

Guidance for Directors and Senior Managers on their Responsibilities for Workplace Safety and Health





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1. Who is this guidance aimed at?

This guidance is aimed at executive and non-executive directors¹ of all types of workplace in both the private and public sectors, at officers of undertakings¹, at board chairmen and board members, at senior managers and at any other managers who are responsible for directing workers while at work and work activities. It will help these office-holders to protect their employees, customers and those members of the public who may be affected by what they do in the workplace by ensuring that the safety and health risks arising from work activities are properly managed.

When this guidance refers to 'safety and health' it means the safety, health and welfare of workers and others while at work or while in the workplace.

The definition of 'undertaking' in the 2005 Act is all embracing and covers all types of work and corporate structures that may exist.

Where the word 'director' is used in this document it should be read as including 'director' as defined and normally used and the equivalent roles in organisations that have governance structures other than boards and directors. It is also intended to include the owners or managers of small businesses, sole traders, etc. Many small to medium-sized enterprises (SMEs) operate different management and governance structures to those of larger undertakings and corporations. However, all workplaces, large and small, tend to have a governing body (board, council, etc.) consisting of two or more directors or their equivalents, together with others from within or external to the organisation. SMEs can use the structures set out in this document, as they are relevant to their undertakings, to meet their legal responsibilities as an employer¹.

Regardless of the size of the undertaking, it is important that directors and officers are fully informed of the relevant safety and health matters and requirements that apply to them. They must understand their role in governing safety and health, which is part of their responsibilities for good corporate governance in running the business. This guidance will also help directors and officers to meet their legal responsibilities as employers.

This guidance highlights the key areas to consider when ensuring good corporate governance on safety and health management. Directors, officers and their advisers will need to consult the more detailed Health and Safety Authority (HSA) guidelines referenced in this booklet or available on the HSA website at www.hsa.ie in order to put the good practices which are highlighted here into operation.

¹The following definitions from the Safety, Health and Welfare at Work Act 2005 (the 2005 Act) should be applied wherever these terms are used in this guidance:

"director" includes a person in accordance with whose directions or instructions the directors of the undertaking concerned are accustomed to act but does not include such a person if the directors are accustomed to so act by reason only that they do so on advice given by the person in a professional capacity;

(There is no legal distinction made between executive and non-executive directors. The difference is that non-executive directors do not get involved in the day-to-day running of the undertaking. They use their experience and expertise to provide independent advice and objectivity to the board, and they may have a role in monitoring executive management. Non-executive directors might be appointed to a board to carry out a specialist role on a part-time basis or for their expertise in specific activities.)

"undertaking" means a person being an individual, a body corporate or an unincorporated body of persons engaged in the production, supply or distribution of goods or the provision of a service (whether carried out by him or her for profit or not);

"employer" in relation to an employee—

(a) Means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment,

(b) Includes a person (other than an employee of that person) under whose control and direction an employee works, and

(c) Includes where appropriate, the successor of the employer or an associate employer of the employer;

2. Why manage safety and health at work?

This section sets out the main reasons why directors and officers of undertakings must manage safety and health.

2.1 The liabilities of directors and officers of undertakings

The Safety, Health and Welfare at Work Act 2005 (the 2005 Act) sets out the duties of employers and their employees regarding safety and health. The 2005 Act puts duties of care on employers to manage and conduct their undertakings so that they are safe for employees. In turn, the 2005 Act requires that employees work in a safe and responsible manner and co-operate with their employer in order to comply with the law. The HSA's guide to the 2005 Act explains these responsibilities in detail (see references).

