



A Short Guide to The Safety, Health and Welfare at Work Act, 2005



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THE SAFETY, HEALTH AND WELFARE AT WORK ACT, 2005

The Safety, Health and Welfare at Work Act, 2005, places responsibility for occupational health and safety on all stakeholders. The Act develops the role of employers, employees and Government in framing and implementing occupational safety and health policy in Ireland.

So, if you are an employer, an employee, safety representative, safety manager, safety and health practitioner a self-employed person, if you are commissioning, designing or carrying out construction work, if you are a supplier, importer or designer of articles or substances for use at a place of work, or have control to any extent over a place of work, or if you are a contractor, then the Safety, Health and Welfare at Work Act, 2005 will impact upon you.

The Safety, Health and Welfare at Work Act, 2005 takes a preventative approach to reducing accidents and ill health at work. The main effects on each party involved are set out in this document. The 2005 Act introduces some significant changes in relation to risk assessment and safety statements where there are less than three employees. It also deals with the use of intoxicants, employee's medical fitness for work, penalties upon conviction and the introduction of 'on the spot fines'.

ABOUT THIS GUIDE

This guide is designed to provide a brief overview of the responsibilities of key stakeholders including employers and workers under Safety, Health and Welfare at Work Legislation.

- **SECTION 1** provides information on the Health and Safety Authority – what it is and what it does.
- **SECTION 2** outlines what are the key objectives of the Safety, Health and Welfare at Work Act 2005.
- **SECTION 3** sets out the duties of the employer. It does not provide a definitive guide for companies with less than 3 employees who will be governed by the new Code of Practice.
- **SECTION 4** provides workers with a list of their duties as set out in the legislation.
- **SECTION 5** deals with other people with duties under the Act.
- **SECTION 6** overviews the enforcement action that can be taken by the Health and Safety Authority and the penalties set out for breaches of the legislation.

Finally, the guide outlines where you can obtain further information on any or all of the issues outlined in this publication.



“This is a practical guide for both employers and employees in the workplace. I hope it will be of assistance to all in discharging their obligations under the new Act.

The primary focus of this Act is on the prevention of deaths and injuries in the workplace. Safety is paramount. This Act is a serious wake-up call to employers who don't do enough to prevent accidents at their places of employment. Workers also have a duty not to endanger themselves or others and to be alert to dangerous situations.”

Mr Tony Killeen TD , Minister for Labour Affairs



The new Health, Safety and Welfare at Work Act 2005 is a dynamic and modern piece of legislation which is very timely. The increase in fines and penalties is welcome as I believe strongly that the level of fines and penalties should reflect the gravity which society attaches to breaches of the law, particularly those which result in death or injury.

Tom Beegan, Chief Executive

SECTION 1

What is the Health and Safety Authority?

The Health and Safety Authority is the national body in Ireland with responsibility for securing health and safety at work. It is a state-sponsored body, established under the Safety, Health and Welfare at Work Act, 1989 and it reports to the Minister for Enterprise, Trade and Employment.

What does the Health and Safety Authority do?

The HSA has an overall responsibility for the administration and enforcement of health and safety at work in Ireland. The HSA monitors compliance with legislation at the workplace and can take enforcement action (up to and including prosecutions). We are the national centre for information and advice to employers, employees and self-employed on all aspects of workplace health and safety. The Authority also promotes education, training and research in the field.

Because safety is everybody's responsibility there is always wide consultation with employers, employees and their respective organisations. To help develop sound policies and good workplace practices the authority works with various Advisory Committees and Task Forces, etc. which focus on specific occupations or hazards.

The staff of the HSA provide the following services to employers, employees and the public:

- promote good standards of health and safety at work
- inspect all places of work and monitor compliance with health and safety laws
- investigate certain serious accidents, causes of ill health and complaints
- carry out and sponsor research on health and safety at work
- publish codes of practice, guidance and information
- provide an information service during office hours
- develop new laws and standards on health and safety at work

SECTION 2 - SAFETY, HEALTH AND WELFARE AT WORK ACT 2005

The Safety, Health and Welfare at Work Act 2005 sets out the main provisions for securing and improving the safety, health and welfare of people at work. The 2005 Act replaces the Safety, Health, and Welfare at Work Act 1989.

The 2005 Act sets out:

- The requirements for the control of safety and health at work.
- The management, organisation and the systems of work necessary to achieve those goals.
- The responsibilities and roles of employers, the self-employed, employees and others-
- The enforcement procedures needed to ensure that the goals are met.

