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LONE AND REMOTE WORKER DUTY OF CARE

4 COMPONENTS TO MITIGATE RISK

INTRODUCTION

The idea of a duty of care is well established and embedded in many legal frameworks. For example, in the USA the idea was codified in law over 100 years ago, whilst in the UK courts first examined the idea just over 80 years ago. At its heart, the idea is that we owe a moral and legal obligation to look after each other and that this duty is stronger between product manufacturers and customers, and between employers and employees.

In the UK, the Health and Safety at Work Act codified the precedents developed in Civil Law, placing Duty of Care onto the UK Statute Book. Ideas around the obligation to provide a duty of care developed as Civil Law precedents, ultimately forming the basis for the UK's primary health and safety legislation. This legislation can be quickly summed up with the statement: The Law requires you to ensure health, safety and welfare, no matter who you are! Ensure is a powerful legal term, it is moderated by the phrase "so far as is reasonably practicable" but it places an onus, particularly on employers, to discharge their duty of care.

In essence, employers are viewed as the "Guiding Mind" for their employees. As such they must discharge their duty of care through ensuring that their employees are protected. Whilst there are specific concerns in the primary legislation, in essence employers are required to think about the risks that they present to their employees and determine whether those risks are tolerable. The more control the employer has, the more they need to do. If the only reason a person is present in a location or undertakes a task is because the employer requires it, the more the employer may need to do to protect the employee from risk. This can be challenging if an organisation employs colleagues who work remotely or who travel away from home. Discharging the duty of care through the implementation of effective controls may not be as easy to implement and to monitor.

RISK AS A CENTRAL THEME

The need to protect employees from risk is not an absolute duty. In other words, employers are not required to ensure that no employee is harmed, no matter what. Such a duty would be impossible to fulfil without stopping employees from doing every task or activity. This is not an excuse to do nothing and to take a laissez faire approach to risk management. It provides a boundary which establishes how far employers need to go in exercising their duty of care and helps shape what the duty might look like.

Health and safety is predicated on risk. Organisations are required to understand health and safety risk; determine whether they are doing enough to control (mitigate) that risk and ensure that systems are in place to monitor the effectiveness of their risk management efforts. In the UK it is essential that once "significant" risks have been identified, a record is created to show what these risks are and what is being done to manage them.

Risk is a much overused and misunderstood term. In the context of health and safety, risk is made up of four components. Firstly, we have to identify the jobs that people do that might (reasonably) give rise to risk. In the case of lone workers or remote workers, it is about determining exactly what they are doing, where they are doing it, what tools they are using, and why and how they are doing it. This provides a context for risk management. We then need to anticipate what might go wrong. Finally we need to predict how likely (or why) it will go wrong and should it go wrong, how bad will it be.

1 ANTICIPATION

Risk management requires us to anticipate adverse events and to predict the outcome of these events. To prevent us from managing fanciful risks or catastophising outcomes we need tools and techniques to ensure we are putting the right recourses, into the right risks, at the right time. Fortunately civil precedent provides us with a framework to predict. This idea is known as "reasonable foreseeability". In essence, virtually anything is foreseeable, if you can think it, then you can foresee it. However, if we qualify the idea with reasonableness we can make three statements. An event is reasonably foreseeable if:

+ Members of the public would have predicted the event a priori (avoiding the everything is obvious with hindsight trap).

+ People like us, who are technical knowledgeable and competent in our field would have predicted it.

+ Experts would have predicted it.

These levels are not equal. If only experts would have predicted something, it is unlikely we will be too harshly judged unless we were told beforehand to consult experts and chose not to. On the other hand, if the adverse event happening was obvious to anyone – it's happened before; it's all over the news; etc. then we must do something.

We can use the same model of prediction to determine how bad the outcome will be. Whilst all outcomes have the potential to be fatal (even paper cuts) we use reasonable foreseeability to determine the reasonably foreseeable worst-case impact (injury). Again we use the three levels of prediction, to ensure that we do not catastrophise all outcomes.

Risk management is thus about managing risks that are BOTH reasonably foreseeable AND significant. These are the risks we must have records about and which we must actively manage.

2 DEALING WITH RISK

Having identified and assessed the level of risk, we are required to manage risk to the extent that we are able. In the UK there is a requirement to manage risk to a level that is as low as is reasonably practicable. Other jurisdictions have other models but all require that we consider what constitutes enough and whether we are doing enough. The idea of reasonable practicability is a powerful one. In the same way that virtually everything is foreseeable, virtually ever control is practicable. The definition of practicability is anything that is technically feasible. If risk had to be reduced as low as practicable, we would have to cease work, as it is always technically feasible not to work. The reasonable qualification has the effect of allowing us to balance the risk with the cost (in the broadest sense of cost, encompassing ideas of money; effort; time; etc.).

Thus our statement of managing risk to personnel wherever they are and whatever activity they are doing on our behalf, becomes:

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"We will manage reasonably foreseeable significant risk and reduce those risks to a level that is as low as is reasonably practicable".

