

Competence at Work

Competence plays a very important role in managing workplace health and safety hazards. The HSE has stated “for a person to be competent, they need qualifications, experience, and qualities appropriate to their duties”. These include:

- such training as would ensure acquisition of necessary knowledge for the tasks they are required to perform
- adequate knowledge of the hazards and failures of the equipment for which they are responsible
- knowledge and understanding of the working practices used in the organisation for which they work
- the ability to communicate effectively with their peers, with any staff working under their supervision, and with their supervisors
- an appreciation of their own limitations and constraints, whether of knowledge experience, facilities, resources, etc., and a willingness to point these out.

This general interpretation of the meaning of competence is borne out in legislation, specifically the Management of Health and Safety at Work Regulations 1999, regulation 7(5), in which the statement is made ‘a person shall be regarded as competent [to render safety assistance] where he has sufficient training and experience or knowledge and other qualities ...’. Although this definition is specific to the function of providing health and safety assistance, it is a reasonable indicator of the full meaning, and indeed to date has not been overruled in any legal action.

Current Position

General Legal Requirement for Competence

The obligation to have competent persons assisting employers in meeting their legal requirements has been in existence for almost 70 years. As far back as 1938, the judge summed up employer’s duties at common law to include provision of ‘competent and safety-conscious personnel’ in the case of *Wilson’s and Clyde Coal Co Ltd. v English* [1938] AC 57.

At its broadest, the Health and Safety at Work etc Act 1974 Section 2(1) requires that an employer ensure the health safety and welfare of their employees. More specifically, Section 2(2) (c) requires sufficient instruction, information and training to ensure this; although only mentioning one aspect of ‘competence’ the implication is clear.

More detail is given in the Management of Health and Safety at Work Regulations 1999 in which the definition for a competent person is given in regulation 7(5) to include knowledge or qualifications, experience and personal qualities. This is extended in L21 Management of Health and Safety at Work; Approved Code of Practice and Guidance, in the guidance at paragraph 51, in which it indicates that, at its very least, knowledge must be considered as an understanding of relevant best practice and the personal qualities must include an awareness of the limitations of one’s own experience and knowledge and a willingness and ability to improve that experience and knowledge by obtaining external help and advice.

Determining Competence

First objectively assess the actual competency needs of the situation. This enables the development of agreed standards that permit both the person undertaking the work and the managers controlling it, to be sure that the needs are known and delivered. This step also indicates the training needs of all concerned, together with any the possibility of unrealistic demands. It is

then easier to determine the most suitable way of recruiting or developing the people concerned - for example the actual qualifications, skills, knowledge or experience a person will require.

The next step is to observe how people actually perform the particular function to verify the determined competencies with those actually indicated during performance. The means of actually determining the required aspects of competence could take many forms, including:

- job observation
- special tasks set in isolation from work activities to enable assessment
- discussion with people currently carrying out the function
- examination to determine knowledge
- aptitude or psychometric testing
- national qualification standards, such as NVQs or by an examining body such as NEBOSH or the CIEH.

Maintaining and Improving Competence

This involves a comprehensive assessment of training, coaching or experience provision being available. Training provision must be suitable and delivered by competent trainers. In this context, 'competent trainers' will be those most able to respond to the needs of the course and the attendees in providing the most appropriate means of presenting the training and responding to the differing needs of the delegates.

A preliminary decision is also needed on a suitable period for refresher training. In some cases, such as first-aid at work, the period is prescribed by law; however in many cases there are usually recommendations from professional or other bodies – especially where professional qualifications are concerned. For example both IOSH and the CIEH have issued guidance on the attainment levels required to maintain professional competence.

Finding a Competent Person

Where a competent person is required from outside the organisation it will be necessary to determine the best way to find one. In some cases, such as Insurance Inspections, the insurance company will specify or provide the relevant competent person – it is unlikely that you will have a choice. However this is not always the case.

The main means of selection of a competent person are most often:

- through a professional or trade organisation dealing with the work required to be undertaken
- advertisements and trade journals - although the telephone directories can also be useful
- approved competent person lists within the client organisation
- recommendations from other organisations having had similar work done.

Individual Liability of a Competent Person

With competency comes a higher degree of responsibility, which has liability implications with regard to:

- wrong advice given (e.g., based on inappropriate or out-of-date legal or technical information)

- failure to act on information received (e.g., about a defect in a piece or equipment) or activity observed (e.g., unsafe system of work)
- failure to take preventive action or give advice (e.g., due to poor communication, for whatever reason).

Competence implies special capability in a particular area, and employers rely on the competent individual to advise them on health and safety requirements of that particular issue. Failure to do so can put both the employer and individuals at risk of prosecution under the section 7 of the 'Health and safety at work etc. act 1974'.

A recent case (*Helmrich v Lincoln City Council*) saw the successful prosecution of a health and safety manager who failed to ensure a piece of equipment was safe, resulting in fatal electrocution of an employee. What this case identifies is that advisers, co-ordinators, managers etc, may be liable to prosecution if they fail to ensure that all risks in the workplace are controlled adequately where it can be proven that they failed in this duty.

Key Action Summary

The main actions are to:

- Determine what competence is required in the organisation
- Establish the means to ensure it, and then to
- Ensure that it is maintained and retained.

This is likely to be undertaken by:

- task analysis, to ensure that all appropriate elements to carry out the role safely are known and understood
- training needs analysis, to ensure that suitable and sufficient training or qualifications are identified as necessary for the function
- competent and credible trainers that utilise the most appropriate means of training to achieve the specified aims and objectives and that the methods adopted for carrying out training are suitable for the task.
- competence assessment to ensure that individuals are capable of carrying out the task safely and properly through carrying out an assessment of their skills and knowledge.
- refresher training for critical and infrequent tasks to properly control skill decay, to ensure current knowledge and that suitable levels of refresher training are provided that achieve this without excessive resource commitment
- a selection process to ensure that individuals are recruited who are capable of acquiring the appropriate competencies to carry out the role, i.e. those individuals with appropriate skills, qualifications and experience are selected and recruited.