SECTION 3 - EMPLOYERS DUTIES

Employers (including self-employed persons) are primarily responsible for creating and maintaining a safe and healthy workplace. An employer's duties include:

- Managing and conducting all work activities so as to ensure the safety, health and welfare of people at work (including the prevention of improper conduct or behaviour likely to put employees at risk^{*}).
- Designing, providing and maintaining a safe place of work that has safe access and egress, and uses plant and equipment that is safe and without risk to health.
- Prevention of risks from the use of any article or substance, or from exposure to physical agents, noise, vibration and ionising or other radiations.

^{*} "Horseplay" and bullying at work would come within these categories

- Planning, organising, performing, maintaining and, where appropriate, revising systems of work that are safe and without risk to health.
- Providing and maintaining welfare facilities for employees at the workplace.
- Providing information, instruction, training and supervision regarding safety and health to employees, which must be in a form, manner, and language that they are likely to understand.
- Cooperating with other employers who share the workplace so as to ensure that safety and health measures apply to all employees (including fixed-term and temporary workers) and providing employees with all relevant safety and health information.
- Providing appropriate protective equipment and clothing to the employees (and at no cost to the employees).
- Appointing one or more competent persons to specifically advise the employer on compliance with the safety and health laws.
- Preventing risks to other people at the place of work.
- Ensuring that reportable accidents and dangerous occurrences are reported to the Health and Safety Authority.

The following steps should be followed:

Step 1: IDENTIFY THE HAZARDS

To successfully manage safety and health, employers and self employed persons should know what hazards are in the workplace. A hazard is defined as anything with the potential to cause harm. A checklist of typical workplace hazards in various employments is given below:

1. Slips, trips and falls.
2. Falls of persons from height.
3. Falls of material from height.
4. Hazards associated with the manual handling of loads.
5. Hazards from plant and machinery (for example, exposure to dangerous moving parts).
6. Mechanical handling.
7. The movement of vehicles and site transport.
8. Fire and explosion.
9. The use of hazardous substances (e.g. toxic, corrosive).
10. The use of compressed air.
11. Exposure to harmful levels of noise.
12. Exposure to radiation.
13. Hazards associated with electricity.
14. Exposure to harmful vibration.
15. Entry into confined spaces.
16. Unsuitable lighting levels in the workroom.
17. Inadequate thermal environment (i.e. too hot or too cold).
18. Work with visual display screens.
19. Human factors (for example, violence to staff, stress, bullying at work).

(This list is non-exhaustive and is not ranked in priority).

Risk assessment and the safety statement – 5 steps to a safer workplace

The Act emphasises the need for employers (including the self-employed) to manage safety and health in order to prevent workplace injuries and ill health. The basis for the management of safety and health is the written safety statement. This document sets out an action programme for safeguarding the safety, health and welfare of your employees while they are at work.

It should be prepared after you have identified the hazards and assessed the risks that may be present at your workplace.

Step 2: ASSESS THE RISKS

Having identified the hazards, you now have to assess any risks (the likelihood of the harm occurring, and the severity of the consequences if it does) arising from those hazards. Categorising the risks (for example, a high risk of injury from manual handling, a medium risk of exposure to chemicals or a low risk of contact with moving parts of machinery) allows you to prioritise the measures necessary to ensure safety, health and welfare at your workplace .

The risk assessment must:

- Address any significant hazards,
- Apply to all aspects of the work, and
- Cover non-routine as well as routine operations (e.g. occasional maintenance tasks).

Step 3: SELECT THE CONTROL MEASURES

You must now select the appropriate control measures to eliminate the hazards and, where that cannot be done, to reduce the risks.

When following this process, you must take into account the General Principles of Prevention as set out in Schedule 3 to the Safety, Health and Welfare at Work Act 2005.

General Principles of Prevention.

1. The avoidance of risks.
2. The evaluation of unavoidable risks.
3. The combating of risks at source.
4. The adoption of work to the individual, especially as regards the design of places of work, the choice of work equipment and the choice of systems of work, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing the effect of this work on health.

5. The adaptation of the place of work to technical progress.
6. The replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work.
7. The giving of priority to collective protective measures over individual protective measures.
8. The development of an adequate prevention policy in relation to safety, health and welfare at work, which takes account of technology, organisation of work, working conditions, social factors and the influence of factors related to the working environment.
9. The giving of appropriate training and instructions to employees.

