

Director's Responsibilities for Health and Safety

Protecting the health and safety of employees or members of the public who may be affected by your activities is an essential part of risk management and must be led by the board. Failure to include health and safety as a key business risk in board decisions can have catastrophic results. Many high-profile safety cases over the years have been rooted in failures of leadership. Health and safety law places duties on organisations and employers and directors can be personally liable when these duties are breached: members of the board have both collective and individual responsibility for health and safety. Your primary health and safety principles should include:

Strong and active leadership

- Visible, active commitment from the board
- Establishing effective 'downward' communication systems and management structures
- Integration of good health and safety management with business decisions

Workforce

- Engaging the workforce in the promotion and achievement of safe and healthy conditions
- Effective 'upward' communication
- High quality training

Assessment and review

- Identifying and managing health and safety risks
- Accessing (and following) competent advice
- Monitoring, reporting and reviewing performance

Legal responsibilities of employers

Health and safety law states that organisations must:

- Provide a written health and safety policy (if you employ five or more people)
- Assess risks to employees, clients, partners and any other people who could be affected by your activities
- Arrange for the effective planning, organisation, control, monitoring and review of preventive and protective measures
- Ensure you have access to competent health and safety advice
- Consult employees about their risks at work and current preventive and protective measures

Failure to comply with these requirements can have serious consequences for both organisations and individuals. Sanctions include fines, imprisonment and disqualification. Under the **Corporate Manslaughter and Corporate Homicide Act 2007** an offence will be committed where failings by an organisation's senior management are a substantial element in any gross breach of the duty of care owed to the organisation's employees or members of the public, which results in death. The maximum penalty is an unlimited fine and the court can additionally make a publicity order requiring the organisation to publish details of its conviction and fine.

Health and safety planning

The board should set the direction for effective health and safety management. Board members need to establish a health and safety policy that is much more than a document. It should be an integral part of your organisation's culture, of its values and performance standards. All board members should take the lead in ensuring the communication of health and safety duties and benefits throughout the

organisation. Executive directors must develop policies to avoid health and safety problems and must respond quickly where difficulties arise or new risks are introduced; non-executives must make sure that health and safety is properly addressed.

To agree a policy, boards will need to ensure they are aware of the significant risks faced by their organisation. The policy should set out the board's own role and that of individual board members in leading the health and safety of its organisation. It should require the board to:

- Understand the key issues involved
- Decide how best to communicate, promote and champion health and safety

The health and safety policy is a live document and it should evolve over time (eg in the light of major organisational changes such as restructuring or a significant acquisition).

Health and safety should appear regularly on the agenda for board meetings. The chief executive can give the clearest visibility of leadership, but some boards find it useful to name one of their number as a Health and Safety Director. The presence on the board of a Health and Safety Director can be a strong signal that the issue is being taken seriously and that its strategic importance is understood. Setting targets helps define what the board is seeking to achieve. A non-executive director can act as a scrutiniser to ensure the processes to support boards facing significant health and safety risks are robust.

Delivering health and safety:

Delivery depends on an effective management system to ensure, so far as is reasonably practicable, the health and safety of employees, clients and members of the public. Organisations should aim to protect people by introducing management systems and practices that ensure risks are dealt with sensibly, responsibly and proportionately.

You must take responsibility and of health and safety with members of the board ensuring that:

- Health and safety arrangements are adequately resourced
- They obtain competent health and safety advice
- Risk assessments are carried out
- Employees or their representatives are involved in decisions that affect their health and safety

The board should consider the health and safety implications of introducing new processes, new working practices or new personnel, dedicating adequate resources to the task and seeking advice where necessary. Boardroom decisions must be made in the context of the organisation's health and

safety policy; it is important to 'design-in' health and safety when implementing change.

Leadership is more effective if visible. Board members can reinforce health and safety policy by following all safety measures themselves and addressing any breaches immediately. You should consider health and safety when deciding senior management appointments and have procurement standards for goods, equipment and services to help prevent the introduction of expensive health and safety hazards. The health and safety arrangements of partners, key suppliers and contractors should be assessed because their performance could adversely affect yours.

Setting up a separate risk management or health and safety committee as a subset of the board, chaired by a senior executive, can make sure the key issues are addressed and guard against time and effort being wasted on trivial risks and unnecessary bureaucracy. Providing health and safety training to some or all of the board can promote understanding and knowledge of the key issues in your organisation. Supporting worker involvement in health and safety, above your legal duty to consult worker representatives can improve participation and help prove your commitment.

Monitoring health and safety:

Monitoring and reporting are vital parts of a health and safety culture. Management systems must allow the board to receive both specific (eg incident led) and routine reports on the performance of health and safety policy. Much of daily health and safety information need be reported only at the time of a formal review, but only a strong system of monitoring can ensure that the formal review can proceed as planned and that relevant events in the interim are brought to the board's attention.

