



VIEWPOINT



Gerard Forlin

Safety takes an international standard

ISO 45001 may be delayed, but its eventual impact could reach prosecutions and court decisions, says a globe-hopping QC

+ ISO 45001, the new health and safety management system standard which will replace OHSAS 18001, is expected to arrive in 2017 if the wind is in the right direction (see p6), and set the standard for best practice in occupational health and safety management. But will the attitudes of prosecutors and investigators shift in the light of the new requirements?

Let us look at a possible situation with two businesses, located in different countries but part of the same international group. The two companies make similar products in each country, although the management processes are different. Each business employs at least one full time health and safety practitioner.

Let us assume that one of the businesses is well run, and is third party certified to ISO 45001. The health and safety practitioner is involved in the planning of the work, oversees methodologies and risk assessments at the planning stages, and undertakes inspections and audits. Other issues are taken into account: resources; training; selection of plant, materials and sub-contractors; and management system reviews, with all of these factors built into the management programme.

Further, senior management is engaged in the management process and makes a considerable effort to comply with the leadership requirements as set out in ISO 45001. This integrated approach presents a positive picture of health and safety management.

It's a different world

In the other country, senior managers adopt a more laid back approach, in line with the general attitude to health and safety in that country. Some managers ignore health and safety altogether, expecting their practitioner to step in, blow the whistle, raise a yellow card and stop the work if anything unsafe is observed. When this happens, managers are fully supportive and issue rebukes for allowing standards to drop, believing this demonstrates full support for health and safety. Unfortunately, this "reactive" approach is not effective.

Both these companies are in the same global group, however. The new ISO 45001 health and safety management standard will be available globally and, if utilised, could apply to both companies. If a fatal accident occurred where the standard was not being applied, it may well be argued in court that the directors of the group should indeed have applied the standard consistently.

To take another hypothetical situation, let us



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assume that a company has hired a mobile elevating working platform (MEWP) to help with servicing a cooling unit on a supermarket roof. During the work, the MEWP topples forward against the building. The immediate cause was that a warning light did not activate in the driver's platform, which would have prompted him to stop the operation. The underlying cause was that the hire team in the office was managing

fatality and the directors of the crane company and the directors on the group's main board are investigated. What would be the effect of ISO 45001 on the prosecution or investigation? What will the consequences be?

It is still unclear how long it will take for ISO to bed down into an organisation and how long prosecutors around the world will grant time for this to happen. It must also be remembered that the ISO is a mere framework.

But its existence could prompt a new set of questions in the minds of prosecutors and judges. It is already more common for previous convictions or evidence of the organisation's "bad character" to be taken into account, and for this to be reflected in the scope of the investigation and any subsequent fines or damages awarded. Previous conduct in other jurisdictions is also being taken into account, as in the case *R v Bodycote HIP* in the English Court of Appeal. In this case, involving a double fatality, the judge factored in what the defendant's sister company had failed to do following an earlier double fatality in the United States.

In conclusion, it would appear to be crystal clear that these new standards will require global organisations to modernise, harmonise, reorganise and customise their operations, wherever they take place. For those who remain unwilling to do so, the prosecutors and claimant lawyers wait in the wings.

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35 MEWPs, was under-resourced and did not ensure this particular MEWP was serviced. In addition, the hire manager kept the team under pressure to keep all cranes utilised as much as possible.

And so to court...

The root cause may have been the behaviour of the hire manager, but what determined his behaviour? Let's say the crane hire company was part of a large international company. The annual budget was set by its finance director and agreed by the main board. The hire manager was doing his best to meet these budget requirements. Where does the ultimate responsibility lie?

Let us assume the accident resulted in a

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