

## **A Beginner's Guide to Accident Reporting Outside of the United States**

**Richard Cooper, MSc, CMIOSH  
Senior Manager – Safety Health Environment  
and Quality Assurance - Europe  
Global Crossing  
Basingstoke Hampshire UK**

### **Introduction**

It is a fact of life. No matter the efforts of Health and Safety Professionals or the integrity of the management systems and processes established, accidents will happen. All management systems, those relating to Occupational Safety and Health, even those relating to Environment and Quality Assurance deal with the issue of failure.

Within the International Standard relating to Quality Assurance, (ISO 9001), sections relate to Customer complaints and Corrective actions, (in other words courses of action to address failure). A failure within a 'Safety System' is by customer and practice referred to as an accident. How they are reported, to whom they are reported, and why they are reported is in some respects a pre-requisite of accident prevention.

Often the distinct subjects of accident reporting and accident investigation are linked and dealt with as a unified process. In this paper the author will seek to separate these two subjects and answer the question that is often posed by safety management professionals working overseas, "Just when do I have to 'report' an accident?"

### **Spoiler Alert**

In short and for those of you that would like to get to the 'punch line,' every country varies; the legislation will be based in part of the 'welfare culture' of the country concerned. The best advice I can offer is to admit you do not know and ask the locals. Now that you have passed the spoiler alert, it becomes time to look further at the subject, ask the questions as why do we report accidents, what is the legal imperative, and what are the benefits of a positive reporting culture?

Let's answer the last question first!

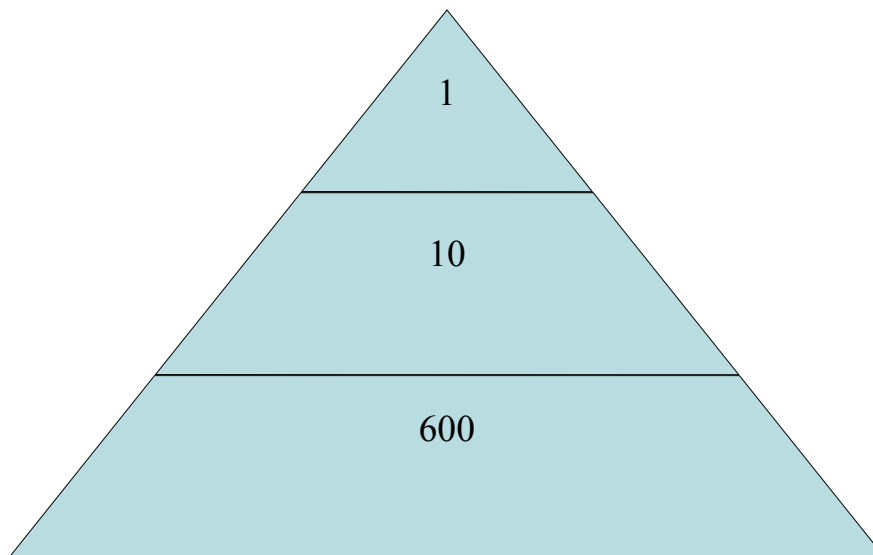
## A Positive Reporting Culture

As a British person, we hear a lot of stories about the United States, none more so than that of one of the most famous American Presidents, 'George Washington.' Is that story true about the cherry tree? Did he really say to his father 'I cannot tell a lie'? At least when the 'event' was discovered the truth came out. That had to be a positive thing.

*On the occasion of every accident that befalls you, remember to turn to yourself and inquire what power you have to turn it to use -Epictetus 60-120 AD (1)*

It would appear to this author that this statement of this first century Greek philosopher gives the reason for 'why' we investigate accidents and this is the main plank of many Safety Management Systems. It does not however explain or expand on the important previous step of reporting the accident in the initial phases.

It is probably one of the first lessons that we learn as safety professionals, the Accident Ratio. Each has its supporters and detractors. The accident ratio model I was first introduced to was in Bird and Germain (2).



This of course is the relationship between Serious and Near Miss accidents. This in essence is the reason that we as professionals need the data or information to be able to investigate the causes, no matter what methodology is used in that particular element. The difficulty being 'how' do you ensure that the workforce has the 'reporting' imperative within the work ethic? How do you ensure that it becomes part of the 'corporate culture' the way we do things around here?