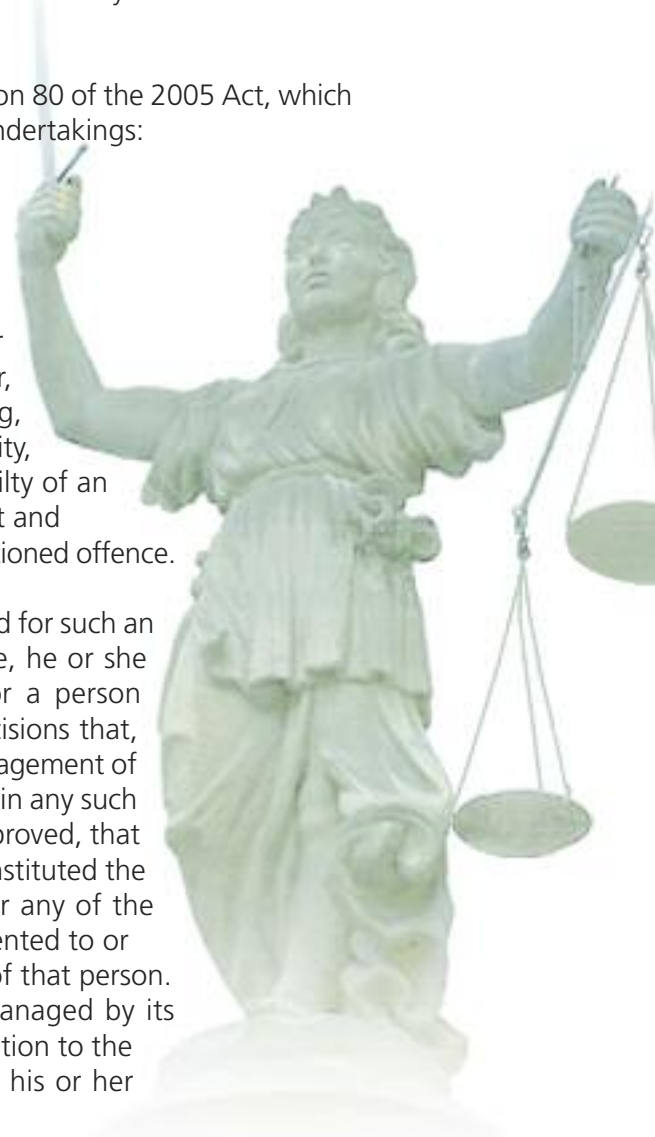
The definition of 'employer' as set out in the 2005 Act includes not only the person who has a contract of employment with an employee but also a person under whose control and direction an employee works. In many instances a director may be both an employer and an employee of the undertaking. The legal interpretation of a 'person' also covers the entity within which the work is carried out.

Specific attention is drawn to the provisions of section 80 of the 2005 Act, which relates to the liability of directors and officers of undertakings:

80. (1) Where an offence under any of the relevant statutory provisions has been committed by an undertaking and the doing of the acts that constituted the offence has been authorised, or consented to by, or is attributable to connivance or neglect on the part of, a person, being a director, manager or other similar officer of the undertaking, or a person who purports to act in any such capacity, that person as well as the undertaking shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she was a director of the undertaking concerned or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, or a person who purported to act in any such capacity, it shall be presumed, until the contrary is proved, that the doing of the acts by the undertaking which constituted the commission by it of the offence concerned under any of the relevant statutory provisions was authorised, consented to or attributable to connivance or neglect on the part of that person.

(3) Where the affairs of a body corporate are managed by its members, subsections (1) and (2) shall apply in relation to the acts or defaults of a member in connection with his or her



functions of management as if he or she were a director of the body corporate.

Under the 2005 Act responsibility for safety and health is placed directly on those in charge in the workplace. In other words, directors and managers who control the work being done must take on this responsibility.

The liabilities of directors and officers of undertakings under the 2005 Act depend on the role that both the board and the senior management team play in the undertaking. Boards of directors are responsible for good corporate governance and perform this task by setting corporate objectives and targets and taking strategic decisions on all business issues, including safety and health management. The regular day-to-day management, control and direction of the undertaking are the responsibility of the chief executive officer/managing director (CEO/MD) and his/her management team. For smaller undertakings these two groupings may be one and the same, i.e. the CEO/MD may own the undertaking, sit on the board and run the undertaking on a day-to-day basis as well.

