

Rationalisation, redundancies and site closure.

When rationalising a site's processes, looking at making employees redundant or planning a full site closure, the implications can be significant for any business and for the employees concerned.

There is a need to designate management resource to defining the strategy and to formulating a risk register and action plan which considers the key issues, how they will be addressed and how information and documentation will be collated, captured and archived in an easily retrievable manner.

Strategy for rationalisation, redundancies and site closure

Take a corporate 'snapshot' i.e. video footage and photographs of the land, premises, processes, plant and equipment during normal working conditions. Pay attention to contentious processes or exposures that could have long term risk and liability potential, especially where an existing claims pattern is already established.

As the nature of activities changes any new, non-routine or enhanced risk exposures should be identified and assessed, with competent individuals nominated to manage the process and implement necessary controls.

The fundamental disciplines of documented task specific risk assessment, safe system of work and training must be maintained.

Ensure controlled communications are maintained with employees, customers, suppliers and the media.

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Documentation creation & retention

It is important for organisations to take control of the retention of documentary evidence. Once a site has closed or redundancies have occurred, access to documentation and witness evidence, may be lost.

The Pre-Action Protocol for Low Value Personal Injury (Employer's Liability and Public Liability) claims, allows insurers 30 working days for employer's liability claims and 40 working days for public liability claims, from receipt of the Claim Notification Form (CNF), to investigate a claim and provide to the claimant a decision on liability and if a claim is to be defended, standard disclosure of documents.

Consequently, QBE will need to retrieve and review certain documents, as detailed below, when considering legal liability. It is therefore critical that these documents are archived, retained and can be easily and quickly retrieved.

- > Accident Report
- > RIDDOR Report
- > Internal accident investigation report
- > Risk assessments – generic and task specific
- > Documented safe systems of work/operating procedures/method statements
- > Training records
- > Contemporaneous witness statements (including negative statements)
- > Photographs, Video, CCTV footage
- > Measurements, weights, dimensions
- > Monitoring records – audits, inspections, as evidence of conditions and response to actions raised
- > Machinery and Equipment maintenance records and defect sheets
- > Minutes of health and safety committee meetings
- > Occupational Health Records including records of Health Surveillance
- > Personnel records including any pre-employment health screening questionnaires or reports
- > Claimant's 13 weeks pre-accident earnings together with details of any payments made during the period of absence
- > Noise and other occupational hygiene monitoring records and surveys

Access to documentation should be restricted to key individuals e.g. senior management, health and safety managers, insurers, defendant solicitors and the enforcement authority, e.g. Health & Safety Executive, Environment Agency.

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Seek legal advice from your QBE panel solicitor concerning legal professional privilege, before disclosing any documents to a third party.

Paper records must be kept in an orderly manner in a secure location. Whilst originals are preferable, copied documentation will suffice.

If a company uses a web-based or online safety management system, key personnel should have specific accounts with strong and secure passwords so that only authorised people can view, edit and delete documents. Back up of all electronic files should occur on a regular basis onto a server or cloud-based storage system.

If it is decided that a personal injury claim is one to defend, documents in the defendant's possession which are material to the allegations being made, have to be disclosed to the claimant's legal advisers.

Limitation Act

Section 11 of the Limitation Act 1980 states the limitation period for actions including damages for personal injury, is three years from the date at which the cause of action accrued – this normally being the date of the injury. For minors at the time of the accident, the period is three years from when they reach age 18.

QBE recommends that all records relating to accidents should be retained for at least 7 years from the date of an accident or if the injured party is a minor, 7 years after they reach age 18.

The limitation period may differ in disease claims and may be 3 years from the claimant's date of knowledge or from the date when it was reasonable to have acquired knowledge that their disease or illness may be connected to their work. The date of knowledge may therefore be some time after the date of any exposure.

Documentation relating to potential short tail disease claims such as Occupational Asthma, Hand Arm Vibration Syndrome and Dermatitis, should be retained for 7 years after exposure to the work activity ceased. For long-tail disease claims such as Noise Induced Hearing Loss, Asbestos related disease, Silicosis, COAD, COPD records should be retained for 40 years, as it could be many years before employees begin to suffer symptoms.

Employee work history records should be reviewed to confirm that sufficient information is held to clearly identify what roles, jobs, departments and work areas the individuals were engaged in, and for what periods. Safety arrangements that were in force in a particular area, for example job rotation, should also be recorded with dates indicating the periods they were effective.

