

FAQ – Safety, Health & Welfare at Work Act 2005

General

Who does the Act cover?

The Act applies to all employers, self-employed persons and employees in all places of work.

The Act also applies to designers, suppliers, manufacturers, persons who procure a construction project and others.

What does the Act cover?

The Act includes the following headings:

- ▶ Duties of employer
- ▶ Duties of employee
- ▶ General duties of persons in control of places of work
- ▶ General duties of designers, manufacturers, importers and suppliers of articles and substances
- ▶ Duties related to construction work
- ▶ Hazard identification and risk assessment
- ▶ Safety statement
- ▶ Duty of employers to co-operate
- ▶ Health surveillance
- ▶ Safety representatives
- ▶ Onus of proof
- ▶ Liability of Directors

When did the Act come into effect?

1st September 2005

What are the differences between the 1989 and 2005 Acts?

The main differences between the two Acts are:

- ▶ extended duties of employers
- ▶ extended duties of others e.g.
 - contractors
 - suppliers
 - designers
 - landlords

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(What are the differences between the 1989 and 2005 Acts? Continued...)

- ▶ new definitions
- ▶ enhanced provisions on the role of safety representatives and the safety and health consultation process
- ▶ new penalties for breaches of health and safety legislation
- ▶ defined role of the Health and Safety Authority
- ▶ health surveillance and medical fitness to work requirements
- ▶ provision for testing for intoxicants
- ▶ protection for employees and safety representatives against being penalised

What are the duties of the employer?

The Act requires the employer to “ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees”.

Specifically, the employer is required to:

- ▶ manage and conduct work activities safely
- ▶ prevent improper conduct or behaviour which is likely to put employees at risk
- ▶ provide a safe place of work
- ▶ provide safe access and egress at the place of work
- ▶ provide safe plant and machinery
- ▶ protect employees from the effects of articles, substances, noise, vibration, radiation and other physical agents
- ▶ provide systems of work that are planned, organised, performed, maintained and revised
- ▶ provide welfare facilities and arrangements
- ▶ provide information, instruction, training and supervision to employees
- ▶ take account of changing circumstances and the General Principles of Prevention when conducting risk assessments or writing the Safety Statement
- ▶ provide protective clothing and equipment where required
- ▶ prepare and maintain emergency plans and procedures
- ▶ report accidents and dangerous occurrences to the Health & Safety Authority
- ▶ obtain the services of a person competent to advise on health and safety matters

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Are Directors and Officers Liable?

Yes. Where a Director, Manager or similar Officer has authorised or consented to an act, or where through their connivance or neglect an offence has been committed, then the Director, Manager or similar Officer is guilty of the same offence. See Section 80 of the Act.

Onus of Proof

In any proceedings taken, the onus is on the accused to prove that they had done all that was practicable or reasonably practicable i.e. the accused is considered not to have done all that was expected of them until such time as they prove the contrary. See Section 81 of the Act.

Definitions

The following provides a *plain English* explanation of some of the terms used in the Act. Full definitions are contained within Section 2 of the Act. The full act can be viewed at www.irishstatutebook.ie

Who is an Employer?

An employer is

- a) the person with whom the employee has entered into a contract of employment, or
- b) the person for whom the employee works under a contract of employment.

Who is an Employee?

An employee is any person who has entered into works under a contract of employment, including fixed-term and temporary employees.

What is a Place of Work?

A place of work includes any place, building, structure, land or other location where work takes place and in such circumstances includes the following;

- ▶ extractive industries (onshore and offshore)
- ▶ a tent, trailer, temporary structure or movable structure
- ▶ a vehicle, vessel or aircraft

Who is a Competent Person?

A person is deemed competent where they possess sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken.

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What is “Reasonably Practicable”?

“Reasonably practicable” means the employer must show that they have put in place the necessary controls based on the findings of their risk assessment and that any further controls would be grossly disproportionate in terms of any unusual, unforeseeable and exceptional circumstance or occurrence which may result in injury.

NB: The Act contains the following definition for Reasonably Practicable

“For the purposes of the relevant statutory provisions, “reasonably practicable”, in relation to the duties of an employer, means that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work.”

What are the General Principles of Prevention?

Employers are required to take account of the General Principles of Prevention when deciding the necessary for protecting employees. The General Principles of Prevention are:

- ▶ the avoidance of risks
- ▶ the evaluation of unavoidable risks
- ▶ the combating of risks at source
- ▶ the adaptation 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
- ▶ the adaptation of the place of work to technical progress
- ▶ the replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work
- ▶ the giving of priority to collective protective measures over individual protective measures
- ▶ 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
- ▶ the giving of appropriate training and instructions to employees.

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Other

Other Legislation

The Safety, Health and Welfare at Work Act 2005 is known informally as an umbrella piece of legislation, as was its predecessor the Safety, Health and Welfare at Work Act 1989. This means it empowers the Minister to prescribe other regulations as described in the Act. Other regulations include:

- ▶ Safety, Health and Welfare at Work (General Application) Regulations 2007
- ▶ Safety, Health and Welfare at Work (Construction) Regulations 2006 ([see here for related services](#))
- ▶ Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006
- ▶ Safety, Health and Welfare at Work (Chemical Agents) Regulations 2001
- ▶ Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001
- ▶ Chemicals Act 2008
- ▶ European Communities (Machinery) Regulations 2008
- ▶ European Communities (Classification, Packaging and Labelling of Dangerous Preparations) Regulations 2004

Codes of Practice

In addition to Acts and Regulations, the Health and Safety Authority has published a number of Codes of Practice. Section 61 of the Act allows for the submission of relevant Codes of Practice in criminal proceedings.

Note: Failure to comply with the provisions of a Code of Practice can add weight to a case against an employer in failing to comply with relevant legal requirements.

We have a Safety Statement. Does that mean we are legally compliant?

You are not compliant by virtue of having a safety statement alone. In addition to having a safety statement, employers are required to have systems of work that are planned, organised, performed, maintained and revised.

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*(We have a Safety Statement. Does that mean we are legally compliant?
Continued...)*

Whereas a safety statement will generally refer to arrangements for protecting health and safety, it is unlikely to cover the particulars of planning, organising, performing, maintaining and revising systems of work.

Risk assessments may contain elements of how work activities are planned and organised, they do little to ensure any such systems of work are performed, maintained and revised so as to be safe and without risk to health.

How do employers ensure they have proper systems in place?

Gaining certification to a recognised standard is the best way to demonstrate to interested parties that you have proper systems in place. OHSAS 18001: 2007 is an internationally recognised standard for assessing safety management systems.

Is OHSAS 18001 compatible with other standards?

Yes. It was written so as to be compatible with ISO 9001 and ISO 14001. It was reviewed in 2007 and the changes made to OHSAS 18001 bring it into closer alignment with these ISO standards. This means you can integrate the requirements of these standards and keep paperwork to a minimum.

BusinessSafety.ie can assist you with ensuring your organisation is fully compliant with all of the relevant statutory requirements and codes of practice.

For further information on this or any other health and safety matter, please call Business Safety on 0818 333 212 or email: info@BusinessSafety.ie