



chapter 12

The changing approach to workplace health and safety

The traditional approach to OHS is called, the *'careless worker'* model. It is assumed by most employers, the courts and accident prevention bodies that most accidents have resulted from an employee's failure to take safety seriously or protect herself or himself. The implication of this is that work can be made safe simply by changing the behaviour of employees by poster campaigns and accident prevention training. In the past, the attitudes of trade unions often paralleled those of employers and managers.

Early trade union activity tended to focus on basic wage and job security issues rather than safety: trade union representatives used their negotiating skill to 'win' wage increases, and health and safety often came rather low down in their bargaining priorities. If union representatives did include health and safety as part of their activities, it was often so that they could negotiate the payment of 'danger' or 'dirt' money over and above the regular wage rate. According to Eva and Oswald (1981, p. 33), the tendency for union officials was 'to put the onus on to inspectors and government rather than to see OHS as part of the everyday activity of local union representatives'.

Among employees, dangerous and hazardous work systems were accepted as part of the risk of working. Lost fingers and deafness, for example, were viewed as a matter of 'luck' or the 'inevitable' outcome of work. Four decades ago, a major investigation into OHS concluded that 'the most important single reason for accidents at work is apathy' (Robens, 1972, p. 1). So there is a paradox here. When there are major disasters on land, air or sea involving fatalities, society as a whole takes a keen interest, yet society's reaction towards the fact that hundreds of employees die and thousands receive serious injuries every year in the workplace tends to be muted.

The 1972 Robens Report encouraged managers and labour organizations to take greater interest in OHS. Importantly, regulatory bodies and many decision-makers reached a developmental stage in which the careless worker model no longer effectively addressed work-induced ill-health caused by unhealthy and unsustainable work systems. A new approach, the *'shared responsibility'* model, assumes that the best way to reduce levels of occupational accidents and disease relies on the cooperation of both employers and employees, a 'self-generating effort' between 'those who create the risks and those who work with them' (Robens, 1972, p. 7).

The British Trades Union Congress articulated a 'trade union approach' to OHS emphasizing that the basic problem of accidents stemmed from the hazards and risks that were built into the work structure or system. Nichols' (1997) characterized such workplaces as constituting 'potentially injurious structure(s) of vulnerability' (quoted by Taylor and Connelly, 2009, p. 161). Systematic breaches of health and safety legislation, the absence of employee representation, and unilateral mismanagement by managers were the causes of many workplace accidents. The trade union approach, therefore, argued that the way to improve OHS was through union-based employee representation and redesigning organizations and work systems in order to 'remove hazards and risks at source' (Trades Union Congress, 1979, p.10). An HSE document gives support to this approach, stating that most accidents

involve an element of failure in control – in other words a failure in managerial skill. A guiding principle when drawing up arrangements for securing health and safety should be that work should, as far as possible, be adapted to people and not vice versa. The trade union view of health and safety draws attention to potential hazards in the labour process.

In an effort to effectively leverage people in order to improve competitiveness and public services, and encourage organizational change (Madsen, 2003), many organizations introduced a wellness model in the 1990s. Wellness is the ‘process of living at one’s highest possible level as a whole person’ (Schafer, 1996, p. 33). It is a general philosophy or holistic approach taken by top management to enhance the overall well-being of the workforce through a combination of voluntary diagnostic and educational health programmes. Whereas workplace ‘health’ manages the tension between organizational goals and employee health, the intrinsically related concept of ‘wellness’ endeavours to ‘improve’ emotional, intellectual, physical, social and spiritual health (Madsen, 2003, p. 48).

Just as safety is regulated and typically given primacy over workplace health issues, wellness is far less likely to be monitored and managed than general health in the workplace (Mearns and Hope, 2005). Workplace wellness encourages the view that both the employer and the employee benefit from wellness management activities. A common metaphor to underpin the approach is that of the ‘healthy organization’ (Haunschild, 2003). The performance argument – that is, that wellness interventions reduce employee absenteeism, improve the bottom line and encourage workers to accept change – provides the ideological basis of wellness management (Haunschild, 2003). A survey of Canadian workplaces reported that 83.4 per cent of employers offered some form of wellness programming (Bentley, 2005).

Health and safety legislation

The history of occupational safety legislation can be traced back to the Industrial Revolution in the eighteenth century. The pioneering legislation included the 1802 Health and Morals of Apprentices Act, which was designed to curb some of the abuses of child labour. The 1867 Factory Act extended safety laws beyond the textile mills and gave limited coverage to adult male employees. The 1901 Factories and Workshops (Consolidation) Act then remained the governing Act until the Factories Act 1937. The Factories Act 1961 consolidated industrial safety law, establishing minimum standards in factories only for cleanliness, space, temperature, ventilation and lighting, the Offices, Shops and Railway Premises Act 1963 giving similar protection to white-collar workers. Building a statutory framework for OHS has been painfully slow, hindered by consistent opposition from the majority of employers, who have argued that OHS laws would make British industry uncompetitive.

The Robens Report

In the 1960s, when the Labour Party formed the UK government, OHS came under detailed scrutiny. The trade union movement pressed for health and safety legislation to be extended to white-collar workers in hospitals and local government, who were not covered by any of the earlier statutes. The Labour government set up a Committee on Safety and Health at Work, chaired by Lord Robens, to review the whole field and make recommendations. The committee’s findings can be summarised thus:

- Despite a wide range of legal regulation, work was continuing to kill, maim and sicken tens of thousands of employees each year. The committee considered that the most important reason for this unacceptable state of affairs was apathy.
- There was too much law. The committee identified 11 major statutes, supported by nearly 500 supplementary statutory instruments. The committee believed that the sheer volume of law had become counterproductive.
- Much of the law was obscure, haphazard and out of date, many laws regulating obsolete production processes. Furthermore, the law was focusing on physical safeguards rather than preventive measures such as training and joint consultation.
- The provision for enforcement of the existing legislation was fragmented and ineffective. The committee felt that the pattern of control was one of ‘bewildering complexity’.