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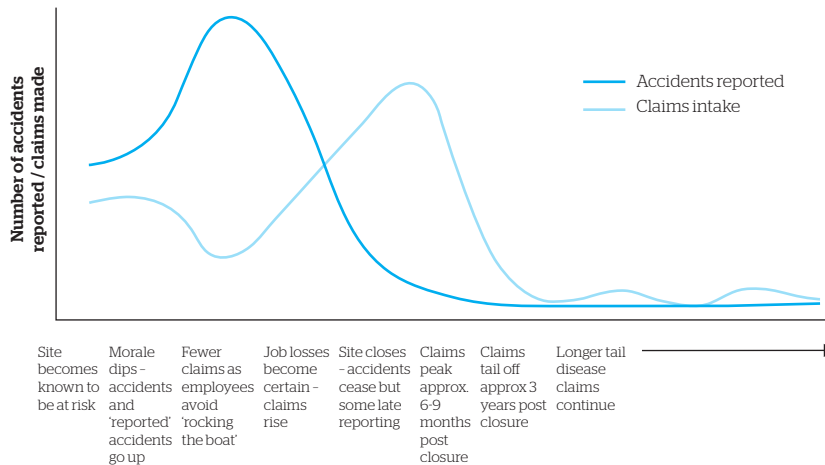
General Data Protection Regulation (GDPR)

GDPR gives individuals greater control over their personal data and it also requires greater accountability from organisations. Personal data and sensitive personal data must only be processed for a legitimate business purpose and it must not be kept for longer than necessary. To ensure GDPR compliance, regular reviews of personal data held should be undertaken and information no longer required must be deleted. Technical and organisational measures must be implemented to preserve the integrity of the personal data and prevent any unlawful processing. A data breach relates to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Site closure and the claims dynamic

Following speculation that a site may close, jobs may be lost, or transferred to a new site or company, individuals may be less inclined to draw adverse attention to themselves and consequently, in the short term, it would not be unusual to see new claims decline.

As the facts become clearer and it is evident that individuals will be adversely affected by the business changes, loyalty to the company will understandably reduce and thoughts may turn to anger, frustration and the pursuit of a personal injury claim. A dip in morale can lead to an increase in accident frequency, but often with a reducing severity as more minor injuries are reported.



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Accident investigation

In anticipation of an increase in claims it is important to raise vigilance levels and ensure robust incident monitoring, investigation and recording, even for minor incidents and injuries.

It is essential that those responsible for accident investigation visit the scene of any reported accident as soon as possible to collate all relevant schematic drawings, sketch plans, photographs and CCTV footage to compile a clear picture of the scene at the time of the accident.

Photographs and video footage taken at the accident investigation stage can become crucial evidence in court, and even more so when a site has closed or the operation in question has ceased. Images should be securely retained. Keeping a record of what each picture shows is also important along with running commentary of the workplace if capturing a video of the processes. Information should include the date and time taken and the identity of the photographer with personal contact details.

It is vitally important that all relevant and appropriate witness statements are gathered at the time of the accident. Obtain written, signed and dated statements from all direct and indirect witnesses and supervisors/managers. Even where individuals state that they did not see anything it is important to capture this information. We recommend that you obtain the address, home and mobile telephone number and email address of any witness to enable future contact.

Human Resources

Employee transfer, redundancy or site closure are very unsettling for all concerned and companies should consider all necessary steps to minimise impact and to support employees mental health and wellbeing.

You can support staff by providing, counselling, additional face-to-face meetings, help getting financial advice, help finding alternative employment, interview training and advice on CV writing, helping individuals to identify wider opportunities and at the same time provide the tools and the confidence to face their changing circumstances more positively. The effect of managing employee relationships in this empathetic way will help maintain morale and can help minimise future accidents. It can also reduce feelings of anger towards the employer which in turn makes individuals less inclined to pursue claims.

Another business option is for the organisation to cut down the numbers of 'non-productive' staff such as, for example, health and safety managers. This may well prove to be a false economy at a time when they will be more important than ever in controlling accidents and assisting with the future investigation and management of claims.

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Where processes or people are being relocated to another site, or to a new organisation, make sure that the site has made the necessary arrangements to cater for any additional exposures posed by new working processes and equipment. Ensure that transferred employees are provided with information, instruction and training specific to tasks at their new environment and take steps to validate competence before work commences.

Where the site is sold or employees transferred, for example, under TUPE, seek legal advice to ensure that all relevant present and future liabilities are transferred to the buyer.

