

Risk Matters

A quarterly newsletter from Gallagher Risk Management Solutions

August 2019



Insurance | Risk Management | Consulting



Upcoming Training Dates

IOSH Managing Safely Courses

IOSH-approved Managing Safely gives your managers, supervisors and staff the skills they need to understand the risks and run effective Health & Safety programmes. Running over three days, the course covers risk assessment, risk control, hazard identification, waste and pollution protection, accident and incident investigation – plus performance measurement.

£650+VAT (per delegate)	
LOCATION	DATE
Birmingham	17th, 18th & 19th September
London	18th, 19th & 20th September
Glasgow	24th, 25th & 26th September
Wakefield	8th, 9th & 10th October
Bristol	22nd, 23rd, 24th October
Leicester	12th, 13th & 14th November
Manchester	19th, 20th & 21st November
London	27th, 28th & 29th November

IOSH Safety for Executives & Directors Courses

The IOSH-approved Safety for Executives & Directors course is designed for individuals who hold senior positions such as business owners or Directors within any business sector. The course lasts one day, starting at approximately 10am and aiming to finish by 3:30pm. The course is based on the occupational health and safety standards which are found in the Health and Safety Executive Guidance, the Turnbull Report and the Corporate Manslaughter and Corporate Homicide Act of 2007.

£250+VAT (per delegate)	
LOCATION	DATE
Leicester	24th September
Birmingham	8th October
London	8th October
Manchester	24th October

HSE increase fees for intervention charges¹

As of 6 April 2019, the HSE's Fee for Intervention has increased from £129 per hour to £154 an hour. Any business found in breach of health and safety law will now be charged the new higher rate. The fee is to penalise organisations for the time HSE takes to identify, address and resolve breaches including speaking to staff and seeking specialist advice. HSE's reasoning for this is that the cost of dealing with breaches is more than they've been able to recover, leaving them operating at a deficit.

Refinery explosion which killed 4 results in £6 million in fines²

The two companies involved in negligence which led to a fatal explosion eight years ago in a Pembroke refinery have received £6 million in fines.

The deaths occurred after a fireball explosion took place in a storage tank being emptied by five workers.

Four workers died in the blast on 2 June 2011, while another worker was seriously injured in what should have been a routine task. The investigation revealed that the explosion was most likely caused by a source of ignition within the site, as flammable atmospheres had not been correctly controlled.

A reading of the tank's flammable gas levels which was taken days before the incident showed it had a lower explosive limit of 67%; a safe limit would be below 10%.

Fuel company Valero Energy UK and tank cleaning specialist B&A Contracts, both pleaded guilty to breaching ss2(1) and 3(1) of the Health and Safety at Work Act and were fined £5 million and £140,000 respectively. Valero were ordered to pay £1 million in costs, while B&A must pay costs of £40,000.

1. www.ioshmagazine.com/article/hse-increases-ffi-charge-by-almost-20

2. www.ioshmagazine.com/article/longstanding-failures-at-refinery-that-led-to-fatal-explosion-costs-firms-more-than-6m



Health and Safety Executive confirms ASA's interpretation of the Vibrations at Work ruling³

A dispute from Reactec, a manufacturer of wrist-mounted vibration monitors, which claimed that an online advertisement on the Industrial Noise and Vibration Centre's (INVC) website was misleading has been disproved with HSE clarification.

The first issue was with INVC's claim that:

As wrist (or glove) mounted transducers do not measure according to [the British standard] BS EN ISO 5349, the data they produce is not related to the EAV (exposure action value) or the ELV (exposure limit value) dose values and cannot be used for comparison with them in a risk assessment.

Secondly, Reatec took umbrage with the line in an article which stated:

Now imagine you are the barrister for a HAV (hand-arm vibration) claimant. Just how easy would you find it to drive a coach and horses through a risk management defence based on wrist-mounted vibration data capture? Potentially, a very costly mistake.

This was rejected as the *Control of Vibration at Work Regulations 2005*: guidance on regulations, confirms these claims and does not state that measurements can be taken at the wrist but does confirm that currently there is no wrist or glove mounted device which is suitable for use in a vibration risk assessment.