The CEO/MD and the senior management team must follow the broad strategic directions on safety and health management set by the board. They must determine how the management of workplace safety and health should happen at the workplace interface and are responsible for ensuring that good practices are followed.

All directors and officers of undertakings who authorise or direct any work activities must understand their legal responsibilities and their roles in governing safety and health, upholding core safety and health values and setting good safety and health standards for their business. The most senior management in the organisation must ensure that all board members have a clear understanding of the key safety and health issues for the business and are continually appraised of the risks likely to arise. Whatever role directors play in the running of the undertaking, they must have, or ensure the availability to the undertaking of, the basic knowledge and safety and health competence that their role requires.

Directors may be prosecuted under the 2005 Act for failing to manage safety and health in the undertaking. Section 80 of the 2005 Act provides that a director, manager or other similar officer of the undertaking may be deemed to be guilty of the same offence as the undertaking if the doing of the acts that constituted the offence has been authorised, or consented to by, or is attributable to connivance or neglect on the part of the director. In such instances, for example, ignoring a safety and health issue could constitute neglect.

Section 80(2) states that if a person is proceeded against under that section then it is presumed, until the contrary is proved, that the breach or neglect was authorised by him/her. It is for the director or the manager to show that he/she did all that could be reasonably expected under the 2005 Act and was not negligent.

Anyone convicted of a serious breach of safety and health law could be fined up to €3m or face going to prison for up to two years.

2.2 Protecting your undertaking's reputation and assets

As well as complying with the law, directors will want to protect the reputation of their undertaking from the adverse publicity that a serious accident would bring. Directors and officers will also wish to avoid undue pressure from employees, trade unions and customers due to poor safety and health management, and the stigma and other consequences of a prosecution (criminal conviction, fines or prison).

An effective safety and health management strategy is a central component of a modern organisation's corporate social responsibilities and ensures that the undertaking does not lag behind others in its sector in this regard. There is also considerable evidence of the financial benefits to be gained from effective safety and health management such as:

- Increased productivity when using safe operating procedures
- Reduced insurance premiums
- Less sickness-related absences and training costs for replacement staff
- Better staff retention and morale

Avoiding the costs associated with poor safety and health management ensures that an undertaking's reputation and assets are protected.

Factors which lead to poor corporate safety and health accountability include:

- Failure of the board to take control
- Rubber stamping of management decisions on safety and health issues
- Lack of resources assigned to safety and health by the board
- Failure to have competent safety and health advice available, either internally or externally
- Failure to have adequate communication on important safety and health issues



3. Creating a positive safety and health culture

Directors and officers of undertakings who authorise and direct work activities are responsible for ensuring good safety and health as part of their corporate governance role and they must consider the following key elements when doing so:

- Their leadership role in establishing the correct safety and health direction
- The standards and objectives they set for management on safety and health
- The extent to which they give managers responsibility, accountability and support for safety and health management
- How they hold managers accountable for the safety and health responsibilities given to them
- How they oversee internal control for safety and health

In setting the strategic aims for the business, directors must have an understanding of the role that safety and health performance plays in the overall running of the business. In accepting corporate responsibility for safety and health, directors need to be proactive in developing a positive safety and health culture for the workplace(s) they control. Directors do this by:

- Ensuring that safety and health is an integral part of the management process
- Setting clear safety and health values and standards
- Thinking strategically about corporate safety and health responsibilities
- Being open and constructive about safety and health regulation
- Rewarding good safety and health behaviour
- Creating a culture of integrity about and responsibility for safety and health matters

Directors can exert considerable influence over the businesses they run, shaping the way things are done, determining how managers interpret safety and health policies and promoting a positive safety and health culture among the workforce. The employees' commitment to safety and health is influenced by their perception of 'your commitment to safety and health'. Visible and active support, strong leadership and commitment from all directors and senior managers are essential for successful safety and health management.

4. Organising safety and health

4.1 The importance of risk assessments and safety statements

Effective safety and health management starts with the carrying out of workplace-specific risk assessments, writing them down and implementing the improvements that they identify as necessary. These assessments are required by section 19 of the 2005 Act and must be included in the undertaking's safety statement and, where applicable, in the safety and health plans for construction sites.

