



Health and Safety

Bulletin Noise claims

Articles in this newsletter:

- Noise claims
- HSE's new five year strategy
- Case Law update - noise

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With the reduction in the number of people employed in “heavy” industries (such as the manufacturing of chemicals, plastics and industrial machinery, oil refining and mining), most experts believed that the number of claims associated with hearing damage would decrease over time. However, recent publications indicate the number of claims is rising, with the total notified in 2013 at approximately 85,000 (at an estimated cost of £400 million – for every £1 paid in damages, an average of £3 is paid in legal fees) compared to an average of 65,000 per year in the 1990s.

Why are the numbers rising?

- Change in the claimant’s employment background: Many smaller employers did not see themselves as having a high risk of receiving claims associated with noise exposure – their perception was the working environment was quieter. The result of this is that noise surveys and assessments were not documented, and even if risk reduction measures were implemented (such as the provision of hearing protection and training in its use), the evidence is not available to refute the claim. There have recently been claims from storemen, painters and decorators and even dinner ladies and leisure centre receptionists
- Time: In most cases there is a significant delay between noise exposure and a claim. This increases the likelihood that employers will not have access to employment records and therefore evidence with which to defend themselves
- Claimant law firms: The number of claims initiated through Unions (whose solicitors vetted the claims before submitting them) is proportionally lower to the number submitted by claim firms compared to ten years ago. Claims management companies have moved into this area following the change in the management of road traffic accident (RTA) related claims, such as whiplash. These changes include the use of independent experts to assess claims (in noise claims the experts are “attached” to defendants or claimants) and the use of the Claims Portal (this system was implemented to make the claims system faster and cheaper. Unfortunately most claims associated with noise drop out of the Claims Portal, allowing legal teams to charge daily rates for their services)

What can employers do to reduce their liability?

The most important step is for organisations to recognise their long-term liability and put plans in place to manage it. This is likely to include:-

- Noise surveys and assessments: even if this only involves recording the justification for not carrying out an assessment, this evidence is vital. The assessment needs to be suitable and sufficient to meet the requirements set out in the Control of Noise at Work Regulations and the associated guidance – and as such, may help to reduce the risk of noise claims by identifying ways of reducing noise generation
- Awareness training records: Provide workers with an overview of the noise assessment findings and, if hearing protection is required, information on how it should be fitted and maintained
- Archiving: Due to the nature of these claims, it is important to ensure records of what was done can be found years later

Conclusion

The Association of British Insurers has made proposals to the Government to improve the way that claims associated with noise exposure are handled, but employers can take action immediately to reduce their liabilities.

Recently issued/ revised health and safety information:

- HSG262 Managing skin exposure risks at work
<http://www.hse.gov.uk/pubns/priced/hsg262.pdf>
- HSG263 Involving your workforce in health and safety Guidance for all workplaces
<http://www.hse.gov.uk/pubns/priced/hsg263.pdf>
- Personal protective equipment at work Personal Protective Equipment at Work Regulations 1992 Guidance on Regulations
<http://www.hse.gov.uk/pubns/priced/l25.pdf>
- PM38 selection and use of hand lamps
<http://www.hse.gov.uk/pubns/guidance/pm38.htm>
- ACAS Seeking better solutions: tackling bullying and ill-treatment in Britain's workplaces
<http://www.acas.org.uk/media/pdf/e/b/Seeking-better-solutions-tackling-bullying-and-ill-treatment-in-Britains-workplaces.pdf>

HSE's new five year strategy

The HSE has launched its new five year strategy, focusing on three aspects of health and safety

- Taking collective ownership and looking at personal contributions to health and safety that do not cause unnecessary cost or inefficiency to people or business.
- Over 23 million working days are lost each year through work-related ill-health and the costs to

Britain are estimated at over £9.4bn per year.

- Boosting Britain's businesses. Ensuring SMEs in particular get the right information, at the right time, and take the right action easily

The strategy has been split into six themes

1. Promoting broader ownership of workplace health and safety
2. Highlighting and tackling the burden of work-related ill-

- health
3. Supporting small firms
4. Enabling productivity through proportionate risk management
5. Anticipating and tackling the challenges of new technology and ways of working
6. Sharing the benefits of Great Britain's approach

The HSE are currently running a series of roadshows around the UK to publicise the strategy and take feedback.

Case Law update

This issue focuses on both criminal and civil cases associated with noise

Fibreline, a firm specialising in foam and feather furnishings was fined **£15,000** and ordered to pay **£4,457** in costs after failing to protect its workforce from excessive noise levels in production. An investigation by HSE found the company had not made a suitable assessment of the noise levels in the factory between 2006 and 2013. Noise levels had become excessive from 2008 when a third machine was added to the feather pillow production process, reaching between two and three times higher than the maximum allowed; and from 2011 in the foam fabrication process when two glue-spraying booths were located side by side. In addition, a health surveillance programme for noise

exposure should have been operating for affected workers, but this was not brought in until 2013.

A retired fitter from Humberside secured **£4,000** compensation for work-related hearing loss. He brought his claim after realising that his hearing had become impaired, with a ringing in his right ear. The claimant stated "the noise on site was very loud. Noise was transmitted from the machines used to roll the steel. There were two furnaces, underground hydraulics and a roughing mill. From around 1972-80, I was told I didn't need hearing protection, and then in approximately 1980 some of the workers there were given it. I received hearing protection in

around 1990 but it was another five years or so until it became compulsory. It was not until June 2005 when I changed jobs and went onto Quality Control in a noisy environment working outside that I noticed a problem with my hearing and in particular a hissing in my right ear."

A 59 year old from Northumberland brought his claim after realising that his hearing had become severely impaired. He was struggling to hear normal conversations and suffering from ringing in both ears. He had worked for 35 years at a smelting company in Northumberland. He secured **£10,000** in compensation.

About Clwyd Associates...

We are a management consultancy, focusing on health and safety and SAP based in the Midlands.

We employ consultants with at least 15 years practical experience backed up by recognised professional and academic qualifications - ensuring our clients receive first class service.

Noise surveys and assessments

Clwyd Associates carries out noise surveys and assessments in compliance with the Control of Noise at Work Regulations. Our assessments are completed by a qualified and experienced assessor and include:-

- Noise surveys using calibrated and serviced equipment
- Assessment of exposure taking into account work patterns
- A prioritised action plan on how noise exposure can be reduced
- Advice on whether hearing protection supplied is suitable for the frequency of noise exposure or what types of hearing protection would be suitable, if needed
- Guidance in the information that needs to be made available for employees following the assessment such as training or posters

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