The ASA asked HSE to clarify before publishing its ruling, and the HSE reiterated that measurements are indeed to be taken on the surface of the equipment in contact with the hand, and while measurement may be required, it isn't always if suitable vibration data is available.



3. www.ioshmagazine.com/article/hse-reiterates-asa-interpretation-of-regulations-in-invc-ruling



Poor management is responsible for rise in workplace stress⁴

The 19th annual Health and Wellbeing at Work report, produced by the Chartered Institute of Personnel and Development (CIPD), found that just 48% of businesses have carried out a stress risk assessment or audit in the past year. This is down from 58% in 2018. As a result, employers are being encouraged to invest more in training line managers so that they can confidently support their staff in their struggles with stress.

The survey which covers 1,078 professionals and 3.2 million employees, revealed that 37% of organisations have seen an increase in stress-related absence in the past year. This uptick in absences was especially prevalent in larger organisations. Excessive workloads were the leading cause of workplace stress, a problem often linked with poor management, while management style was the second biggest contributor.

Findings also pinpointed an issue with training, with only half of organisations giving managers the training needed to support their staff and 37% giving them the tools to identify presenteeism (turning up to work while sick) and leavism (continuing to work while on annual leave).

An uncertain future⁵

The QBE Unpredictability Index has found that the world has become more unpredictable over the past 30 years with economic and business factors driving this uncertainty. This has a significant impact on businesses, with four in five surveyed having been effected in some way within the last ten years. This in part due to a lack of preparedness, with only 29% of businesses taking the time to develop risk management plans for unexpected events and just 17% carrying out stress tests to check any plans in place are effective.

This trend does seem set to change in the near future, as only 20% of surveyed businesses reported not being well prepared for extreme events in 2019. So what is driving this unpredictability? Data is a key factor, with vast amounts being generated and data playing a huge role in everything from connected vehicles to the Internet of Things. Huge investments are being made in improving AI and machine learning, with venture capital funding for US AI companies hitting \$9.3 billion last year. Learning to handle data and make the best use of it can help your organisation to face the future with confidence and reduce some of this uncertainty.

4. www.ioshmagazine.com/article/rise-in-workplace-stress-linked-to-poor-management-survey-finds

5. qbeyeurope.com/unpredictability/is-data-the-key-to-unlocking-unpredictability/

SHP release updated ebook featuring legislation on mental health, welding fumes and more⁶

The SHP's latest ebook, released in May this year, covers updates to a number of key pieces of legislation.

One of these is drone safety regulations, which has come into the spotlight after hundreds of flights were cancelled in December last year at Gatwick after a drone was spotted near the runway.

Now a 'no-fly' zone has come into force, making it illegal to fly a drone within 5km of an airport, with major penalties for those who do. A Drones Bill is set to come into force later this year, which increases police power to deal with the illegal use of drones.

Another update concerns Brexit, and aims to insure that EU-derived protections will remain in domestic law after the UK exits the EU. The Health and Safety (Amendment) (EU Exit) Regulations 2018, is one example, and while the UK government may be able to tweak the laws and create differences in the future, they must for now, remain in line with existing EU laws.

Finally, there has been an update to worker protections legislation with the introduction of the manslaughter guidelines instigated in November last year. These posed increased fines for those who fail to comply with Health and Safety legislation. Now, more than ever, senior staff need to ensure that they are putting the safety of their workforce first.

Historic building fires shift focus to Hot Work Permits⁷

With the recent Notre Dame and Mandarin Hotel fires in the headlines, there has been an increased focus on hot work as part of restoration programmes. The likely cause of the Notre Dame fire and the source of the blaze at the Mandarin Hotel which took six hours to extinguish, hot work has been the source of many of the 200 fires in heritage buildings in the UK.

The key to protecting these buildings is a Hot Work Permit. This document should make clear the nature of the work being carried out, the location within the property and any precautions that need to be taken.

If the work is due to be carried out across multiple days or across shifts then multiple permits should be present.