All undertakings are required by section 20 of the 2005 Act to prepare a safety statement. The safety statement is the undertaking's organisational plan for safety and health. It sets out how safety and health is managed in the workplace(s) under the directors' control. The safety statement should be endorsed by the board as an illustration of its commitment to the statement's objectives and plans.

The preparation and implementation of these documents presents an opportunity to ensure the involvement of everyone in the safety and health of the undertaking. For this purpose, directors and their advisers can use the templates and guidance given in a range of HSA booklets (see references).

4.2 Collective responsibility for directors and senior managers

The safety statement must set out the specific safety and health responsibilities of each management level within the undertaking and, in particular, how they will work together to ensure safety and health. Directors must also be given the authority to effect safety and health changes in the workplace(s) covered by the safety statement.

The safety statement must start with the safety and health policy. This policy is the undertaking's commitment to protect the safety and health of employees and others at the workplace under the director's control. This policy should be specific to each workplace in the undertaking – consult employees when it is being prepared and review it regularly, as necessary, including if there are changes in the workplace, workforce, organisation or method of work, articles or substances used at work etc. Directors should have a clear understanding of what the safety and health policy covers and should formally accept it as company policy. Then the board, and its senior management team, must ensure that all their business decisions reflect the policy as set out.

The policy should be open to examination at board level to ensure that it is sufficiently robust to cover the safety and health risks posed by the undertaking. The board should be responsible for driving the safety and health agenda, understanding the risks and opportunities associated with safety and health and any matters that might affect safety and health.

The knowledge, training, experience and safety and health competence that directors require to carry out this role and to meet their legal responsibilities will depend on the safety and health risks posed by the undertaking.

It is important for the board to remember that, although safety and health responsibilities can and should be delegated to senior managers, the legal responsibility for safety and health rests with the employer. Each director and senior manager must accept his/her individual role in providing safety and health leadership for the undertaking. Strong leadership is vital in delivering effective safety and health risk control. Everyone in the undertaking must believe that the board is committed to the continuous improvement of safety and health performance and must know what its expectations are of them and how they should deliver what is expected of them. By involving all staff in the development and maintenance of safety and health, the issue of safety and health becomes everyone's business.

The key tasks that board members should carry out in ensuring that they accept collective responsibility and meet their legal safety and health obligations include:

- Reviewing and, where appropriate, endorsing the safety statement when prepared by the senior management team
- Receiving regular reports on progress, performance and implementation of safety and health plans
- Ensuring sufficient resources are made available to achieve and implement these safety and health plans
- Ensuring that the senior managers and the workforce are actively involved in the management of safety and health
- Developing a communications plan to show the board's commitment to its safety and health policy
- Making sure the necessary organisational structures exist to ensure that safety and health is properly managed
- Keeping aware of all matters in relation to safety and health, especially major incidents and changes in legislation
- Ensuring safety and health audits are undertaken to monitor all aspects of safety and health policy implementation

In ensuring collective responsibility among senior managers, the board must ask the following key questions:

- Do you involve all your staff in issues that affect their safety and health?
- Do you provide daily safety and health leadership in the areas you control?
- Have you allocated responsibility and authority for safety and health to specific people in your department/unit – are they clear on what they have to do and what they are to be held accountable for?
- Do you have sufficient information about the risks your staff are exposed to and the preventive measures they must take?
- Do you consult and involve your staff in key decision-making on safety and health issues?
- Do you have a safety committee for this purpose and do you facilitate the selection of safety representative(s)?

4.3 Setting the best standards

Establishing a positive safety and health culture is a key to good performance. This culture should be driven from the top. The board and its directors should take ownership of key safety and health issues and be ambassadors for good safety and health performance within the undertaking by upholding core values and standards. A visible level of involvement from directors will help influence attitudes and behaviours throughout the organisation. The board should be clear on the safety and health standards they expect. The chairperson and CEO/MD should play a key role in setting these safety and health standards in a culture of openness and as part of a drive for better performance.

