarding:
 - protective measures proposed
 - the designation of employees with safety responsibilities
 - activities arising from or relating to the protection from and the prevention of risks
 - the hazard identification and risk assessment
 - the safety statement
 - the information to be provided to employees (as outlined above)
 - the information required to be kept or notified to the Authority in respect of accidents or dangerous occurrences
 - the appointment of competent persons
 - the planning and organisation of training
 - the planning and organisation of new technologies particularly in relation to the choice of equipment, working conditions and the work environment

Protection against Dismissal & Penalisation

Employers are prohibited from penalising (defined as dismissal, demotion, transfer, imposition of duties, coercion or intimidation) or threatening to penalise employees, who are performing any duty, exercising rights or who make any complaints relating to safety and health or who give evidence in enforcement proceedings.

The dismissal or penalisation in such manner can be deemed to be an unfair dismissal within the meaning of the Unfair Dismissals Acts of 1997 and 2005 and employees may also complain to the Rights Commissioner that their employer has penalised them for exercising their rights under the safety and health legislation.

Offences and Penalties

The Act allows for summary penalties including ‘on the spot’ fines for breaches of the 2005 Act. Among the less serious offences are:

- failing to discharge duties such as hazard identification and risk assessment,
- failing to consider representations made by safety representatives,
- failing to inform a safety representative that an inspector is carrying out an inspection,
- failing to consult with employees on safety arrangements, and
- failing to allow safety representatives time off to acquire the knowledge and training to perform their duties and the time off to discharge their duties.

Among the offences classified as serious are failure by an employer to discharge general duties and providing information, instruction, training and supervision for employees.

Other serious offences include obstructing an HSA inspector and recklessly or knowingly making false statements to an HSA inspector.

Charges for less serious offences shall be brought in the District Court by way of summary proceedings and if convicted, the person charged shall be fined a sum not exceeding €3,000.

In relation to serious offences, if summary charges are brought in the District Court, a person convicted may be fined up to €3,000 and/or imprisoned for a period not exceeding six months. If the charges are brought on indictment in the Circuit Court, a person convicted may be fined up to €3m and/or sentenced to imprisonment for a period not exceeding two years.

The Act provides that Regulations may be made under it empowering an inspector to issue on "the spot fines" where he or she has reasonable grounds for believing that a person is committing or has committed certain prescribed offences under occupational safety and health legislation.

The Act allows for fines of up to €1000 per offence although the Regulations may set a lower level.

On the spot fines can apply to employers, employees, persons in control of workplaces, importers and suppliers etc - all duty holders under the Act.

Safety, Health and Welfare at Work (General Application) Regulations 2007

The General Application regulations came into force on the 1st of November 2007. The regulations which cover all workplaces and employments are designed to consolidate changes that had been made to the existing General Applications Regulations 1993 and to incorporate other sets of Regulations which have been introduced in recent times such as Working at Heights, Noise and Vibration.

While the majority of changes to the existing Health and Safety regulations are technical or semantic there are a number of significant changes under the General Application Regulations 2007 which all employers should be aware of.

Workplaces

The definition of workplace within these regulations does not apply to construction sites. They do, however apply to office accommodation including construction site offices.

Room Temperature

A minimum temperature of 17.5°C is now set for offices and for other sedentary work at 16 °C. If such temperatures cannot be maintained, then appropriate PPE must be provided.

Floors, Walls, Ceilings and Roofs of Rooms

Employers are obliged to prevent access to roofs or suspended ceilings made of fragile materials unless work can be carried out safely and appropriate warning signs have been erected at access points.

Fire Detection and Fire Fighting

This new regulation specifically requires employers to provide fire fighting equipment in places of work and as necessary, fire detectors and an alarm system, which is properly maintained. Non-automatic fire fighting equipment must be easily accessible and indicated by signs.

General Welfare Requirements

This regulation requires employers to facilitate employees to sit while working rather than stand, if this is feasible.

Manual Handling

Duties of Employers

The regulation requires the employer to take particular care of groups of employees who are particularly at risk due to manual handling of loads.

