

Sleep and Well-Being in the Workplace

Considerations from a legal perspective



What will we be covered?

- The impact of fatigue at work
- Work Sleep and the Law
- Consequences for employers/employees
- Practical steps
- Technology, New Measures and Sleep

Statistics

- 3.5 million people are employed as shift workers in the UK in a wide variety of industries, including emergency services, healthcare, utilities, transport, manufacturing, entertainment and retail.
- 20% of accidents on major roads is said to cost the UK £115m - £240m a year.
- Notable examples of fatigue related accidents – Herald Free Enterprise, Chernobyl, Texas City, Clapham Junction, Challenger and Exxon Valdez, Buncefield.

How can fatigue affect the workplace?

- Tiredness;
- Sleepiness including falling asleep against your will ("micro" sleeps);
- Irritability;
- Depression;
- Giddiness/Light headedness/Whirring;
- Loss of appetite/Energy/Digestive problems; and
- Increased susceptibility to illness.

The Impact of Fatigue at Work

What types of working environment will be affected?

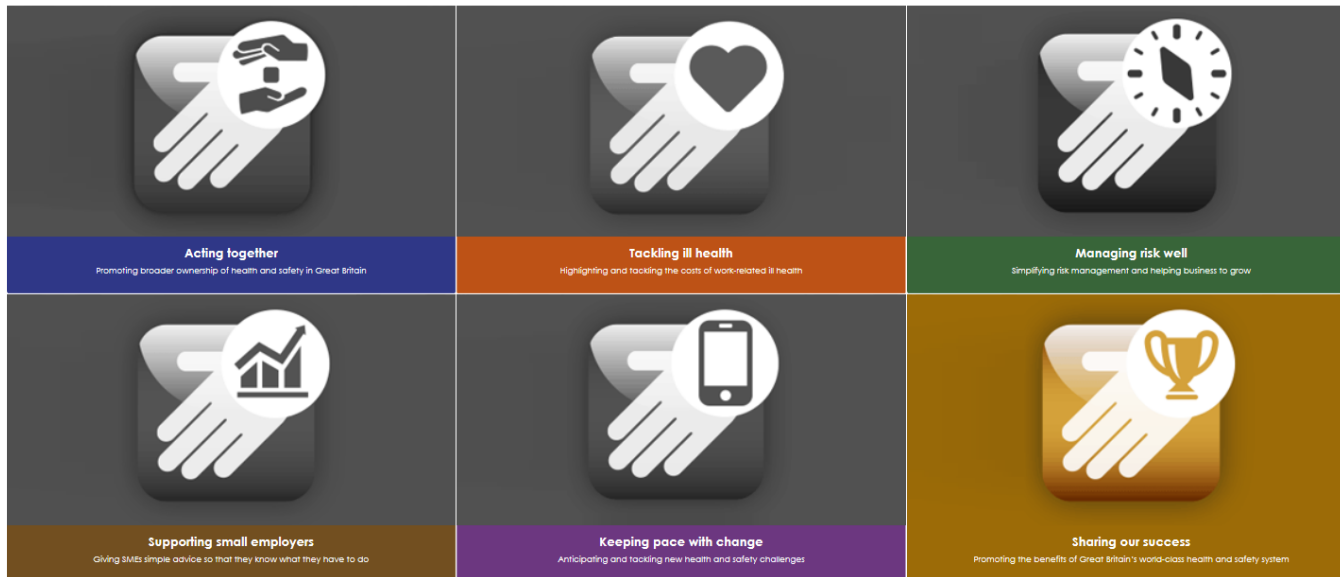
- All.
- While particular industries and organisations, like transportation, utilities, the emergency services and hospitals, have long been affected and aware of the risks of fatigue, the growth in the service economy over the past decade or so has meant the likes of retail outlets, catering establishments, and call centres are increasingly needed to consider this issue too.