Undertakings make many decisions which have safety and health implications and in making these decisions boards and directors must take into account the safety and health issues arising, for example when investing in new plant, replacing safety critical plant in high hazard workplaces as necessary, and when assessing premises, safety critical processes and products.

Being proactive on safety and health management involves carrying out risk assessments for all existing and new work processes and putting in place appropriate corrective actions when issues are identified. Paying particular attention to safety critical processes is paramount. When undertakings take on new workers they must check to ensure they are competent to do their work safely and to identify whether they need safety and health training. These functions are normally the responsibility of senior management. By applying business logic to the assessment process, managers will identify the most appropriate safety and health control measures required.

Key questions the board must ask its senior management when setting the best standards include:

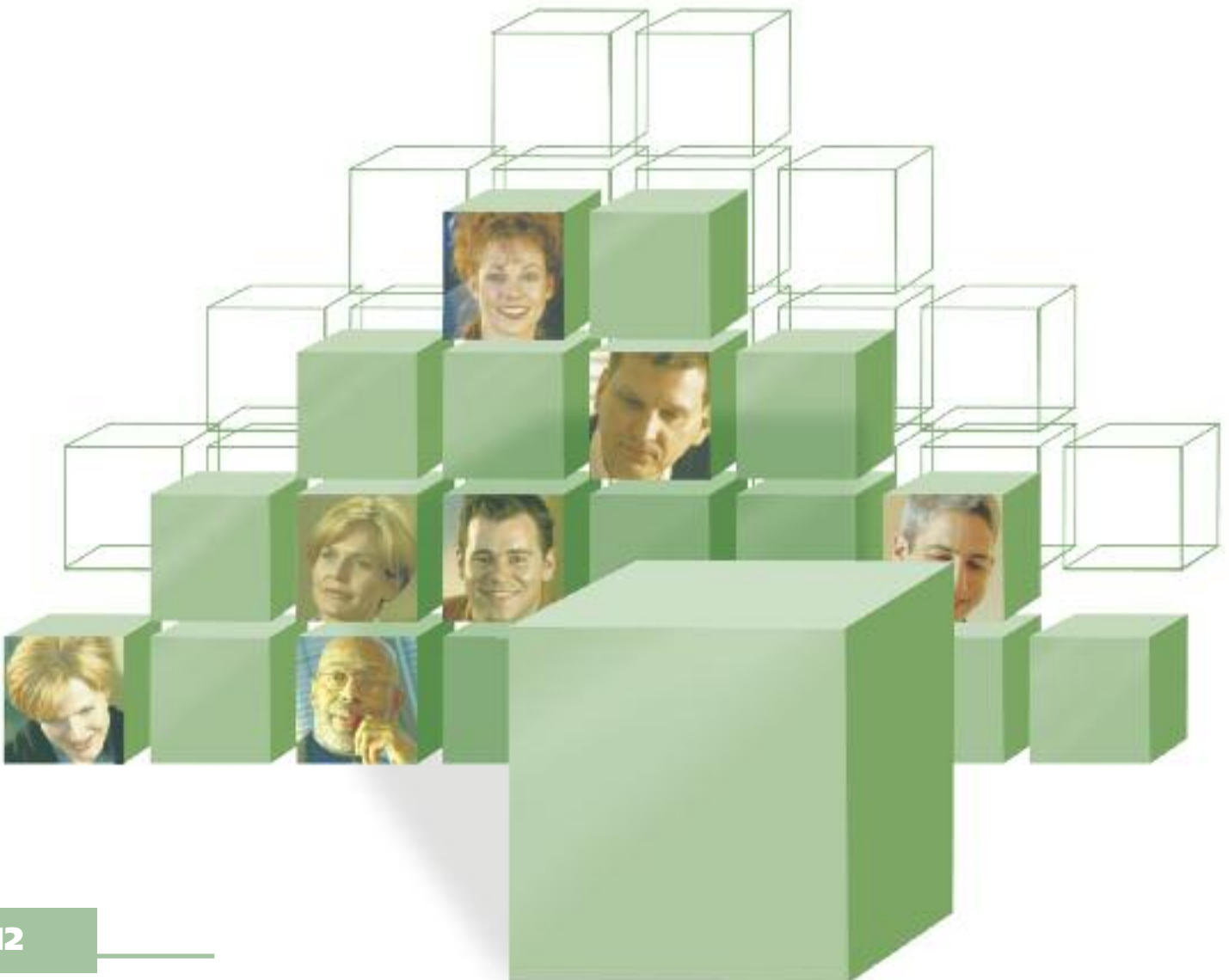
- Does this organisation have the right levels of safety and health expertise and competence?
- Is safety and health always considered before any new work is started or new work equipment is brought into use?
- Do you carry out risk assessments for all new work and for existing operations?
- Do you involve the safety committee and the safety representative(s) in these assessments?
- Have you identified what work needs to be assessed?
- Have we reviewed our safety critical processes?
- How do you know our safety and health protection is good enough?
- Have you facilitated the selection of safety representatives?
- Do our safety consultation programmes and safety committee work effectively?
- Are our employees properly trained and do they attend the safety and health training provided by us? Do we evaluate the effectiveness of our training?
- Do we have adequate emergency plans for dealing with serious or imminent danger, for example for fires, process deviations, accidents?

