Health and Safety Executive

Proposals to revise the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended) (RIDDOR '95)

Response from Thompsons Solicitors

October 2012

About Thompsons

Thompsons employs over 400 lawyers in 28 offices across the UK. At any one time we will be running 70,000 claims on behalf of people who have been injured at or away from work, through no fault of their own.

Introduction

Thompsons accepts that RIDDOR reporting rates are very poor. In our experience, the data compiled from RIDDOR reporting is often not helpful when we are investigating a personal injury claim on behalf of a worker who has been injured in a workplace accident.

However, reducing employer obligations will not, in our view, increase compliance. There is a wealth of information for employers about their duties and failure to report cannot be excused on grounds that the requirements are too complex.

Employer reporting duties under the regulations have already been reduced. Further change, unless it involves real sanctions for non-compliance, will not make the RIDDOR regulations more effective. They will only serve to further undermine their use.

In our view, the nature of the questions too narrowly focuses this consultation on employers rather than encouraging the views of all stakeholders. It is inevitable that employers will support further revision of the regulations.

Thompsons is responding to this consultation as an organisation that takes legal action against organisations that breach health and safety regulations, resulting in injury to employees, and not in our capacity as an employer.

Therefore we have addressed only those questions which impact on our work and the work of trade unions and health and safety reps in raising levels of compliance with all health and safety regulations.

Response to questions

Q4. Should the requirement that there must be an "accident" before a death or injury becomes reportable be retained?

Yes. For the reasons set out in the consultation and the purpose behind the requirement.

Q5. Does "accident" need to be defined in guidance?

Yes, it would be helpful it was.

Q6. Is the current definition of "accident" sufficient?

It is, although sometimes accidents are not unexpected. With a clearly unsafe system of work they are "accidents waiting to happen".

Q7. Would it improve clarity to restrict accident reporting to injuries to people engaged in work at any place, and to non-workers only when occurring at "work premises?"

No. It would further restrict the type of reportable accidents and reduce employer obligations towards bystanders injured or killed in accidents which result as a result of a failure of health and safety procedures.

Q8. Do you agree with aligning the major injury categories with those in HSE's incident selection criteria?

Yes

Q9. Is the proposed list of major injuries clear and unambiguous?

Yes.

Q10. Are there any other types of injury that you feel should be included in the list of major injuries? If so, please describe and explain why they require inclusion.

It is disappointing that the consultation has ruled out the potential for widening the scope of reportable incidents where the HSE and other enforcing authorities do not have primacy, such as work-related road traffic accidents.

Q11. Do you agree with removing the requirement to report non-fatal injuries to persons not at work? (i.e. non-workers who sustain injuries as a consequence of a work activity, such as members of the public and customers in retail premises.)

No. If an accident such as equipment failure accidents and slipping accidents at a workplace it is probably a matter of fortune if it happens to a non employee. But it is as important to know that the workplace is dangerous as the exact category of person injured.

Q12. Do you agree that removing the requirement to report non-fatal injuries to persons not at work makes it easier to comply with the requirements?

We do not agree with the premise behind this question. Removing requirements to report certain types of injuries assists organisations to avoid their duties rather than making it easier to comply with requirements.

Q13. Are there any potential negative consequences of not recording/reporting this information?

Yes. By not reporting these types of injuries it becomes difficult for health and safety reps and others to obtain information about accident levels. Poor compliance may have obscured the picture, but removing reporting requirements altogether will do nothing to improve health and safety compliance by organisations.

Q14. **Do you agree with the proposal to remove the reporting requirement for cases of occupational disease, other than those resulting from a work-related exposure to a biological agent?**

No. This proposal has serious implications for employees who develop industrial diseases through exposure to such hazards as excessive vibration and noise. While employers continue to expose their workers to unsafe levels they must be required to report when this results in the development of, for example, hand arm vibration syndrome (HAVS) or industrial deafness.

Taking a view that because a duty is often ignored it should be removed is not good logic. The diseases which are reported will still provide useful data, not least about whether the incidence of a condition is increasing or reducing (assuming that the incidence of underreporting remains broadly the same).

In our view, the process of having to make a RIDDOR report (not infrequently because it is pointed out to an employer by internal/external occupational health providers) has an impact on the employer since it is a formal process which underlines that there has been a problem at the workplace and there may still be.

The impact of HAVS on an individual can be devastating. In many of the cases that we see, they have had to give up work and often need help with day to day tasks. In the majority of cases the condition would have been prevented if the employer had undertaken regular health checks of employees using vibrating tools and had implemented simple measures such as work rotation.

Clearly the HSE is right that there is poor compliance in this area. But the objective should be to increase awareness among employers of the dangers of exposure to excessive noise and vibration. Allowing them to not report it when staff develop related conditions will only compound the problem.

Q16. Do you agree with the proposals for the revision of the types of dangerous occurrences that must be reported given in Annex 1 to this consultative document?

We do not agree that dangerous occurrences outside of higher risk sectors or activities should not be reported. We are concerned that by implication so-called "low risk" industries need less monitoring and can be less compliant with regulations. We cannot support an agenda, if that is what it is, to appear to reduce breaches of regulations or compliance by minimising duty holder obligations (at a time when inspections and investigations of incidents will also be reduced).

Q17. Do you agree that there should be no change to the recording requirements, i.e. records must be kept of all deaths, injuries and dangerous occurrences that must be reported, together with records of O3D injuries to workers?

Yes.

Q19. Do you agree with the conclusion of the impact assessment?

We do not agree with the logic that greater compliance, achieved through reduced reporting obligations, will reduce cost savings to businesses. Costs are not saved by not reporting accidents. The most effective way to reduce costs is by reducing accidents.

Further information:

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