You should ensure that:

- Appropriate weight is given to reporting both preventive information such as progress of training and maintenance programme's and incident data such as accident and sickness absence rates
- Periodic audits of the effectiveness of management structures and risk controls for health and safety are carried out
- Impact of changes such as the introduction of new procedures, work processes/products or any major health and safety failure is reported as soon as possible to the board
- Procedures to implement new and changed legal requirements and to consider other external developments and events

Effective monitoring of sickness absence and workplace health can alert the board to underlying problems that could seriously damage performance or result in accidents and long-term illness. The collection of workplace health and safety data can allow the board to benchmark the organisation's performance against others in its sector. Appraisals of senior managers can include an assessment of their contribution to health and safety performance. Boards can receive regular reports on the health and safety performance and actions of contractors. Some organisations have found they win greater support for health and safety by involving workers in monitoring.

Reviewing health and safety:

A formal boardroom review of health and safety performance is essential. It allows the board to establish whether the essential health and safety principles: strong and active leadership; worker involvement and assessment and review have been embedded in the organisation. It tells you whether your system is effective in managing risk and protecting people. The board should review health and safety performance at least once a year. The review process should:

- Examine whether the health and safety policy reflects the organisation's current priorities, plans and targets
- Examine whether risk management and other health and safety systems have been effectively reporting to the board
- Report health and safety shortcomings and the effect of all relevant board and management decisions
- Decide actions to address any weaknesses and a system to monitor their implementation
- Consider immediate reviews in the light of major shortcomings or events

Performance on health and safety and wellbeing is increasingly being recorded in organisation's annual reports to investors and stakeholders.

Auditing and reporting:

Larger public and private sector organisations need to have formal procedures for auditing and reporting health and safety performance. The board should ensure that any audit is perceived as a positive management and boardroom tool. It should have unrestricted access to both external and internal auditors, keeping their cost-effectiveness, independence and objectivity under review. Various codes and guides are available to help organisations report health and safety performance and risk management as part of good governance.

Legal liability of individual board members for health and safety failures:

When board members do not lead effectively on health and safety management the consequences can be severe.

If a health and safety offence is committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other similar officer of the organisation then that person (as well as the organisation) can be prosecuted under **Section 37 of the Health and Safety at Work etc Act 1974**. Recent case law has confirmed that directors cannot avoid a charge of neglect under Section 37 by arranging their organisation's business so as to leave them ignorant of circumstances which would trigger their obligation to address health and safety breaches.

Those found guilty are liable for fines and, in some cases, imprisonment. In addition, the **Company Directors Disqualification Act 1986 Section 2(1)** empowers the court to disqualify an individual convicted of an offence in connection with the management of a company. This includes health and safety offences. This power is exercised at the discretion of the court; it requires no additional investigation or evidence. Individual directors are also potentially liable for other related offences, such as the common law offence of gross negligence manslaughter. Under the common law, gross negligence manslaughter is proved when individual officers of a company (directors or business owners) by their own grossly negligent behavior cause death. This offence is punishable by a maximum of life imprisonment.

Health and safety leadership checklist:

This list is designed to check your status as a Health and Safety Director on health and safety:

- ✓ Demonstrate the board's commitment to health and safety
- ✓ Ensure appropriate board level review of health and safety
- ✓ Ensure your organisation (at all levels including the board) receives competent health and safety advice
- ✓ Ensure that all staff (including the board) are sufficiently trained and competent in their health and safety responsibilities
- ✓ Ensure that your workforce, particularly safety representatives, are consulted properly on health and safety matters and that their concerns are reaching the appropriate level including the board
- ✓ Systems are in place to ensure your organisation's risks are assessed and that sensible control measures are established and maintained

- ✓ Make sure you know what audits or assessments are undertaken to inform you about what your organisation and contractors actually do
- ✓ Information the board receives regularly about health and safety (ie performance data and reports on injuries and work-related ill health)
- ✓ What targets have been set to improve health and safety and the performance benchmark against others in your sector or beyond
- ✓ Where changes in working arrangements have significant implications for health and safety are brought to the attention of the board

References

Guidance for Directors on the Combined Code 1999
(Institute of Chartered Accountants for England and Wales)
Successful Health and Safety Management 1997 (HSE)
Leading Health and Safety at Work (HSE)
Managing Health and Safety: five steps to success (HSE)
Essentials of Health and Safety at Work 2006 (HSE)
Revitalising Health and Safety: Health and Safety in Annual Reports (HSE)
Management of Health and Safety at Work Regulations 1999 (amended 2003)
Health and Safety (Consultation with Employees) Regulations 1996
Safety Representatives and Safety Committees Regulations 1977
Health and Safety at Work etc Act 1974 (Section 7 and 37)
Corporate Manslaughter and Corporate Homicide Act 2007

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