- Do we have adequate safety and health procedures in place?
- Do we review/audit our safety and health management systems on a periodic basis?

4.4 Organisational structures

The board needs to integrate the safety and health governance process into the main corporate governance structures within the undertaking, including the activities of the board and its sub-committees. In some cases, the creation of a board sub-committee to consider safety and health may be required. This will depend on the safety and health risks posed by the undertaking. For example, the sub-committee could oversee the risk assessments carried out on safety critical processes, the implementation of the safety statement, the implementation of a new safety and health management system and any new key safety and health procedures for the undertaking. In short, the board must organise itself to meet its safety and health corporate governance obligations as efficiently and effectively as possible, having regard to the range and nature of the hazards and risks that may arise.

For all undertakings it is imperative that directors have a clear understanding and a basic level of competence in relevant safety and health matters, particularly in relation to their legal responsibilities as an employer.



5. Carrying out safety and health monitoring

5.1 Implementing the safety statement

The board should set key safety and health management objectives and targets for the senior management team and ensure that its structures drive good performance. Key performance 'leading and lagging' indicators must be specific to the undertaking's needs and link in with the board's overall safety and health strategy. Leading or proactive indicators include:

- Carrying out work-specific risk assessments, and their extent and thoroughness
- Level of implementation of the safety statement
- Monitoring the appropriateness, replacement and maintenance of plant and equipment used for safety critical processes
- Development, implementation and performance of the overall safety and health management system, for example the extent and thoroughness of monitoring and auditing safety and health performance
- Measurement of the safety and health culture of the undertaking

Lagging or reactive indicators include investigating accidents, chemical spills, lifting equipment failure, safety-implication incidents and safety-related reports and representations.

The safety and health organisation plan should be detailed in the safety statement and should include risk assessments. The legal requirement for carrying out risk assessments includes an in-built improvement programme. Therefore the successful implementation of the undertaking's safety statement will help to ensure the safety and health of its employees and others who may be affected by its work activities.

To implement the safety statement properly, the undertaking must put in place an efficient monitoring system, suited to its needs. This system must ensure that everyone in the workplace knows what is expected of them. It should set the ground rules which all must follow to comply with their legal responsibilities. Most successful undertakings now want to do much more than the minimum required and strive to have safety and health rules which ensure they have no accidents and continue to improve. This approach ensures that the undertaking is, and will continue to be, a business success.

5.2 Assessing safety and health performance

The board should ensure that the safety and health risks generated by the undertaking are managed and controlled adequately and that a framework is established to ensure compliance with its core safety and health standards. It is important that the board's governance structures enable management systems, actions and levels of performance to be challenged. Assessing how internal control procedures work is a key part of senior managers' responsibilities.