Electricity

Definitions

- *Overhead line - line carrying voltage greater than 80 volts.*
- *Underground cable - line carrying voltage greater than 80 volts.*

Suitability of Electrical Equipment and Installations

Now requires the employer to ensure that electrical installations are designed so as to prevent danger.

Suitability of Electrical Equipment and Installations

Requires all electrical installations, including distribution boards, sockets and transformers to be protected from the ingress of moisture.

Identification and Marking

Requires electrical circuits to be identified at source so they can be safely deactivated.

Protection Against Electric Shock In Fault Conditions

Requires backup protection of a circuit when a fault arises that may override a RCD. Also all circuits supplying water heaters, electrically heated showers or pumps to showers, must be protected by an RCD.

Connections and Cables

New section added requiring cables on construction sites and quarries to be protected to prevent danger.

Working Space, Access and Lighting

A new requirement to fit emergency lighting in all switch rooms has been added.

Testing and Inspection

Requires an existing electrical installation to be inspected and tested on a regular basis. Also requires the employer to act on the results of the test to prevent danger and to do so promptly.

Overhead and Underground Cables

Virtually all of this regulation is new.

Underground electricity cables are required to be placed in ducting, that is;

- (a) **Coloured red**
- (b) **Of high impact resistance and**
- (c) **Covered with warning tape.**

When working in close proximity to an underground cable, the regulation calls, where reasonably practicable, for the power to be isolated, the location to be determined and for safe excavation techniques to be used.

This regulation also puts an onus on the owner of a new or known underground cable to determine its position and record it on a plan.

Work At Heights

The Work at Height Regulations 2006 is now incorporated into Part 4 of the General Application Regulations.

Scaffolding, Additional Requirements

The additional section requires scaffolds to be of good design and construction and that the material is of adequate strength for the purpose it is to be used for.

Physical Agents - Noise and Vibration

The Noise Regulations and the Vibration Regulations are now incorporated into Part 5 of the General Application Regulations.

Sensitive Risk Groups

Part 6 covers sensitive risk groups which include; young persons and children, pregnant and post natal employees, night workers and shift workers. Previous regulations covering these workers are now incorporated into the new General Application Regulations.

Safety Signs

Signboards

The definition clarifies that 'signboard' means a sign with symbols only and must not include any words. Where a signboard however contains words and is already in place, an employer may leave it in place until January 1st 2011.

First Aid

Occupational First Aider

The definition of 'Occupational First Aider' has changed from the 1993 definition which required a first aider to hold a certificate of first aid, renewable every three years. Now the person must simply be '*a person trained and qualified in first aid.*' There is no reference to a period for renewal training.

Provisions for First Aid

The names, addresses and telephone numbers of local emergency services must be clearly displayed at each place of work. Standard practice, which is now a legal requirement.

First Aid Rooms

Places a duty on the employer to risk assess the need for the provision of a first aid room. The risk assessment must be based upon the size of the undertaking, type and scale of work and the frequency of accidents.

New Regulations for Lifting Equipment

New regulations governing the use of lifting equipment come into effect on November 1st 2007 with the introduction of the *General Application Regulations 2007*. The regulations will apply across all workplaces and, therefore, they replace existing sectoral law and in particular, Regulations 80 -103 of the Construction Regulations 2001, which deal specifically with lifting appliances and lifting gear in construction.

Definitions

Definitions made under *Regulation 27*, with reference to lifting operations include:

- *Work Equipment* - any machinery, appliance, apparatus, tool or installation at work.
- *Lifting Equipment* - work equipment for lifting lowering loads or pile driving, and includes anything used for anchoring, fixing or supporting such equipment. (Examples include cranes, excavators, telehandlers, hoists, a passenger lift in a office blocks and a vehicle inspection hoist in a workshop).
- *Lifting Accessories* - include clamps and similar attachments, chain slings, rope slings, rings, hooks, shackles, swivels, spreader beams, spreader frames and any other item placed between lifting equipment and the load or on the load in order to attach it, but excluding features of the load used for its lifting.
- *Load* includes a person.
- *Non-integrated cage or basket* means one which is not equipped with controls that control its movement.