That perhaps is the subject of another paper but it is worth in passing mentioning the three main approaches:

- 1 No Blame Culture
- 2 Just Culture
- 3 The Right to say No

Whatever methodology is adopted, the important element has to be that of obtaining the information to allow the 'statutory' elements to be complied with.

So far then, we have established that there is a need for some form of reporting system within organisations to allow for adequate investigation, we must now turn our attention to external influences on organisations requiring the reporting.

## **A Definition**

Within the context of this paper, any accident, no matter the severity that is required to be reported to a 'statutory agency,' shall be referred to as a 'Reportable Accident'

## **Outside Influences**

It would be perhaps a broad statement to make, insofar as the primary influence on accident reporting to external agencies are culture and legislation.

Certainly we shall explore this element further within this paper. In broad terms, however, the need to have a 'proactive' reporting system allowing for statutory reports to be made falls within two main areas: Civil and Criminal.

Perhaps a further explanation is required, for that terminology may be United Kingdom-specific. The Law of England and Wales is effectively divided into two main areas:

- Common or Civil Law
- Criminal Law

There is a fundamental distinction between crimes and civil wrongs, which are dealt with by different courts and by different procedures.

Common or Civil wrongs are concerned with the rights or duties of individuals to individuals, and Criminal Law deals with the rights or duties of individuals (Including Corporate bodies) to the state. Each state or the country has its own culture which will influence the legal system and legislative requirements.

## **The Welfare State**

Many countries thorough out the world operate some form of 'Welfare State.' In perhaps a simplistic or basic level, the state provides in return for the payment of some form of taxation, a 'safety net' whereby a citizen receives a basic level of protection when required.

This however as one can imagine is not as simple as the statement above would first appear.

Bruno Palier (3) outlines various types of welfare state systems. While a complete understanding of the types is not a requirement for the understanding of accident reporting criteria, it certainly would assist a Safety professional to appreciate the background of the statutory requirements.

*The so-called “conservative-corporatist” model, that we may want to re-name “categorical” or “Bismarckian” model, organised on the basis of occupational categories, is designed much less to reduce inequality than to provide workers with security, and to conserve status. The level of social protection offered to each beneficiary is determined by market performance and employment situation.*

It can be seen from this small extract that in the Bismarckian welfare system, the desire of the state system is to offer protection to the individual in order that his status can be conserved. In other words, when a subject is unable to work as a result of accidental injuries, a level of financial protection is available from the state. Such an entitlement will of course give rise to a ‘report’ being required allowing such benefits to be claimed and received.

Perhaps the other basic type of welfare system adopted is that of the ‘Kassen’ where the welfare institutions are mainly based on entitlements associated with employment status, contributory benefits, financing through social contribution and management of the systems by funds.

*Most countries of the European continent, having followed the Bismarckian route of welfare state development, can be considered as ‘social insurance states’ and share common features: access to benefits is linked to work position (instead of citizenship or need), most of the benefits are in cash and contributory (instead of flat-rate benefits or social services), much of their social outlays are financed via earnings-related contributions (instead of taxation) and they have established a more or less ‘corporatist’ management of their schemes (not directly run by the state - this is why the term ‘welfare system’ is more appropriate than ‘welfare state’ when characterising them).*

In other words no matter how you address the issue, a safety professional will need to be aware of within the country that he is dealing with the welfare system that is in place.

Some basic questions in order to aid such researches should be at the very least:

- (A) the rules and criteria governing eligibility and entitlement: who is entitled to the benefit?
- (B) the forms taken by the benefits: what types of benefits are provided?
- (C) financing systems: who pays and how?
- (D) the organisation and management of the scheme: who decides and who manages?

An understanding of these questions may then be of assistance to the requirements for any state reporting requirements.

## **Philosophy of Statutory Reporting**

This of course is the essence of this paper, how do we as safety professional report accidents within country? What is the need or the criteria? The need to report will be driven by the underlying cultural demands of the country. Is there a welfare state? How can an individual continue to survive in monetary terms during the period of incapacity?

An illustration of this would be that from:

The Peoples Special Administrative Region of Hong Kong, the primary reason for reporting an accident is to allow the injured person to be able to claim 'compensation' from the insurance-based workers compensation scheme. Only after such due process of the compensation has been dealt with will the 'Form 2' be passed to the Labour department for Enforcement or preventative action.

While this can be viewed as a positive model, a synergy between the needs of the individual to receive such compensation or benefit is required to allow for continuation of economic activity by the individual during times of distress and the needs of the state to ensure that employees are not exposed to undue risk in the workplace and that basic 'state safety rules' have not been breached.

