

Casualty Risk Solutions

Competence in relation to health and safety was first referred to in the Factories and Workshops Act 1901. Today there's a legal requirement for a business to obtain competent advice to assist it in complying with health and safety legislation.

When looking for assistance, preference should be given to persons within the business who have the appropriate level of competence. What combination of attributes is considered as competence has not been clearly defined. Whilst qualifications can be assessed, skills and experience are more ambiguous. When the duty to seek health and safety (H&S) assistance has been breached, it is the courts who decide whether a person is competent retrospectively.

Best practice standards

The following points will help an employer comply with their obligations in relation to Competent Persons:



✓	An employer should have knowledge of current H&S legislation to ensure the competent person they are appointing can fulfil their duties. Safety representatives should be involved in the selection process too.
✓	Employers need to access competent help when devising and applying protective measures.
✓	External competence may be needed to augment internal competence and certain Regulations e.g. The Ionising Radiation Regulations, require the appointment of a specialist advisor.
✓	Medical professionals must demonstrate that they have experience and training in occupational health.
✓	Competence involves having an awareness of one's limitations, an understanding of current best practice and a willingness to obtain external help when appropriate.

✓	When employing a competent person, check for appropriate qualifications and membership of professional bodies. See the Occupational Safety and Health Consultants Register (OSHCR).
✓	The H&S management document HS(G)65 suggests H&S advisors report to directors on policy matters. It expects the role to be involved in setting up and running the H&S management system.
✓	Ensure that appointed persons receive regular refresher training to keep their competencies updated.
✓	The competent person should assist line managers in managing H&S so influencing skills are important.
✓	A competent person with seniority will have access to decision makers, financial and human resource.
✓	A competent person understands industry processes, hazards and best practice and has contacts within the industry to allow benchmarking of activities.

Legal requirements

Any external individual appointed as Competent Person needs to be provided with information by the employer on factors which may affect the health and safety of those involved in the business. The employer also needs to inform the appointed person of those persons employed in the business as contractors. The Regulations deem a person as being competent if he has sufficient training and experience or knowledge and other qualities to help him assist the business in complying with its legal obligations. There are exemptions to these requirements for individuals in partnerships and self employed persons who employ others.

A number of court cases have given more detail on what can be expected of a Competent Person. In *Basingstoke and Deane Borough Council v J Sainsbury plc* (1998) the person appointed by Sainsbury as H&S advisor had a NEBOSH certificate. The court deemed the nurse inadequately qualified to undertake the role unassisted. In *Eckersley v Binnie and Partners* (1988) a Competent Person was ruled to display the qualities which an ordinary member of his profession would have "but not that he be a paragon, combining the qualities of a polymath and a prophet". In *HSE v Lockwood* (2001) the HSE expert witness stated that "the level of knowledge and expertise involved must be tied to the complexity of the problems to be tackled".

Guidance and useful information

- Management of Health and Safety at Work Regulations 1999, HSE ISBN 978 0 7176 24881
- Getting specialist help with health and safety, HSE Guidance Note INDG420
- Occupational Health and Safety Consultants Register, www.OSHCR.net



Further information

For more information please visit: www.QBEurope.com/rs or email us on RS@uk.qbe.com

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