New Requirements

For the most part the requirements relating to the use of lifting equipment remain familiar. In summary new requirements include:

Forms

The CR forms for recording the results of tests, thorough examinations and inspections (CR3, 4a, 4b, 6 etc) are no longer prescribed. Any form may be used provided the correct information is specified on the form. For the time being it is anticipated that current CR forms will continue to be used. For mobile plant, records / forms must be kept on the machine in addition to any office.

Thorough Examination and Inspections

The previous requirement to thoroughly examine lifting appliances every 14 months has been changed to every 12 months. Where lifting equipment is to be used to lift persons it must be thoroughly examined every 6 months. See tables below regarding the periods for thorough examination and testing.

The requirement to inspect lifting equipment weekly remains unchanged.

Excavators, Telehandlers, or Loaders Used As Cranes.

The requirements relating to the use of these machines as cranes, for example using an excavator to lift a pipe, have been simplified:

- The SWL of the machine must be marked on the machine or displayed in the cab. Where applicable SWLs at different operating radii must be provided
- Hydraulically operated machines with a maximum rated lifting capacity of more than 1000 kg, must be fitted with check valves on the cylinders.
- In the case of a telehandler with a maximum rated lifting capacity of more than 1000 kg, it must be fitted with an automatic safe load indicator.

Conditions Regarding The Lifting Of Persons

Regulation 48 states that work equipment '*not specifically designed*' for the purpose of lifting persons is not to be used other than in exceptional circumstances. A teleporter or a crane used with a non-integrated man-rider cage falls into this category. Where exceptional circumstances prevail some of the conditions that apply include:

- The control position must be manned at all times.
- The cage basket must be properly secured to the lifting machine.
- The total load must be half the rated capacity of the lifting equipment.
- The lifting equipment has a capacity not less than 1000kg unless the manufacture indicates that the machine is suitable for such use.
- Lifting equipment in free fall mode must not be used for lifting persons.

Duty of Persons Who Hire Lifting Equipment To Others

Under *Regulation 59* a hire company has a duty to ensure that when lifting equipment is hired out, physical evidence in the form of test and examination certificates must accompany it.

Period of Testing of Lifting Equipment (As part of A Thorough Examination).

Description of Equipment	Period when testing is required
All lifting equipment	After any substantial alteration or repair affecting its strength or stability
Fixed lifting equipment	Before first use
Tower Crane	After each assembly and every 4 years
Mobile Crane	Every 4 years
Winch	Every 4 years
Self Erecting Crane	After erection and before first use on site and after any change in configuration or support conditions

Pulley block, gin wheel, sheer legs used with loads weighing 1,000 kg or more	Before first use in a new position
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Period of Thorough Examination of Lifting Equipment & Lifting Accessory

Description of lifting equipment or lifting accessory	Period
Crane	12 months
Excavator	12 months
Fork lift truck including interchangeable accessories	12 months (6 if used to lift persons)
Telehandler including interchangeable accessories	12 months (6 if used to lift persons)
Mobile elevating work platform	6 months
Passenger hoist or lift	6 months
Suspended access equipment	6 months
Mast climbing work platform	6 months
Lifting accessories including chains, ropes, rings, hooks, shackles, clamps, swivels, spreader beams and spreader frames, vacuum lifting devices	6 months
Tower crane climbing rig	6 months
Items provided for support of lifting equipment	12 months
Winches used for lifting loads	12 months
Vehicle lifting table	12 months
Tailboard goods lift	12 months
Other machines for lifting materials (e.g. Lorry Loader)	12 months
Other machines for lifting persons	6 months

Note

- 1. Lifting equipment is also subject to thorough examination after substantial alteration or repair.*
- 2. A thorough examination is not required for new lifting equipment which is accompanied by an EC declaration of conformity and certificate of test, issued no more than 12 months before the lifting equipment was put into use.*