Other liability considerations

Consider the duties posed by public, property owners, occupiers and environmental liabilities – for example;

- > What additional steps need to be taken to protect visitors and the public arising from a redundant site and the buildings and structures therein?
- > How will the site be secured against trespassers or arsonists?
- > What is the potential for fire to spread to neighbouring buildings?
- > What danger exists in terms of pollution?
- > Are there containers which need to be maintained to avoid seepage?
- > Where contaminants have been stored on site, have they been safely removed and pose no environmental threat?

Where site closures take place then the physical security of property and assets is essential. Ensure that you check your tenancy agreement, if applicable, so that you are aware of your duties. Many property insurers have a standard clause regarding non occupancy of premises and stipulate conditions of cover such as turning off mains services, emptying water tanks, removing combustible materials, boarding ground floor windows and letterboxes, and generally taking all reasonable precautions to secure the buildings against unauthorised entry (validated by regular documented inspections).

It is also a sensible measure to nominate appropriate competent contacts with the knowledge and expertise to take both immediate and long-term responsibility for liaising with insurers, local and regulatory authorities on issues relating to the site's legacy.

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Property

Once a site becomes vacant, the potential for loss or damage to property is significantly increased so any site closure plan should include the following actions:

- > Advise insurer/broker that the site will become vacant and the date this will occur to ensure insurance cover reflects the changing site activities and risk profile
- > Ensure key management for the premises, sprinklers etc. in the lead up to closure and post closure including changing of locks to prevent unauthorised access to the building once it has closed
- > Retain protective devices in operational condition (including maintenance regimes) – fire alarms, intruder alarms, sprinklers, unless your Insurance Policy requires you to isolate power and water supplies to the site and drain all water services
- > Security – if a third party provider is used, a regular audit should be undertaken. Vacant premises should be inspected at least fortnightly for signs of damage/unauthorised access, unless required more frequently by your insurer
- > Secure points of access, including gates, doors, windows, ladders, stairways and fire escapes
- > Grounds maintenance should be retained once the premises become vacant to give the impression that the site is still occupied. Keep shrubbery and trees trimmed to minimise the risk of trespassing/unauthorised access
- > Remove all combustible materials and dispose of appropriately – packaging materials, gas cylinders, pallets
- > Disconnect utilities no longer required – water, electricity, gas
- > Drain, purge and where necessary decommission/remove chemical, fuel and oil tanks. A documented risk assessment should be undertaken covering both health and safety and environmental risks in respect of this
- > Removal and appropriate disposal of all waste from site (particularly hazardous and combustible waste)
- > Identification and remediation of defects prior to sale/disposal – prevention of dilapidation of the buildings

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- > Retention of property related documents – site plans and drawings, asbestos records, permits and licences, service and maintenance records, reactive repairs, inspection regimes, statutory inspections
- > If the site is to be sold, consider the hand over process to the new owner
- > Re-assess business continuity planning in light of the new arrangements

Plant, equipment and services

Plant and equipment (internal and external) should also be the subject of a comprehensive video/photographic record prior to removal, so that there is a permanent record of the plant and machinery in operation, guarding and protective devices in place, record of operator positions and lighting levels. Areas to consider:

- > Asset register up to date and accurate
- > Effective cleaning of all plant and machinery prior to removal
- > Proper drainage of oil in transmission and gearboxes and disposed of in waste oil containers
- > Sale/disposal of plant and machinery – manuals, service and maintenance records, parts and spares.
- > Utilities – gas, electricity, water, fuel oil. Process for disconnection on closure of the site
- > Inspections of plant/machinery still in use following closure – passenger lifts, utilities, fire alarm, intruder alarm

Customers, contractors and suppliers

Processes to manage the ending of supplier contracts, stock management, customer deliveries, service provision and payments to ensure the supply chain is maintained until operations cease are essential. This is particularly important where health and safety of employees e.g. through the provision of disposable PPE, is at stake and is required until all operations cease at the site.

Contractor management processes and permit to work systems need to be in place and suitably monitored as during this time, contractor activity may increase significantly.

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Conclusion

When rationalising a site's processes, looking at making employees redundant or transferred under TUPE arrangements, or planning a full site closure, the organisation's changing liabilities should not be overlooked.

There is a clear business case for designating financial and management resources to a strategy that properly considers the key issues. Current and future exposures need to be identified, plans need to be put in place to address them and information will need to be documented and archived in an effective and easily retrievable format.

Without these fundamental risk management steps, a business could find that it has gone through all the tough decisions necessary to preserve its short-term position, only to expose itself to liability issues in the future.

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