

Civil Liability: It's cheaper to manage the issue than face a claim^o



Office of Rail Regulation

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Overview:



- What evidence is required to successfully defend a civil claim in negligence and/or breach of statutory duty
- The cost of generating such evidence before an incident and/or claim even occurs
- The potential financial ramifications of failing to have such evidence.

The Law:



Risk Assessments

- Duty is wide and varied
- Common law and statutory obligations
- Will depend on nature of undertaking
- “Reasonable and proportionate”
- “Suitable and sufficient”



The Balancing Act:



	Significant Impact	Insignificant Impact
High Risk	Mandatory	Preferable
Low Risk	Mandatory	Optional



Common Pitfalls:



- Documentation
- Communication
- Action
- Monitoring
- Updating



Case Study 1:



Stress

“ *Knowledge is power* ”

- Train Conductor
- Signed Working-Time Directive Opt-out
- Within two years is absent due to work-related stress
- Returns to work on light duties but within two weeks is working to previous rota
- No appointment offered with OH Advisor
- Within three months goes off sick again and does not return to work
- Employee presents claim for psychiatric injury, namely depression



Case Study 2:



Work Related Upper-Limb Disorder

“ *Don't just carry on!* ”

- Patrolman
- Employed in same role for 15 years
- Develops shoulder pain which employee thinks is related to lifting weights at the gym
- No risk assessment carried out in respect of pulling points levers
- Employee is soon unable to work due to chronic shoulder pain and goes on long-term sick leave
- A claim for personal injury is presented two years later



What could it have cost?



- Assessment of fitness to work
- Intermittent monitoring
- Annual Training
- Completion and maintenance of personnel and OH records
- Comprehensive risk assessments



What did it cost?



- General Damages
- Special Damages
- Claimant's Costs
- Defendant's Costs

Stress

£60,000

Work-Related Upper Limb Disorder

£145,000

...Plus additional time of OH Advisors, management and witnesses



Conclusion:



- Immediate cost, effort and resources of pro-actively managing Occupational Health risks appear significant, but...
- Compared to the potential damages and legal costs bill, are worthwhile incurring in the long-term
- A safe and healthy workforce is a happier, more motivated and efficient workforce

Questions



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