The Principles are “goal setting” and are based on a recognition that risks cannot always be completely eliminated. The goal is to eliminate where possible or reduce the risk using a hierarchy of control in which the Principles should be applied in the order listed in the 2005 Act. Each level should only be considered after you have given due regard to the levels above it. Residual risks left over from initial control measures should therefore be dealt with by the next level of the hierarchy.

An example of how the hierarchy of control should work as regards the use of a hazardous substance is as follows:

- Could the risk be avoided by completely eliminating the need for employees to handle or come into contact with the hazardous substance, its fumes or vapours?
- If this proves impossible, the unavoidable risks must be evaluated to determine the appropriate control measures.
- Would the adaptation of the process to technical progress eliminate or reduce the unavoidable risks from the use of the hazardous substance?
- If not it may, for example, be possible to replace or substitute the hazardous substance with a substance that is safe or less hazardous.
- The risk may be combated at source by totally enclosing the process so as to reduce the level of exposure to the substance.

- Collective protective measures such as the use of local exhaust ventilation may be able to control the exposure to an acceptable level.
- Finally, where it is not possible to completely control the risk using collective protection, individual protective measures in the form of personal protective equipment (for example, respiratory protective equipment) would need to be used.
- The use of such equipment would involve the giving of appropriate training and instruction to the employees concerned.
- The control measures selected must be capable of dealing with changing circumstances at the place of work.

Step 4: WRITE THE SAFETY STATEMENT

Having gone through the above steps, you will now be in a position to write your safety statement. The document must:

- List the control measures to be taken to avoid the risks.
- Name those responsible for implementing and maintaining the measures.
- Contain plans to deal with an emergency or any serious and imminent risks.
- List the names of the safety representatives (if any).

The safety statement must be reviewed and, if necessary, amended when there has been a significant change in work practices (for example, the introduction of new equipment or substances) or when there is reason to believe that it is no longer valid (an accident, dangerous occurrence or a “near miss” may prompt such a review). The safety statement must also be revised, within 30 days, if directed by an Inspector.

You are required to bring the safety statement to the attention of your employees (and to other persons at the place of work who might be exposed to the specific risks outlined in the safety statement).

When bringing the Safety Statement to the attention of employees it must be a form, manner and, if necessary, in a language that can be understood by employees. This should be done at least annually, on recruitment and when there is a change made to the safety statement.

You must provide health surveillance for your employees when the risk assessment justifies it (or where it is specifically required by law).

Step 5: RECORD AND REVIEW

A Safety Statement when complete is not just a box to be ticked on the management to do list. Workplaces constantly change. Your Safety Statement must be updated as conditions change and new risks are introduced. It is recommended that you review your Safety Statement at least once annually. It is also important that you keep detailed records of risk assessments carried out and any controls put in place.

The role of the competent person

As an employer, you should appoint one or more competent persons to advise you on following these steps and to play a key role in the management of safety and health. In this context, competent person means someone who is able to give informed and appropriate advice on safety and health to management (rather than a person who has specialised technical knowledge of matters such as electrical work or lifting operations). You should select someone for the role on the basis of his or her training, knowledge and experience. You may appoint yourself to the role if you consider that you have the necessary capabilities. However, if you have a relatively small business you may find that you do not have the appropriate range of expertise in-house. In these circumstances, a combination of external and internal competence may be advisable.

“Reasonably Practicable”

Some of the general duties placed on employers under the 2005 Act are qualified by the term “reasonably practicable”. This means that you have exercised all due care when, having identified the hazards and assessed the risks at your workplace, you have put into place the necessary protective and preventive measures, and where

further measures would be grossly disproportionate (having regard to unusual, unforeseeable and exceptional circumstances).

Consultation with employees.

Employers must consult their employees with regard to safety, health and welfare at work and must provide them with certain information on these matters.

As part of the consultation process, employees have the right to select safety representative(s). Employers must provide certain information on safety, health and welfare at the workplace to the employees or to their safety representative(s). These arrangements require the employer to:

- Consult with employees or their safety representative(s) (or both) on any proposed measures likely to substantially affect their safety, health or welfare at work.
- Provide employees or their safety representative(s) (or both) with the results of the risk assessment and consult with them on the preparation of the safety statement.
- Provide employees or their safety representative(s) with other relevant information, including details of any reportable accidents, illnesses or dangerous occurrences, the names of any competent persons appointed to advise on safety and health matters and the preventive and protective measures to be taken to avoid risks (i.e., a copy of the safety statement). This information has to be in a form, manner and language likely to be understood by the employees.
- Refrain from penalising any employee for acting in accordance with safety and health laws or for reporting complaints regarding safety and health matters at work.
- Recognise that safety representatives have various rights, including the right to:
 1. Inspect the place of work.
 2. Investigate accidents and dangerous occurrences (as long as this does not interfere with an investigation being carried out by an Inspector).