## **Australia**

It would certainly not be correct to praise any particular system and this author will attempt not to do so in this paper. While the synergy of the Hong Kong system is thought to be a model which is workable in the extreme, the Australian system of 'State endorsed' Regulatory powers and Compensation is one which withstands examination.

### **Enforcement:**

Each of the Australian OHS statutes adopts the well-known three-tiered approach recommended by the Robens Report – broad, overarching general duties, and more detailed provisions in regulations, and codes of practice. Provisions in regulations have force of law (they are mandatory), whereas codes contain guidance material, which can be used as evidence in a prosecution for an alleged contravention of an applicable regulation or general duty provision. (6) These Agencies, (Government agencies) usually are referred to as 'Work safe' or 'Safe work', (followed by the name of the State). They are a source of much information in respect of the statutory powers and requirements of the state.

### **Compensation**

By legislative requirement, States within the Federation are required to set up compensation bodies, (insurance based) which are usually known by such name as Work cover followed by the (State name).

## **Ireland**

The Republic of Ireland, while having a State involvement in both Accident reporting for regulatory purposes and compensation, also maintains a division between the agencies.

The Injuries Board established in 2004 - it is a statutory body set up to provide independent assessment of personal injury compensation for victims of Workplace, Motor and Public Liability accidents. This assessment will be provided without the need for most of the current litigation costs, such as Solicitors fees, Barristers fees and Experts fees, associated with such claims.

The process for the claimant is straight forward:

1. Claim is submitted to Injuries Board. either online or by post.

2. Injuries Board sends a Formal Notice of the Claim to the Respondent (A Respondent is the term we use to describe the Person or Entity against whom a claim is made).
3. Respondent consents to an Injuries Board assessment.
4. Injuries Board arranges an Independent Medical Examination and requests details of out of pocket expenses. Without full details of the injuries and out of pocket expenses, the assessment will not reflect fully the pain, suffering and expense incurred by the injured party.
5. Assessment is made and Claimant and Respondent are notified of assessment, level of compensation being awarded.
6. Both parties accept the assessment and Injuries Board issues an Order to Pay.

In practice however this process can lead to situation of claims being made to the Injuries Board without notification to employers or other 'Respondent.' Notification is sent to the 'Respondent' via post. An interesting section of the act allows the Board to assume:

*If we do not receive a reply in writing within the 90 days, you will be deemed by default to have consented to the assessment of the claim and become liable for payment of the statutory fee for dealing with the Claimant's Application.* It must be mentioned here that in the majority of cases Insurance companies will meet costs statutory fee but of course their reporting criteria will need to be implemented.

It can perhaps be envisaged that while 90 days is in effect three months, in large organisations, internal communication is such that this time frame is not excessive to allow for the correct departments to conduct investigations.

From this author's experience let the simple message be that internal reporting systems and internal communications must be robust to ensure that a 'default' scenario is not to be established.

## **United Kingdom**

It is worthwhile at this stage to refer to the British or United Kingdom experience. The Civil or Common Law within the British Legal System is the primary vehicle to allow for and Injured Person to receive compensation.

### **Statutory Sick Pay (SSP)**

All employees within the United Kingdom are required by statute (Law) to pay a percentage of their gross salary into a Government Fund. This is normally referred to as 'National Insurance.' This payment covers a contribution towards retirement benefits, medical treatment and as we are discussing 'SSP'.

While the system of entitlement has changed in respect of 'Notice of Fitness to work,' in essence an employee who is unable to work due to injury or ill-health must visit a Registered Medical Practitioner and in their opinion be unfit to attend work. This will then allow for a claim to be made.

The employee must inform the employer that he is unable to work, and provide the medical evidence. The employer will then independent of any contractual obligations pay SSP to the employee on a weekly or monthly basis. This entitlement lasts for up to 28 weeks. It should be noted that this payment is reclaimable by the employer from the Government fund. There are of course various complications to this simple outline. However the principle is simple whereby an Injured Person should not suffer financial distress as a result of an industrial accident.

Within the United Kingdom an important principle has to be appreciated that compensation is paid to enable the claimant to return to a situation as if the event had not occurred. In other words, there is no provision in the UK legal system for such a concept as 'Punitive Damages.'