Alongside a permit, contractors should ensure the area is free of combustible items or use fire rated coverings where possible. Fire extinguishers should be on-hand and those using them should be trained to do so, and a second party should observe the work and look for signs of fire. On completion of hot work a supervisor should continue to monitor the area for at least a further hour. Where possible, sprinkler systems should remain on throughout the course of the work.



6. shponline.co.uk/legislation-and-standards/health-safety-legislation-update-april-2019/?elq_mid=1784&elq_cid=233277

7. riskstop.co.uk/single-post/2019/06/05/Heritage-building-fires-highlight-importance-of-Hot-Work-Permits



Recent prosecutions

Stone masons sentenced after silica dust exposure⁸

GO Stonemasonry Limited has been sentenced after an employee developed silicosis resulting from exposure to silica dust. The company had been cutting and working with stone for several years without suitable means of extracting the dust. They had also failed to ensure that respiratory protective equipment had been provided and did not have appropriate control measures in place nor did they have any health surveillance to monitor workers health.

The company were fined £8,000 and ordered to pay costs of £10,000 for breaching section 2(1) of the Health and Safety at Work etc. Act 1974.

Company fined after employee killed by shutter door⁹

B.S Graves (Electrical) Limited have been fined after an employee became trapped in a roller-shutter door, and was fatally crushed. An investigation revealed that the sensors at the top of the door were incorrectly wired and did not function when the door was opened. Despite carrying out work on the door in 2012, they had failed to locate and fix the fault.

They pleaded guilty to breaching Section 3(1) of Health & Safety at Work etc Act 1974 and were fined £25,000 and ordered to pay costs of £6,500.

Builder sentenced after injuring child¹⁰

A self-employed builder received a suspended jail sentence after a three-year-old girl received head injuries after timber fell on her. The timber, which was being hoisted outside of the scaffold, fell approximately ten metres before hitting the girl on the head. She has suffered life changing injuries and it is unknown whether she will fully recover.

The builder in control of the works had not used a suitable knot when securing the timber, causing it to slip out. There was also no exclusion zone set up underneath the zone to protect passers-by. Mr Glowacki, pleaded guilty to breaching Regulation 8 (1) of the Lifting Operations and Lifting Equipment Regulations 1998. He was sentenced to six months imprisonment, suspended for 18 months, plus 220 hours of unpaid work. He was also ordered to repay full costs of £5727.92.

8. press.hse.gov.uk/2019/06/12/company-sentenced-after-employees-exposed-to-silica-dust/?_ga=2.127429636.840263187.1560761139-979999149.1557476403#utm_source=hse.gov.uk&utm_medium=referral&utm_campaign=press-channels-push&utm_term=silica-dust-exposed&utm_content=news-page

9. press.hse.gov.uk/2019/06/10/company-fined-after-woman-crushed-to-death-by-roller-shutter-door/?_ga=2.26699188.840263187.1560761139-979999149.1557476403#utm_source=hse.gov.uk&utm_medium=referral&utm_campaign=press-channels-push&utm_term=shutter-door-fatality&utm_content=news-page

10. press.hse.gov.uk/2019/06/04/builder-sentenced-after-timber-falls-on-three-year-old-girl/