3. Investigate complaints made by employees (after giving reasonable notice to the employer).
4. Be given time off from work, without loss of remuneration, to receive appropriate training.
5. Accompany an Inspector carrying out an inspection at the workplace.
6. Make representations to the employer on safety, health and welfare.
7. Make representations to, and receive information from, an inspector.
8. Consult and liaise with other safety representatives in the same undertaking.

SECTION 4 - WORKERS DUTIES

Employees (including full or part-time, permanent or temporary, regardless of any employment or contractual arrangement they may have) also have duties under the Act. They must:

- Comply with relevant laws and protect their own safety and health, as well as the safety and health of anyone who may be affected by their acts or omissions at work.
- Ensure that they are not under the influence of any intoxicant to the extent that they could be a danger to themselves or others while at work.
- Cooperate with their employer with regard to safety, health and welfare at work.
- Not engage in any improper conduct that could endanger their safety or health or that of anyone else.
- Participate in safety and health training offered by their employer.
- Make proper use of all machinery, tools, substances, etc. and of all personal protective equipment provided for use at work.
- Report any defects in the place of work, equipment, etc. which might endanger safety and health.

SECTION 5 - OTHER PEOPLE WITH DUTIES

Persons who have control over:

- a non-domestic place of work that has been made available to the employees of another person,
- the means of access to or egress from that place of work, or
- any article or substance provided for use at that place of work (other than employees of the person in control)

have a duty to ensure, so far as is reasonably practicable, that the place of work, the access to and egress from it, and any article or substance so provided, is safe and without risk to health.

For example, a person in control of an office has to ensure that a visiting window cleaner is provided with safe access and egress and, in particular, that any permanent window cleaning equipment is safe to use (of course, the employer of the window cleaner also has duties in relation to his or her employees.).

Manufacturers, importers and suppliers (including designers, installers and erectors) have to comply with the following duties:

- Manufacturers, importers and suppliers of equipment, machinery, articles, or substances used at work have the duty of ensuring safety and health concerning the use of the materials that they produce or supply.
- Manufacturers, importers and suppliers must provide information on the correct use of the materials to ensure safety and health at work.

Those who design or construct a place of work must ensure that it is designed and capable of being constructed and maintained without risk to safety and health.

SECTION 6 - ENFORCEMENT.

The Health and Safety Authority is responsible for enforcing and promoting safety and health at work. For the most part, HSA Inspectors give advice and information during the course of an inspection. However, they have a wide range of enforcement powers that are used in appropriate circumstances.

An inspector may serve a direction for an improvement plan requiring the submission, within one month, of an improvement plan setting out the proposed remedial action for dealing with a specified risk.

Enforcement notices may be served to deal with a failure to comply with the law. An Improvement Notice gives a period of time for the matter to be remedied, while a Prohibition Notice requires the immediate cessation of the activity that has created the risk. The Authority may also apply to the High Court for an order prohibiting or restricting the use of a place of work.

Following prosecution, the Courts may impose fines or prison sentences (or both), depending on the seriousness of the offence. Most offences, including any breaches of Regulations under the Safety, Health and Welfare at Work Act 2005 may be tried either in the District Court, where the maximum penalty is 3,000 per charge and/or up to six months imprisonment, or on indictment in the Circuit Court where the maximum penalty is 3,000,000 and/or imprisonment for a term not exceeding two years. The Authority also has the right to publish the names and addresses of those subjected to a prohibition notice, High Court order or a penalty following a court conviction.

The 2005 Act provides for the specification in Regulations of “On-the Spot” fines of up to 1,000 for certain offences to be prescribed in the Regulations.

Directors and senior managers carry particular responsibilities under the 2005 Act if it can be shown that an offence committed by their undertaking was attributable to neglect, connivance, consent or authorisation on their part.

SECTION 7 - FURTHER INFORMATION

The Health and Safety Authority provides a wide range of materials covering all aspects of Health and Safety. This includes a number of publications relating to the legislative aspects. For further information visit our website at www.hsa.ie or phone 1890 289 389.

**The Safety, Health and Welfare
at Work Act, 2005**

*Achieving a
Healthy
and Safe
Working Life
-Together*

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