

## **RISK MANAGEMENT GUIDELINES**

# **Reporting Bodily Injury Claims**

### **Introduction**

Despite all your best efforts incidents resulting in injury and disease may occur to people due to your business activities. Prompt investigation and reporting of these incidents is essential to

- determine the causes and where possible take steps to eliminate or reduce the risk to prevent recurrences
- comply with statutory requirements to report accidents and disease occurring in the workplace to the relevant enforcement authority i.e. RIDDOR 1995
- enable civil claims to be properly assessed and handled by us as your insurer

This Guideline gives you some of the background surrounding the reporting of bodily injury civil claims and advice on the procedures you may need to follow to ensure such claims are effectively managed by you and us as your insurers.

### **Background**

The Woolf reforms of 1998 and the Access to Justice Act 1999 introduced a new civil justice system in England and Wales aimed at:

- simplifying the legal process
- reducing the length of time for claims to be settled
- introducing the concept of proportionality between claim value and legal fees.
- permitting the use of conditional fee agreements and after the event legal expenses insurance

A number of protocols have been introduced which stipulate the roles and actions expected by the various parties involved in legal actions i.e. claimants, lawyers, insurers and you our customers and impose penalties if these are not observed.

For example the Personal Injury Pre-Action Protocol applies to all personal injury claims where damages are below £15,000 and on personal injury claims outside this criteria the parties will be expected to act within the spirit of this protocol. It requires:

- Claimants to send a formal letter of claim to the defendant including details of the alleged negligence and the reasons why the defendant is held responsible
- Defendant or their representative, normally us as your insurers, to respond to this letter within 21 days.
- Following the response, the defendant or their representatives have a period of 3 months to investigate and communicate their decision on liability to the claimant
- Specific reasons must be given with any denial of liability or allegation of contributory negligence and the defendant will be obliged to disclose documents in support of these within the 3 month period.

Also if court proceedings are initiated then the claim can be handled in one of three different ways

- Small Claims Track, applicable to claims under £5,000 where the personal injury element does not exceed £1,000.
- Fast Track applies where the value of the claim is less than £15,000 and the claim is not appropriate for the Small Claims Track.
- Multi Track applies to all claims over £15,000 and the more complex claims irrespective of value.

In all such cases there are rules as to the extent and nature of evidence to be presented and strict time tabling and management of cases by the Judge

If the rules are not complied with then the court may impose:

- Sanctions upon damages in the form of interest at up to 10% over base rate.
- Sanctions upon costs, including award of costs on an indemnity basis, and interest at up to 10% over base rate.
- A higher success fee where two stage success fees have been agreed.
- Strict limitations upon the evidence that may be presented in the defence of the claim

### **What do you need to do?**

We can only meet the time scales and requirements set by the civil justice process if we work together on claims in the following areas

#### **Notification:**

- Please notify us immediately of any incident that might reasonably be expected to produce a claim and in any event for:
- Employers Liability; any accident at work involving absence of more than 3 days, head injury and / or hospitalisation;
- Public / Products Liability; any accident involving attendance at hospital;
- Motor; all accidents involving third parties
- Ensure that you have a procedure in place to enable you to do this.

**Investigation:**

- Investigate the accidents notified to us as claims as soon as possible. This will enable us to make a decision on liability within the specified 3 months.
- Ensure that there are internal accident investigation procedures in place. See other RSA Risk Management Guidelines for more details on this.

**Documentation:**

- If the claimant commences court action documents should be sent to us immediately.
- During the investigation of the claim we may need documents and information to be provided quickly. We will identify which documents we need and, if appropriate, advise you.
- You will need to put systems in place for the creation, retention and provision of those documents and records many of these are also required under health and safety legislation. Appendix 1 gives a list of the sorts of documentation that may be required.

**Further Information**

RSA Risk Management Guidelines  
*"Accident Investigation"*

RSA Risk Management Guidelines  
*"Accident Reporting"*

## Appendix 1: Possible Bodily Injury Claims Documentation

The following is a non-exhaustive, list of documents that may be material to liability claims for accidents in the workplace. Courts are likely to order these documents to be disclosed, either prior to or during proceedings. However, it is important that they are readily available whether proceedings are issued or not.

### *Accident Reports*

- Internal accident report form.
- Photographs
- Written witness statements, signed and dated.
- Photocopy entries of Accident Book/First Aid Treatment
- RIDDOR Accident Reports

### *Management of Health and Safety at Work Regulations 1992*

- Pre-accident risk assessment
- Health surveillance records
- Documents relating to employees' health and safety training

### *Workplace (Health, Safety and Welfare) Regulations 1992*

- Repair, maintenance and housekeeping records

### *Provision and Use of Work Equipment Regulations 1998*

- Manufacturers' specifications and instructions
- Maintenance log/records
- Documents providing information and instructions to employees
- Documents provided to employees on training for use of equipment
- Any notice, sign or document dealing with controls and control systems

- Instruction/training documents issued dealing with maintenance operations
- Copies of markings and warnings

### *Personal Protective Equipment at Work Regulations 1992*

- Documents relating to the assessment of personal protective equipment (PPE)
- Documents relating to the maintenance and replacement of PPE
- Record of maintenance procedures for PPE
- Records of tests and examinations of PPE
- Documents providing information, instruction and training in relation to PPE
- Instructions for use of PPE to include the manufacturers' instructions

### *Manual Handling Operations Regulations 1992*

- Manual handling risk assessment
- Documents showing the information provided to the employee to give:
  - ❖ general indications related to the load;
  - ❖ precise indications on the weight of the load and the heaviest side of the load if the centre of gravity was not positioned centrally
  - ❖ Documents relating to training in respect of manual handling operations and training records

*Health and Safety (Display Screen Equipment) Regulations 1992*

- Analysis of work stations to assess and reduce risks carried out
- Documents detailing the provision of training including training records
- Documents providing information to employees

*Control of Substances Hazardous to Health Regulations 1994*

- Risk assessment and reviewed risk assessment
- Copy labels from containers used for storage handling and disposal of carcinogens
- Warning signs identifying designation of areas and installations which may be contaminated by carcinogens
- Air monitoring records for substances assigned a maximum exposure limit or occupational exposure standard
- Maintenance, examination and test of control measures records
- Monitoring records
- Health surveillance records
- Documents detailing information, instruction and training including training records for employees
- Labels and health and safety data sheets supplied to the employers
- See list of disclosures for the Personal Protective Equipment at Work Regulations 1992

*Construction (Design and Management) Regulations 1994*

- Notification of a project form (HSE F10)
- Health and safety plan
- Health and safety file
- Information and training records provided
- Records of advice from and view of persons at work

*Lifting Plant and Equipment (Records of Test and Examination etc.) Regulations 1992*

- Records kept

*The Noise at Work Regulations 1989*

- Any risk assessment records
- Manufacturers' literature in respect of all ear protection made available to claimant
- All documents provided to the employee for the provision of information

*Construction (Head Protection) Regulations 1989*

- Pre-accident assessment of head protection

*Construction (Health, Safety and Welfare) Regulations 1996*

- Reports prepared following inspections and examinations of working platforms, excavations etc.
- Report prepared following inspections and examinations of work in cofferdams and caissons

***For further assistance on this or any other risk management topic, please contact Risk Control via your Royal & SunAlliance Area Centre or via your insurance adviser.***