

# [Employer's obligations for employee health and safety](https://assignbuster.com/employers-obligations-for-employee-health-and-safety/)

To what extent is the employer obliged to exercise care for the health and safety of the employee while performing his or her duties? Is the current position in this regard satisfactory?

Introduction

The obligations of the employer for health and safety have undergone an interesting development on both the common law and statutory sides of legal regulation. This paper will examine the current extent of obligations for employers towards the health and safety of their employees while they are carrying out their work duties. This current position will then be analysed in order to determine whether it is satisfactory.

A. Current Health and Safety Obligations of the employer to the employee

1. The Common Law

The common law duty of care [1] translates into an implied term of the contract and in the case of Wilsons and Clyde Coal Co v English [2] the House of Lords identified three key areas in which this implied duty lies:

(a)Competent Staff

An employer will be liable if they do not provide their employees with sufficient training. This occurred in Hawkins v Ross Castings Ltd [3] where an employee sustained an injury as a result of a spillage of molten metal at the fault of a seventeen year old colleague who possessed only a rudimentary standard of English. Another facet to the heading of competent staff is the actual behaviour of the employees whereby, acts of mischief or ‘ larking around’ can be of a particular danger as occurred in Hudson v Ridge Manufacturing Co Ltd. [4]

(b) Safe Plant and Equipment

An employer is obliged to provide safe equipment and this even applies where there was no knowledge of there being a fault. This is a departure from the traditional common law perspective but is not a new measure as it into effect with the passing of the Employer’s Liability (Defective Equipment) Act of 1969. Here all faults in equipment to be attributable to the employer where a third party has been negligent and in order to meet the financial needs of this obligation, insurance is obligatory for such actions in accordance with the Employer’s Liability (Compulsory Insurance) Act 1969. In the interests of fairness, the employer and/or the insurance company can then sue the manufacturer.

(c) Safe System of Work

This obligation is twofold whereby the employer must, firstly, tell the employees of the location of safety equipment [5] and secondly, the employer has the right to assume that the employee possesses a degree of common sense with the result that there is no obligation to warn of dangers that are obvious such as the hitting of an unexploded bomb with a hammer [6] or running in the corridor to obtain lunch. [7] This highlights the fact that the employer must find a balance between the obvious and the not so obvious safety measures where there would be an obligation to inform the employee of risks and the proper procedures. Employees may make a decision not to take certain precautions, but if the risk is obvious, their employer will not be liable [8] , however despite any conscious choice on the part of the employee, a risk that is not obvious will always rest with the employer [9] . This standard is ideal as it rightly presupposes the authority of the employer and their superior knowledge but at the same time, also acknowledges personal autonomy of employees for which the employer should not be held liable.

A further and more recent application of the safe system of work is that the employer must refrain from requiring that the employee work excessively long hours [10] and cause unnecessary levels of stress [11] that arise on account of insufficient staffing and the even more serious occurrence of bullying in the work place. [12] This gave rise to an innovation in liability for the psychological injury that employees could sustain and in this era of greater pressure in the work place, it would have been a far more applicable head of claim to a greater number of employees than that of the traditional doctrine of liability for physical injury alone. However two recent cases on this matter gave rise first of all, limitation and then outright exclusion of heads of claim concerning stress in the work place. The earlier limitation arose in Sutherland v Hatton [13] in which it was held by the Court of Appeal that there had to be ‘ plain indications of impending harm’ that would arise from the stress. This is part of a traditional acceptance that there has to be a balance between the likelihood of the injury occurring and the cost to the employer of protecting his employees. [14] In the latter case of Barber (Appellant) v. Somerset County Council (Respondents) [15] involved a teacher suffering from stress and the House of Lords rejected the notion of an employer’s duty of care. Lord Scott of Foscote stated that:

“ The school is entitled to expect, also, that the teacher, an adult, will take his own decisions as to whether he needs to consult his doctor and will, if so advised by his doctor, take time off… [16] ”

(d) Safe Place of Work

Since the decision of the Wilsons and Clyde Coal Co case, there is a fourth area to which the applied duty of care is attributable and this is the provision of a safe place of work. There are three key areas where the employer must exercise a reasonable standard of care. This constituted the obligation to provide an adequate reporting system. [17] More recently, this has the potential to extend to instances of long term injury such as passive smoking as it was established that employees have a right not to work in a smoky environment in Waltons and Morse v Dorrington [18] and this would constitute a step in the right direction. A question now arises as to how far this duty ought to extend.

2. Statutory Duties

The Health and Safety at Work Act 1974 is the key legislative authority for the obligations of employers to their employees and its aim is twofold.

1. The provision of a general duty of care

In the first place the 1974 Act sets out the general duties that are applicable to the entire employment spectrum and this standard is found in s 2(1) of the 1974 Act, which is as follows:

“ It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees.”

Further to this there are also more specific obligations laid throughout s 2 of the Act, which encompass ‘ the provision and maintenance of plant and systems of work so that they are safe and without risk to health’. [19] There is also provision on, ‘ the handling, storage and transport of articles and substances [20] ’ as well as, ‘ provision of information, instructions, training and supervision. [21] ’ Finally s 2 of the 1974 Act also has provision on:

“ The maintenance of places of work under the employer’s control in a safe condition with safe and risk free means of access and egress. [22] ”

and

“ The provision and maintenance of a safe, risk-free working environment with adequate welfare facilities and arrangements. [23] ”

The crucial element of these provisions is that the standard of care stipulated is for the employer to act is, ‘ as far as is reasonably practicable .’ This standard carries with it the obligation for employers to do everything reasonable that would ensure safety and the provisions go far to show that this encompasses many fields such as training, inspections and the availability of safety equipment. The emphasis of the Robens Report was therefore largely met with there being a statutory framework that requires employers to actively think about the measures they are taking.