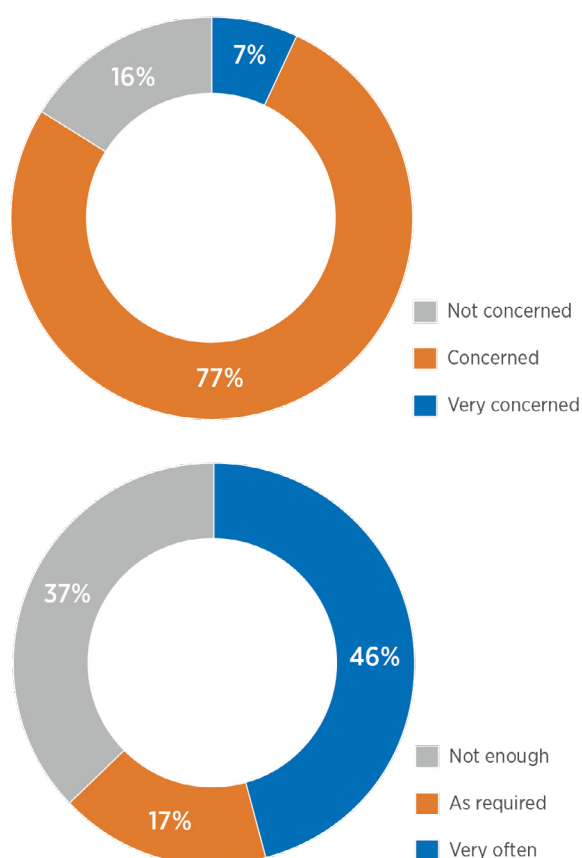
Speed limiters to be mandatory by 2022¹¹

New rules provisionally agreed by the EU mean that speed limiters will be mandatory for all vehicles sold in Europe by 2022. The UK Department of Transport says that we will follow suit even after withdrawal from the EU. The European Transport Safety Council (ETSC) states that the introduction of speed limiting technology – known as Intelligent Speed Assistance (ISA) – could reduce collisions by 30% and save around 25,000 lives over the next 15 years.

Contractual Risk Management – closing gaps in your cover¹²

A recent survey by Airmic has revealed that 84% of members held concerns about gaps in their contractual responsibilities and their insurance coverage. As well as this, 37% admitted that they did not work with their legal teams enough to ensure a joined-up risk management approach.

These results are detailed in the graphs below:



So what is the causation of uninsured loss and what can organisations do to improve their approach to risk management?

If an uninsured loss occurs then your insurer does not have to indemnify you in respect of any claims.

This means you will still have to pay any sums due in respect of losses, you'll need to cover your own defence costs and your directors could find themselves personally liable. This could be prohibitively expensive, leading to financial hardship or even insolvency on part of your organisation.

How can insurance respond?

While no policy can protect you from every possible eventuality, certain liability policies such as public, product or cyber liability can protect you from specific areas of exposure that a standard policy will not cover.

Clauses can exist within contracts which impose liability in respect of all losses, claims, damages and costs resulting from a particular breach of duty and to respond to these you'll need cover that is specifically negotiated for these liabilities.

To do so, you'll need full disclosure of the contract to your brokers who can then advise what can be covered by your insurance, and equally important, what is uninsurable and will have to be self-insured risks.

Where necessary, organisations should consider collateral warranties to create a legal relationship with any sub-contractors or suppliers that do not already have one.

Doing so not only forges a better relationship between your legal team and the business but it also helps you to know what clauses are being used and whether or not they are insurable. It also gives your organisation the opportunity to seek specific extensions where required and to look for gaps in your contract.

All in all, a good contractual audit can help with the time lag between projects and claims and demonstrate added value by helping the business function – saving them money by helping to prevent uninsured claims.

11. <https://www.rac.co.uk/drive/news/motoring-news/mandatory-speed-limiters/>

12. <https://www.airmic.com/news/guest-stories/contractual-risk-management-risk-mitigation-and-insurer-response>



About Gallagher

Founded by Arthur J. Gallagher in Chicago in 1927, Gallagher has grown to be one of the leading insurance brokerage, risk management, and human capital consultant companies in the world. With significant reach internationally, our organisation employs over 30,000 people and our global network provides services in more than 150 countries.

Our people partner with businesses across countries and international territories to provide relevant and impactful professional advice. Regardless of what risk and human capital challenges our clients have, we work hard and utilise industry specific expertise to find the best solution and to deliver it with world-class service.

We continue to build on 90 plus years of expertise that spans global industries. No matter the size of the organisation we partner with and the challenges presented by the industry, we work tirelessly to provide solutions that maximise value for our clients.

Our values are core to our culture. Passionate service, strategic innovation, and ethical behaviour form the basis of how we do business.

WE HELP BUSINESSES GO BEYOND THEIR GOALS. IT'S THE GALLAGHER WAY.

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