3 LONE AND REMOTE WORKERS, RISK AND DUTY OF CARE

We have established the universality of duty of care and stated that employers owe a significant duty of care in both civil and criminal law. Workers who work by themselves, whether in a fixed location or peripatetically are owed a duty of care. The act of working alone fundamentally alters the nature of the risks faced. The fact of being alone makes certain types of incidents more likely to occur and often exaggerates the consequences should a bad thing happen. Bluntly, a lone worker is more likely to suffer an adverse event and should that event occur, they are likely to suffer more harm. The mere fact of them being alone makes them more vulnerable. This does not mean that we need to discourage or prevent lone working. It does mean that we need to do more to protect them. We need to establish what options we have and revisit the idea of reasonable practicability to assess our controls. It is unlikely to be considered that we have discharged our duty of care if we simply instruct employees to be careful out there. On the other hand, it is absolutely reasonable for employees to engage in lone working. Controls are likely to include putting in place an effective system to identify where colleagues are located and providing them with an opportunity to raise an alarm quickly and reliably. We are unlikely to have to train all our colleagues in breakaway techniques or to provide them with extensive weaponry.

4 CHALLENGES OF MANAGING LONE WORKER RISKS

When people work by themselves and are away for supervision or are in unfamiliar areas or situations, they might not behave as we expect. People might not use the equipment we provide or follow the procedures we lay down. Our controls not be as effective as we would like them to be. We need to understand why lone workers might not behave as we expect. Susan Michie and her team at UCL have provided an incredibly useful framework to model behaviours. It leads directly to ideas that we might try to drive the behaviours we want. The model is known as COM-B.

+ **C – Capability.** People need to have the capability to follow the behaviour we want them to. Sometimes this is a training issue. Are our lone workers properly trained? Do they understand how to behave? Sometimes it is a physical, psychological or emotional issue. Are they able to behave as we want them to? If you're job is about dealing with very vulnerable people, will you put their welfare before your own?

+ **O – Opportunity.** Others often determine people's behaviour. Managers put pressure on to do the job quickly. Colleagues use peer pressure to persuade us to take short cuts or ignore rules. Lone workers might be given unrealistic timescales or demands that mean they behave inappropriately because they think that's what we want.

+ **M – Motivation.** People are motivated to behave in a certain way because of their need to do something else. For example, they want to get home; they want to please; they think they know better; etc. Lone workers might feel that rules are unnecessary and don't apply to them, because of their experience and knowledge of the job, so they ignore them.

These three factors combine to create the **Behaviours** we observe. The challenge is that we often do not directly observe the behaviours of lone workers until it has all gone wrong. So we must make it easier to behave the way we want them to and harder to behave in unsafe ways. This is not simply a question of training or close monitoring. This is about understanding what drives people to behave the way they do and putting in support structures to encourage safe working whilst putting in barriers to unsafe acts.

From a lone worker perspective we need to ensure:

+ Lone workers are suitably trained and competent to do their job. This means going further than technical training to complete the task in hand. Training should also provide core skills around dynamic risk assessments, practical strategies to help them remain safe and skills to help them manage difficult unforeseen situations.

+ They are provided with the appropriate tools to do the job effectively and safely, whether that includes personal protective equipment, or simply a hard copy map to get to a remote location without mobile coverage.

+ The environment they work in is as safe as we can make it. A challenge when we have little control over this. We should aim to gather and provide information about the area they are entering and communicate this to the worker ahead of time if at all possible. As a minimum we should provide lone workers with very powerful and simple stopping rules, that we support i.e. when to stop the job and leave.

+ Lone workers are provided with practical and effective procedures or ways of working, that are easy to follow and protect them. Often the workers themselves will have good experience and practices and these can be utilised as part of the development and engagement process.

+ Lone workers understand that we care about them and actively take an interest in their welfare. This should be communicated from the very top of the organisation and throughout.

CONCLUSIONS

Unambiguously we owe those working for us a duty of care, where so ever they work and under whatever circumstances they are working in. This duty will normally require us to make a record of the reasonably foreseeable and significant risks posed by the jobs and activities the lone worker undertakes. We must recognise that the nature of the risks to colleagues who work alone or away from the office will be more significant, and our duty of care will be greater. We will have to do more to protect those colleagues who are at increased risk.

We will need to record what we are doing about managing those risks to a tolerable level. This need not be unduly hard and detailed but it should be sufficient that in the event on an incident, we can demonstrate under close scrutiny that we cared and that we did enough.

We need to recognise that many of the controls we have pertaining to lone workers require them to act in certain ways and to behave safely. A lone worker's behaviour will be driven by their Capability; the Opportunity afforded them and their Motivation. We need to encourage our teams to work in the right way and to make decisions about their health, safety and welfare that are appropriate. Apart from very exceptional circumstances, we do not expect our colleagues to chose between their own safety and doing the job. If we are not there, we need them to act as we would want them to act, not as how they might think that we would want them to act.

From a management perspective, remote and lone workers need to understand that it is not "out of sight; out of mind" but that managers care about their health, safety and welfare.

In the event of a failure, we may need to demonstrate to the satisfaction of either a civil or criminal court that we had done enough; that our systems were robust enough and, ultimately, that we cared enough.

ABOUT THE AUTHORS

Nicole Vazquez is the founder of Worthwhile Training and has over 20 years' experience providing practical advice and training solutions across many sectors assisting organisations to manage the risks associated with employee's safety, security and wellbeing. She is also the organiser of the UK's Lone Worker Safety Expo Conference.

Nigel Heaton is a founding Director of Human Applications. He provides training and consultancy worldwide, advising organisations on designing and implementing risk management systems for business risk and health & safety risk. He acts as an expert witness in civil and criminal cases, offering advice on the interpretation of health & safety law.

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