### **Civil Claims**

Within England and Wales, (a slightly different system in Scotland), should an individual be injured, (or suffer illness) as a result of a workplace injury must make a claim. Notice of intent to claim should be served on the 'Defendant' by the Claimant's solicitor or legal professional.

In order for a claim to be won, the Claimant must prove that the Defendant owed a 'duty of care' to the Claimant and that duty was breached. This is the first and important element in the claim; without this the claim will fail. The Claimant then has to show 'how' the duty was breached. This is usually done by the use of an established 'TORT,' an old French word meaning 'Civil wrong.' It should be noted that while the Claimant must 'prove,' the burden of proof is substantially less than that required within the Criminal Court System

For the sake of completeness, the burden of proof required within the two systems is:

- Criminal – Beyond all reasonable doubt
- Civil – On the balance of probabilities.

Should the Claim be successful, the award given by the courts will be such as to compensate the Claimant for losses not to punish the Defendant.

There is a legal obligation for employing organisations to retain both Public and Employee Liability Insurance. Insurance companies will therefore have a great interest in such Civil claims and therefore robust procedures will be required in respect of reporting to ensure that their requirements are met.

So far in this paper we have addressed issues relating to accident reporting in respect of compensation elements. We now need to turn our attention to the statutory or regulatory requirements.

Let me again from a British perspective make the following clarification: Statutory or regulatory requirements are those which are made and must be complied with to ensure that a breach or contravention of the Criminal Code is made.

## **Statutory Accident Reporting**

As can be imagined each country which enforces some form of Safety legislation will have addressed the issue of accident reporting. This may be for a pure enforcement requirement or the

data collected may be used for other purposes such as calculation of loss to the national economy, calculation of need from industrial accidents for medical and rehabilitation services. The data might also be used by statutory agencies to analyse the types and causation of accidents to established prevention programmes or allocation of resources towards certain industrial sectors.

### **Republic of Ireland**

The State enforcing agency for the Republic of Ireland is the Health and Safety Authority. General Application Regulations 1993 set down requirements for employers to advise the Authority of certain industrial workplace accidents. There is an absolute duty (contained within the 2005 Safety Health and Welfare Act) on this agency: to investigate certain serious accidents, causes of ill health and complaints. Therefore the requirement to report is very specific:

- General injuries involving employees and self-employed Accidents, where a person is injured at a place of work and cannot perform their normal work for more than 3 consecutive days, not including the day of the accident, are reportable.
- ***Road traffic/ vehicle accidents involving employees and self-employed***  
Such accidents are reportable if the person was injured while driving or riding in the vehicle in the course of work, and cannot perform their normal work for more than 3 consecutive days, not including the day of the accident.
- ***General injuries involving members of the public***  
Accidents related to a place of work or a work activity where a person requires treatment from a medical practitioner are reportable. Accidents related to medical treatment or a pre-existing medical condition are not reportable. However the compensation element is under the jurisdiction of another agency.

In this section therefore we have established that a 'statutory' accident report may be required in order to allow for the 'Welfare State' mechanism to commence in order that the Injured Person to receive compensation.

### **United Kingdom**

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), place a legal duty on:

- employers;
- self-employed people;
- people in control of premises;

As an employer, a person who is self-employed, or someone in control of work premises, you have legal duties under RIDDOR that require you to report and record some work-related accidents by the quickest means possible.

You must report:



- deaths;
- major injuries;
- over-3-day injuries – where an employee or self-employed person is away from work or unable to perform their normal work duties for more than 3 consecutive days;
- injuries to members of the public or people not at work where they are taken from the scene of an accident to hospital;
- some work-related diseases;
- dangerous occurrences – where something happens that does not result in an injury, but could have;
- Gas Safe registered gas fitters must also report dangerous gas fittings they find, and gas conveyors/suppliers must report some flammable gas incidents.

There is a fully documented system in place including on line reporting and ‘free phone’ telephone numbers.

### **New Zealand**

The New Zealand Ministry of Labour is the enforcing agency for workplace safety. In the event of a Notifiable Accident an employer is required to provide The Department written notice of the circumstances within 7 days.

The primary legislation within New Zealand relating to Workplace Health and Safety is: **Health and Safety in Employment Act 1992 No 96 (as at 03 March 2010)**

Section 25 of the Act details accident ‘recording.’

