



Effective health and safety risk management is the only way forward

Philip Jones, Senior Consultant for Vision Employment Health & Safety Limited, discusses how important robust health and safety arrangements are in terms of securing Employers Liability Insurance and also how health and safety systems, third party contractors and Public Liability Insurance can interrelate.

Employers Liability

Much has been written about the crisis in the Employers Liability market over the past two years with significant price increases and even difficulties with obtaining cover being the principal concerns.

Last years Government review of Employers' Liability Compulsory Insurance proposed:

- changing the arrangements for employee vocational rehabilitation following accidents at work;
- testing new ways to resolve claims more quickly and with fewer costs;
- looking at fixed-fee schemes for Employers' Liability; and
- working with insurers, business and the Health and Safety Executive (HSE) to develop an approach to underwriting which better reflects the health and safety performance of individual firms.

However, there is now some evidence that insurance price increases are beginning to even out and the Government promised restructuring of this section of the insurance market appears not to be on the agenda.

The accepted view is that insurance premiums should be fairer to those companies who implement risk management strategies and who have a good health and safety record. However, it may be some time before companies receive insurance discounts for being able to demonstrate their effective health and safety policies and procedures; the challenge for most companies still remains that of obtaining the most reasonably priced insurance cover.

Insurance providers are, however, taking a much tougher line in requiring companies to disclose their health and safety risk management arrangements as a condition of obtaining insurance. Therefore, companies will have to work closely with their insurance brokers who make presentations on their behalf to insurance providers. This will assist them in securing the maximum discounts available as well as giving them more choice of insurer.

Insurance companies are looking for documentary evidence that companies are proactively managing their health and safety risks. In particular, an effective safety management system comprising policy, risk assessments, risk control procedures and monitoring arrangements will be essential.

So the message appears to be quite clear. Whilst there remains uncertainty over the way in which the insurance industry rewards companies who manage their risks effectively, there is no doubt that companies who implement a robust risk management strategy will have increasing leverage with insurance providers.

More importantly, companies will have to work more openly with their insurance brokers which will involve sharing increasing amounts of information, to enable them to demonstrate that companies have their risks under control.

Vision Employment Health & Safety Limited has been supporting numerous companies across a variety of industry sectors that, under pressure from insurance providers, have been required to demonstrate that they have implemented a comprehensive risk management strategy for their businesses. In practical terms this has meant developing and implementing a tailored health and safety management system covering their activities on site.

The system comprises the following key elements:

- clearly defined policy detailing the organisation and arrangements for health and safety;
- risk assessments supported by written processes/procedures;
- a formalised training programme;
- regular monitoring of standards; and
- formal review by senior management.

Once a risk management system has been developed for a company, dedicated safety consultants will help the company to implement it and will provide further support in order to help them develop annual safety plans, which will in turn define how the objectives set in their health and safety policy will be achieved.

The on going support is provided through routine visits to the company and via a telephone helpline service which is available to companies 24 hours a day, 365 days a year.

We have found however, that a significant number of companies who have been operating for many years still do not have a health and safety policy and have never completed risk assessments for their activities. Although the majority of these companies have been advised through their insurance brokers that risk improvements are required, many have taken advantage of the fact that these risk improvement measures are often not fully enforced.

As discussed earlier, these companies will have to change their approach to managing their health and safety risks and will need to embrace the process of proactive risk management in their workplaces. This process of changing the mind set of such business managers is being positively impacted by insurance brokers. More and more companies are coming to realise that the view of having a good accident history means that an individual business must be safe, does not stand up. Vision Employment Health & Safety Limited is increasingly finding that more and more companies who fit this description are being given ultimatums by their insurance brokers to address occupational health and safety in their workplaces or risk being refused cover.

Public Liability

Turning now to Public Liability Insurance, and with specific reference to the work of third party contractors, it has previously been determined through case law that an employer or occupier will not be liable for the negligence of its appointed contractor unless it owed some statutory or other non-delegable duty; or the task involved was extra hazardous; or it had failed to appoint a competent contractor.

Two questions arise from the duty to ensure that the contractor is competent. Firstly, whether there is ever an obligation to check an independent contractor's insurance position and secondly, in the absence of such a duty, whether the principle of ensuring competency includes an obligation to make such checks.

These questions were considered in three recent decisions by the Court of Appeal, *Gwilliam v West Harps Hospital NHS Trust*, *Bottomley v Todmorden Cricket Club and others* and most recently in *Naylor (trading as Mainstreet) v Payling*.

These three cases unfortunately resulted in different decisions being arrived at with regards to the question of whether there is an obligation to check on the contractor's insurance position. However, it is generally agreed that there is a duty to take reasonable steps to ensure that contractors are competent to carry out the activity properly and safely. An employer or occupier may, by checking that the contractor has insurance cover, thereby fulfil the duty to satisfy itself that the independent contractor is suitable for the task for which it is to be engaged.

The more interesting question perhaps is how an employer or occupier uses the information he obtains from the contractor having asked the relevant question regarding their insurance cover. If a contractor does not have public liability insurance, will that render them incompetent to perform a task properly and safely, given there is no statutory obligation to carry public liability insurance?

The answer, for an employer faced with this situation, is that it would be prudent to ensure there is other satisfactory evidence that they can undertake the work properly and safely. There should be comprehensive risk assessments and safe systems of work in place before any contractor is engaged.

However, the uncertainty of the law created by these three cases puts every employer and occupier at some risk if they either do not make the necessary checks or decide to appoint an uninsured contractor, without doing anything more to check their competency.

Whether considering Employers Liability Insurance or Public Liability Insurance, it is clear that operating in accordance with a documented health and safety management system is essential in being able to demonstrate to insurance providers the level of risk being insured and also to provide the necessary due diligence documentation, should an incident or accident occur.

The challenge for professionals promoting health and safety in the insurance arena is to use the 'carrot and stick' approaches in equal measure; we have talked about the 'stick' approach in great detail above so with regards to the 'carrot' approach, the need to promote to business managers the positive impacts of good health and safety management on most aspects of their business, is paramount. It is often said that managing health and safety effectively also provides other knock on benefits such as efficiency savings in many other areas.

Health and safety in the work place is inextricably linked to insurance and the challenge for all of us is to continue to develop innovative approaches in linking the two to help clients reduce risk, increase insurer choice and obtain affordable insurance.

Philip Jones is a Senior Consultant for Vision Employment Health & Safety Limited, part of the Vision Underwriting Group, who specialise in providing health and safety advice.

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