In order to ensure that the undertaking's safety and health responsibilities are

properly discharged, directors must ensure that they review their safety and health performance on a regular basis. The board and the senior management team should have an agreed plan on how this is done. The board must be assured that its management team is doing, at a minimum, what the law requires and, in addition, that its safety and health management system continues to operate to best standards. Reviewing safety and health performance ensures that the undertaking's safety and health risk management system remains up to date and effective.

The following list of questions will help the board and its senior management team to judge the level of safety and health monitoring and auditing being carried out:

- Do we reward excellence in safety and health?
- When did we last review our safety statement and our safety and health policy?
- Are we committed to continuously improving our safety and health performance?
- Do we monitor the performance, maintenance and integrity of safety critical plant, equipment and processes?
- Do we know how well we perform on safety and health issues?
- Are we as directors kept informed by our senior management team of our safety and health performance?
- Do we comment on safety and health performance in our annual report, where relevant?
- How do we know if we are meeting our own objectives and standards for safety and health? Are our risk controls good enough?
- Do we have an active monitoring system in place for safety and health critical issues?
- How do we know we are complying with the safety and health legislation that applies to our business?
- Do our accident or incident investigations uncover all the underlying causes – or do they stop when we find the first person that has made a mistake?
- Do we have accurate records of injuries, ill health, bullying complaints, accidental loss etc.?
- Do we as directors get reports on our safety and health failures?
- How do we learn from our mistakes and our successes?
- Do we carry out safety and health audits regularly, as necessary? If we do, what action do we take on audit findings?
- Do these audits involve staff at all levels? Do we involve our safety representative and safety committee, where it exists, in the audits?

5.3 Directors' roles and responsibilities for safety and health

All directors should understand their legal responsibilities. Their roles should be supported by formal, individual terms of reference. Depending on the size, scale and nature of the undertaking's activities, and the potential hazards and risks arising, it may be prudent to nominate a director to oversee and co-ordinate the safety and health governance process. It should be noted that the establishment of such a role does not dilute other directors' safety and health responsibilities. Areas where this might be appropriate include 'Seveso' major accident hazard premises, the pharmaceutical and chemicals sector, construction, utilities and mining and quarrying. Having regard to the safety and health risks that the undertaking poses, this role could be discharged on an executive or non-executive basis. For example, where safety critical plant is used and the consequences of loss of integrity could be severe for the undertaking the role should be carried out by a person with the competence to fulfil the role and meet the responsibilities. Whoever is assigned to this role must have a clear understanding of what is expected of them and should receive the necessary safety and health training to be comfortable with the responsibilities.

The person nominated may chair the safety and health sub-committee of the board, where one exists. Such nomination will not mean that the board's general safety and health responsibilities are delegated to one person. However, such nominees should have the responsibility of ensuring that safety and health risk management issues are properly addressed at board level and throughout the organisation as a whole. He/she will also keep the board informed of the relevant safety and health issues, levels of performance etc.

A significant way of demonstrating the board's commitment to safety and health management is for the nominated 'Safety and Health Director' to take a personal interest in monitoring safety and health performance. He/she should talk to the workers and their safety representative(s) about safety and health issues on the floor and set a good example by obeying in-house safety and health rules, for example by wearing a hard hat and other personal protective equipment while on site. He or she can look for evidence of the practical working of the board's safety and health policy and ensure that discussions on this issue at board meetings are focused and effective. He/she could also liaise closely with the undertaking's safety committee, where one exists.

References

The HSA has several publications which give detailed guidance on safety and health management for specific sectors and work activities. Most are available for free download from the Authority's website at www.hsa.ie. The main ones are:

1. Guide to the Safety, Health and Welfare at Work Act 2005
2. HSA Guidance on Workplace Safety and Health Management
3. HSA Guidance on Safety Statements and Risk Assessments
4. HSA Guidance on Safety Representatives and Safety Consultation





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*Working to create a
National Culture of
Excellence in
Workplace Safety,
Health and Welfare
for Ireland*

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