In general terms:

- Every employer shall maintain (in the prescribed form) a register of accidents and serious harm; and shall record in the register the prescribed particulars relating to—
  - (a) every accident that harmed (or, as the case may be, might have harmed)—
    - (i) any employee at work; or
    - (ii) any person in a place of work controlled by the employer; and
  - (b) every occurrence of serious harm to an employee at work, or as a result of any hazard to which the employee was exposed while at work, in the employment of the employer.

A schedule to the Act further defines ‘serious harm’ as:

- Any of the following conditions that amounts to or results in permanent loss of bodily function, or temporary severe loss of bodily function: respiratory disease, noise-induced hearing loss, neurological disease, cancer, dermatological disease, communicable disease, musculoskeletal disease, illness caused by exposure to infected material, decompression sickness, poisoning, vision impairment, chemical or hot-metal burn of eye, penetrating wound of eye, bone fracture, laceration, crushing.
- Amputation of body part.

- Burns requiring referral to a specialist registered medical practitioner or specialist outpatient clinic.
- Loss of consciousness from lack of oxygen.
- Loss of consciousness, or acute illness requiring treatment by a registered medical practitioner, from absorption, inhalation or ingestion of any substance.
- Any harm that causes the person harmed to be hospitalised for a period of 48 hours or more commencing within 7 days of the harm's occurrence.
- The definition of serious harm is relevant to employers' duties to manage hazards, notification requirements, employees' rights to refuse to do dangerous work, and inspectors' powers to issue prohibition notices

The foregoing is just a flavour, a snapshot of the Global reporting standards or requirements. Consider that in the 'civilised world' as we perhaps define it there are some 192 countries. Each one of these countries will have some element of legal and social requirement for a 'safe working environment.' Each as part of this requirement will have both a financial (Compensation-led) reporting process in addition to a Regulatory or (enforcement -led) requirement. The extent to which this requirement will be implemented is not the subject of this paper. However the safety professional working in such environments will be required to understand the 'local' requirements, the local culture, and the implementation of safety management systems.

Can you be expected to know such detail? The answer must be yes and no.

A safety professional working within a particular jurisdiction must know and understand the legal and social obligations or requirements that are faced by their employing organisation. It is often difficult with either language or 'pre-conceived' ideas for an 'expatriate' safety manager to ensure that such local requirements are implemented fully.

If any guidance can be offered within this paper then it has to be that of utilisation of local resources. Local Safety Professional agencies, Local Regulatory Agencies are always willing to offer an explanation as to local requirements.

During 2007, the author undertook a 'very unscientific' study confined to 110 individuals. All based in the same building, all the same nationality, various ages from 21-62 a fairly equal mix of male and female. One question was asked of the participants. 'Is speeding in a motor car a criminal or civil wrong?' Less than forty percent gave the correct answer. We may conclude from this that the majority of people know something is wrong but are unable to say why. There are a lot of 'Barrack Room' lawyers and a lot of misconceptions in respect of the law.

'Words of advise' 'Fools rush in' The local legal system of any jurisdiction has developed over the progress of time. You have chosen to work in that particular environment and while you may believe that your 'home' requirement is a comfortable or pragmatic approach to situation, be open to new ideas.

Remember also that ‘locals’ have a greater understanding of ‘how it happens.’ Not necessarily how laws are made but certainly as to local culture and attitude to laws and very much the specifics of such elements as accident reporting. Use the resources that you have at your disposal.

## **Summary**

Perhaps by way of explanation we should consider an accident scenario:

‘An individual slips on a pool of water on the floor in an access way in the workplace. The fall results in the individual fracturing a leg and being absent from work for a period of six months’.

### **Criminal Law**

Within the some jurisdictions this will be defined as a ‘notifiable’ or ‘reportable’ accident. There may be a requirement to report this event immediately, within seven days or even in some cases not for sixty days. The notification of the accident will be to a Government or State Agency. The rationale of the report may be for many reasons, regulatory, (enforcement), social or economic, central planning or even just statistical information gathering.

### **Civil Law**

The individual will have suffered not only the trauma of the accident but will have some financial burden in respect of loss of earning and out of pocket expenses. Compensation systems can be administered by a state controlled or recommended agency, (See Australia, Ireland and Hong Kong examples). Compensation could be payable on via some form a claim process which is a remedy perhaps only available via a litigation procedure.

### **Rehabilitation**

The need for reporting can as in some jurisdictions provide access for the Injured Persons (7), to gain access not only compensation for the event but also state system, (often managed on a tripartite basis) through the treatment and rehabilitation processes to a return to work.

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