- Existing health and safety law ignored a large number of employees: statutes prior to 1974 excluded over 8 million workers in communication, education, hospitals and local government.

The committee therefore made four main proposals to improve OHS:

- The law should be rationalized. A unified framework of legislation should be based upon the employment relationship (rather than on a factory or mine), and all employers involved with work or affected by work activities (except for domestic servants in private homes) would be covered by the new legislation.
- A self-regulating system involving employers, employees and union representatives should be created to encourage organizational decision-makers to design and maintain safe work systems and help employees to take more responsibility for health and safety. The basic concept was to be the employer's duty towards her or his employees – employers being bound to design and maintain safe and healthy systems of work – and the concomitant duty of the employees was to behave in a manner safeguarding their own health and that of their co-workers.
- A new unified statutory framework setting out general principles should be enacted.
- A new unified enforcement agency headed by a national body with overall responsibility should be established and should provide new, stronger powers of sanction.

In 1972, the Robens Committee published its report, and the Conservative government introduced a new Bill in Parliament. Two years later, the Conservatives lost the general election, but in 1974 the Labour government reintroduced a similar Bill, which became the HASAWA 1974, examined in more detail in the next section.

The Health and Safety at Work etc. Act 1974

This Act has been the cornerstone of OHS law for over three decades now. The Act vested trade unions with significant powers related to workplace health and safety matters. As Nichols (1990, p. 366) points out, compared with the 1980s and 90s, the HASAWA was 'a product of a different politics and philosophy'. The complete coverage of this complex Act is outside the scope of this chapter, but we will highlight its salient features so that readers can become familiar with some important principles and terminology. The main duties on employers are contained within Section 2 of the Act.

European Union health and safety legislation

In addition to health and safety legislation from their national governments, employers within EU member countries have EU directives to follow, which adds to the complexity of the situation. EU law affects the health and safety legislation of the UK as it overrides domestic law. The Social Charter (see Appendix A) gives added weight to OHS, stating that workers have the 'right to health protection and safety at the workplace'. EU directives under Article 189 of the Treaty of Rome are also an important source of OHS legislation. These cover a wide range of health and safety issues, such as the use of asbestos, the control of major industrial accident hazards, risk assessment, equipment regulations and the prevention of repetitive strain injuries. Directives are binding, although member states can decide upon the means of giving them legal and administrative effect. In the UK, this is usually in the form of regulations, which are normally published with associated approved codes of practice and guidance notes. Teague and Grahl (1992, p. 136) optimistically argue that the new EU health and safety legislation will 'not be of the "lowest common denominator" type but "maximalist" in nature'.

At the turn of the new millennium, the UK's New Labour government expressed a commitment to improving OHS. The Revitalising Health and Safety statement, launched by the deputy prime minister and chair of the HSC in 2000, set national targets for improving health and safety performance:

- To reduce the number of working days lost from work-related injury by 30 per cent
- To reduce work-related ill-health by 20 per cent
- To reduce fatalities by 10 per cent by 2010 (HSE, 2001).

Research on health and safety legislation in France and Germany demonstrates, however, the importance of joint safety committees for improving health and safety performance in the workplace (Reilly et al., 1995; Walters, 2004). The implications of OHS legislation for managers and HR professionals are formidable. At executive level in the UK, the 2007 *Corporate Manslaughter and*

Corporate Homicide Act establishes organizational liability. An organization will commit the offence if its activities are managed or organized in such a way that causes death to either employees or members of the public (Lockton, 2010).

As safety experts rightly point out, workplace accidents and ill-health are not without cause, are largely preventable and often arise from failures in control and management (Cullen, 2002). Hazard prevention and control requires managers to undertake risk assessment in order to help the organization decide what health and safety measures need to be implemented. For permanent, unionized, workers, joint consultative health and safety committees potentially have a key role in determining strategic approaches to workplace health and safety. The reality for many casual migrant workers in the UK, however, is that language skills and cost-reducing imperatives are a barrier to health and safety. Research shows that migrants working in the construction industry, built on rules of 'maximum flexibility and profitability', are more at risk than non-migrant workers (Pai, 2010, p. W1).

Legge (2005) notes that the track record of the EU in the area of health and safety has been 'modest', and, particularly during economic recession, has mirrored nineteenth-century discourse on OHS: employers, unions and government agencies have tended to 'back-pedal' and fail to comply with OHS regulations. Similarly, Bain (1997) persuasively argues that, in Europe and the USA, powerful business lobbies and governments have mounted an offensive against health and safety legislation, health regulation being sacrificed on the altar of profit. The source of campaigns for the 'deregulation' of health and environmental safeguards is ideologically driven and can be located in the ascendancy of neo-liberal ideology.

The perceptive reader will have noticed similarities between the argument opposing factory legislation in the nineteenth century and the twenty-first-century debate on the 1997 Kyoto Protocol and the 2011 UN negotiations to establish a new climate accord. Many corporations are opposed to meaningful, legally binding targets on carbon emissions because they would, they argue, make North American industry uncompetitive.