2. Provision of a unified system of enforcement by the Health and Safety Executive and the various local authorities.

The second aim of the 1974 Act is as a system of enforcement and this is largely carried out by the Health and Safety inspectorate but paradoxically, no one can, in accordance with s 47 of the 1974 Act, raise a civil action under the duties imposed by the 1974 Act. While this results in a fundamental questioning of the usefulness of the 1974 Act, it does highlight the fact that this legislation is exclusively an Act for professional enforceability. The rights of recourse for employees are therefore in accordance with the standard duties of care that are found under the law of tort. [24] More specifically, actions can be raised in relation to industrial accidents, personal injury, injuries arising out of the course of employment and some statutory obligations. However, it is the Act itself that specifics the standard of care to be adopted by employers when their employees are carrying out their employment duties. In addition, the 1974 Act creates a premise for criminal liability, which of course carries higher penalties as well as an employer’s burden of proof, as opposed to the burden of the plaintiff in civil actions.

2. Interpretation of the standard of care of the 1974 Act in case law

Interpretation of the standard under case law is essentially analysis of the way in which the courts have dealt with the crucial phrase, ‘ so far as is reasonably practicable.’ Case law shows that the reasonable practicability of a given situation can cover areas such as financial viability of the health and safety measure as against the risk of injury. This is similar to the balance that requires to be sought under the common law, with the equivalent 1974 Act case being that of Associated Diaries v Hartley. [25] Here an employee sustained an injury as a result of a truck going over his foot. The safety shoes would have cost him £1 per week but decided not to use them and his argument that they should have been provided for free failed on account of the fact that they would have cost the employer £20, 000.

This balance is perfectly sound but the 1974 Act is not equipped to deal with instances of stress at work on account of the fact that civil actions cannot be raised via its provisions.

B. Is this position satisfactory?

1. Possible faults with the common law

It is extremely disappointing that the House of Lords has rejected the concept of a duty of care for stress as there is a great deal that employers can do to relieve stress levels and, as with the balance that has been achieved between the cost of health and safety and the likelihood of injury, the equivalent would be more than approachable for stress situations. This does not bode well for other types of innovations such as

The common law does however acknowledge that a duty of care also extends beyond the work place where the employee continues to act within their duties of employment. This is seen in the case of King v Smith and Another [26] where, in the event of inadequate on-site facilities, it is up to the employer to find a suitable solution.

2. Faults with the 1974 Act

The current issue with the current Health and Safety legislation is that it is becoming outdated and is much in need of reform in order to cope with new kinds of dangers that were not such a going concern in 1974. This specifically refers to the ever increasing circumstances of stress related injury that would be wholly out-with the competence of the Health and Safety Inspectorate. However as a result of Barber v Somerset County Council, such an argument would not hold strength unless the legislative were to decide to override the common law doctrine and create a statutory obligation for employers against employee stress.

Conclusion

Both the common law and the statutory framework are equally satisfactory in terms of their ability to tackle cases of negligence where there has been physical injury caused to the employee on account of the negligence of the employer. However, the express exclusion of liability for stress, as well as the impracticability of the Health and Safety inspectorate to even attempt to assist in safeguarding against stress is a concern of great magnitude. The conclusion of Lord Foscote in the case of Barber v Somerset County Council was wrong as the question of choosing to be a teacher or a doctor is an overly romanticised image of a pic’ n mix employee’s market with readily available jobs. Further to this, it should never become an accepted condition of our society that unhealthy stress should be an integral to working life for which there can be no legal recourse.

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### Footnotes

[1] Donoghue v Stevenson [1932] AC 562

[2] [1938] AC 57

[3] [1970] 1 All ER 180

[4] [1957] 2 QB 348

[5] See Finch v Telegraph Construction & Maintenance Co Ltd [1949] 1 All ER 452

[6] O’Reilly v National Rail [1966] 1 All ER 499

[7] Lazarus v Firestone Tyre and Rubber Co Ltd (1963) The Times 2 May

[8] See Qualcast (Wolverhampton) Ltd v Haynes [1959] AC 743

[9] See Berry v Stone Maganese Marine Ltd (1971) 12 KIR 13

[10] Johnstone v Bloombury Area Health Authority [1991] ICR 269

[11] Walker v Northumberland County Council [1995] IRLR 35

[12] See Ratcliffe v Dorset County Council [1978] IRLR 191. See also Waters v Commissioner for the Police of the Metropolis [2000] IRLR 720, which involved tormenting within the police force after the failure to take seriously an allegation of sexual assault.

[13] [2002] EWCA Civ 76

[14] For an in depth analysis of this balance, see Stokes v Guest, Keen & Nettleford (Bolts & Nuts) Ltd [1968] 1 WLR 1776 per Swanwick J at pp 1779-1783

[15] [2004] UKHL 13. For commentary see D Brodie ‘ Trust and Confidence and Barber v Somerset County Council: Some further Questions’ (224) 33 ILJ 261

[16] ibid per Lord Foscote at paragraph 14

[17] Franklin v Edmonton Corporation (1966) 109 SJ 876

[18] [1997] IRLR 488

[19] 1974 Act s 2(2)(a)

[20] 1974 Act s 2(2)(b)

[21] 1974 Act s 2(2)(c)

[22] 1974 Act s 2(2)(d)

[23] 1974 Act s 2(2)(e)

[24] For the birth of the neighbour principle, see Donoghue v Stevenson [1932] AC 562.

[25] [1979] IRLR 171

[26] (1994) The Times 3 November. This case followed the older case of General Cleaning Contractors v Christmas [1953] AC 180