

Deaths in the workplace: what to do when the worst happens

Any death is a tragic event that no one likes to think about, but doing nothing is not an option for HR professionals, as Andrew Katzen reports

by Andrew Katzen 22 November 2018

Three people die at work every week in the UK, according to the latest data from the Health and Safety Executive (HSE). The legal aftermath of every one of these will be complicated and, for the firms involved, potentially damaging both financially and reputationally.

But while the circumstances of each death will vary, there are a few fundamental legal points all HR professionals should keep in mind.

As the old business adage has it: if you fail to plan; you plan to fail. All organisations should have plans for how to deal with crises. These should include what to do in the case of a workplace death.

HR needs to be intimately involved in drawing a short, simple and relevant plan, as it will allocate roles to be assumed in the immediate aftermath of a fatality. These will include an incident controller, site controller and a responsible person to whom employees can report their concerns.

But there are also some very important roles for HR to play. HR should control all internal and external communications and potentially also assist with the media. They will also be involved in supporting concerned employees. But it is in dealing with the legal aftermath that HR's skills really become important.

Internal investigations

After any death in the workplace, the police, the HSE, or another industry regulator may want to investigate to establish what happened and potentially take remedial action. Care should be taken to avoid clashing within these groups.

If such an external investigation is underway, the affected organisation should consider informing these bodies before seeking to question their own staff about what happened. Doing so will help avoid any allegation that a company's internal inquiry formed part of a 'cover-up'.

When the time does come for your organisation to conduct its own investigation, HR should tread carefully. While HR managers might frequently conduct internal investigations into highly sensitive matters, the stakes can be much higher in the case of a death. If run

improperly, an internal investigation into a workplace death can risk exposing HR managers to personal legal liabilities.

It is often sensible to appoint independent, external professionals to do the job for you. These could be technical experts, private investigators or lawyers. Lawyers have the advantage of legal privilege, which is the duty to keep these reports, which can be highly sensitive, confidential.

External investigations

The police and HSE will normally interview key people either as witnesses or suspects. How the organisation approaches these interviews with external bodies can make a significant difference to the outcome. Again, HR has a crucial role to play.

Employees interviewed as suspects are likely to need their own legal advice, separate from the organisation's own lawyers. It is often sensible for the employer to support the individual by finding them a specialist independent lawyer.

If the business itself is under suspicion, it is vital to ensure the person who represents the company at interview is not themselves a suspect or a witness and there is no conflict of interest between their own position and that of the firm.

Inquest

Most fatal workplace accidents will lead to an inquest in the coroner's court. Although the stated purpose of an inquest is to discover how the deceased died, rather than to attribute blame, there may be legal implications for the organisation here too.

Not only does evidence given in an inquest have the potential to trigger criminal proceedings, coroners can also write public reports designed to prevent future deaths. These may be highly critical and thus reputationally damaging. Even when there has been a decision not to prosecute, the inquest's public verdict may lead to a review of that decision. Expert advice and representation can be vital.

Any accidental death in the workplace is likely to be a tragedy that no-one foresaw. But that doesn't mean it's unthinkable. Any serious HR professional should take steps now to mitigate a death's impact.

Andrew Katzen is head of regulatory law at Hickman & Rose