

Claims Defensibility

The Health and Safety at Work Act 1973 places a significant level of responsibility on employers to ensure their employees operate in a safe working environment whilst following safe working practices, and courts seem to be imposing strict liability – i.e., the employer has failed to provide either a safe place of work or safe working practices if an accident has occurred, and so liability attaches to the employer for the injuries sustained.

Some companies will be familiar with a scenario where an employee has been injured at work as a result of doing something on their own accord that is outside their job description or usual duties, yet their insurers have still paid an Employers Liability claim, with perhaps only a small amount of contributory negligence attaching to the employee.

Insurers are often accused of settling these claims too easily, but in most cases, the issue is the lack of evidence available to defend the claim, and in the event of legal proceedings being issued, it's often more commercially prudent to settle the claim given the lack of evidence rather than incur even more costs if the claim goes to court.

In this article, we share some guidance on how you can improve your claims defensibility based on our experience as an insurance broker and the claims we have seen.

So, what can you do

- Record the details of training being provided, the date on which the training activity was carried out and a statement (or test) to confirm the employee has understood and will abide by this training.
- Record relevant risk assessments/method statement for employees usual tasks & processes and review periodically, especially if there are changes to your business.
- Have a formal induction plan for new employees (including temporary or agency staff) & relevant training applied consistently (and suitably recorded and reviewed/updated periodically).
- Get employees to sign to say they've received PPE, that know they should use it, and ensure the use of PPE is enforced at local management/team leader/supervisor level.
- Encourage a culture where employees are encouraged to report near miss events.

With the financial impact of the pandemic likely to be felt by many businesses in the coming months, employers could find themselves unable to retain staff in what are likely to be challenging trading conditions, and it's certainly possible that some individuals, disgruntled at being let go by their former employers, could look to make spurious injury claims against them to fill the gap in their finances.

In the event that such claims are made, and if you don't have the evidence to enable your insurers to defend the claim, then don't be surprised if the claim is paid. **For further details contact Karl Jones at karl.jones@oamps.co.uk**

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