



LEGAL OBLIGATION TO INVESTIGATE NEAR MISSES

Q. I am reviewing our current policy and procedures on the investigation of accidents and incidents. We encourage employees to report near misses but are we legally obliged to investigate such incidents and to what level?

A. A near miss is defined as “an event that, while not causing harm, has the potential to cause injury or ill health”. Certainly, lessons can be learnt from such events and there is the potential to prevent costly accidents in similar circumstances.

Under health and safety legislation, there are no specific requirements to undertake investigations of near misses. However, regulation 5 of the Management of Health and Safety at Work Regulations 1999 requires employers to plan, organise, control, monitor and review their health and safety arrangements with Health and Safety Executive (HSE) guidance noting that “health and safety investigations form an essential part of this process”.

HSG245 Investigating Accidents and Incidents: A Workbook for Employers, Unions, Safety Representatives and Safety Professionals provides useful guidance in relation to near misses. It recognises that while the argument for investigating accidents is fairly clear, “the need to investigate near misses and undesired circumstances may not be so obvious”.

However, the same document states that “it is often pure luck that determines whether an undesired circumstance translates into a near miss or accident” and that “investigating near misses and undesired circumstances is as useful and very much easier than investigating accidents”. It notes that such events enable investigations to be undertaken without:

- having to deal with injured parties and demoralised employees
- the threat of criminal or civil action being in the background.

Some rationale will need to be developed as to what unwanted events are investigated, as it may not be reasonable to commit considerable resources to every near miss incident reported.

The HSE guidance notes that “it is the potential consequences and the likelihood of the adverse event recurring that should determine the level of investigation” and that employers “must also consider the potential for learning lessons”.

To be of value, the lessons learnt from near misses should be disseminated to relevant stakeholders along with any recommendations to eliminate/reduce the potential for future events.

In addition, lessons learnt can also be built into any future learning and development given to staff members as part of their regular professional development or, alternatively, specific one-off sessions can be held, if it is felt the outcomes of the investigation warrant such action.