KAROSH 過労死
death by overwork

- Death from Overwork – “Karoshi”

- Increasing Focus on Well-Being by Regulators
 - Helping Great Britain Work Well



Legal Duties

■ Employment Law

- Working Time Regulations 1998 – requires that people who work at night must be offered a free health assessment

■ Health and Safety Law

- Risk Assessment – General duty of employers to make a “suitable and sufficient assessment of the risks to the health and safety of his employees to which they are exposed whilst they are at work”.
- Health and Safety at Work etc. Act 1974 (HSWA)
 - Regulation 2(3) – duty of employers and duty to risk assess
 - Regulation 7 – duty of employees
- Management of Health and Safety at Work Regulations 1999
 - Regulation 3
 - Regulation 5
- Railway and Other Guided Transport Systems (Safety) Regulations 2006
 - Regulation 25

Legal Duties

- Would sleep need to be risk assessed?
 - Sleeping does not take place in the workplace but employers must consider all foreseeable risks
 - Is it a risk that if the employee is not getting enough sleep they could pose a higher risk?
 - Is it foreseeable that the task they are carrying out might require high intensity concentration for which sleep and rest are required?
 - Is there a particular culture in the workplace that lends itself to not sleeping? For example, office competition, fear of not 'getting ahead', sending emails late at night etc., chargeable hours, sales targets etc.

Guidance

■ HSG256 – Managing Shift Work

- “Under MHSWR, employers are required to make an assessment of the risks to employees from work activities and make a commitment to introduce measures that are ‘reasonably practicable’ to remove or control these risks. This includes the number of hours worked and how these hours are scheduled.”
- Section 7 - Employees also have a duty to take reasonable care of their own health and safety and that of other people, who may be affected by their activities at work. This duty implies that employees should take positive steps to understand the risk factors in their work, such as the causes of fatigue, comply with safety rules and procedures and make sure that nothing they do or fail to do at work puts anyone at risk.
- There is no specific definition of shift work in law, but it usually means:
 - a work activity scheduled **outside standard daytime hours**, where there may be a handover of duty from one individual or work group to another;
 - a pattern of work where one employee replaces another on the same job within a 24-hour period.

Guidance

HSG 256 – Managing Shift Work

- Standard daytime hours are considered as:
 - a work schedule involving an activity during the day, commonly for a period of eight n hours between 7.00 am and 7.00 pm. There are usually two periods of work, one in the morning, the other in the afternoon, separated by a lunch-time break.
 - All systems of work other than standard daytime hours are considered as shift work.

Examples of shift work might be:

- work during the afternoon, night or weekend, typically with periods of the work schedule outside standard daytime hours;
- extended work periods of 12 hours or more, often associated with compressing the working week;
- rotating hours of work;
- split shifts, where work periods are divided into two distinct parts with several n hours break in between;
- overtime;
- standby/on-call duties.

Guidance

- HSE's Fatigue and Risk Index
 - HSE considers that the Fatigue and Risk Index tool is a risk assessment method for use with rotating shift patterns.
 - Was developed for use in the workplace to assist in identifying risk – there are two separate indices, one which relates to fatigue (Fatigue Index) and one that relates to risk (Risk Index).
 - It focuses on patterns of work. The main differences are due to the different time of day effect: the peak in risk occurs close to midnight, whereas the peak in fatigue tends to occur some five hours later, in the early morning.
 - Will ask the assessor to put in break times, commuting times, hours worked
 - It is not appropriate for work patterns which only involve day working. Nor is it advised for use with shift patterns which are worked offshore.

Both Employer and Employee

- Potential for an accident, long term illness, suicide.
- Civil claims in negligence – from employees, others
- Criminal prosecution – regulated by HSE, Police, Local Councils
 - Health and Safety at Work etc. Act 1974 – new Sentencing Guidelines
 - Individuals
 - Directors, Managers, Senior Officers
 - Employers
 - Corporate Manslaughter and Corporate Homicide 2007
 - If led to a death, companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.
 - Coronial Inquests
 - Employer may be considered an interested person

Practical Guidance

■ Key principles in managing fatigue

- Fatigue needs to be managed, like any other hazard. Do not underestimate it.
- The legal duty is on employers to manage risks from fatigue. Compliance with the Working Time Regulations alone is insufficient to manage the risks of fatigue.
- Changes to working hours need to be risk assessed. Risk assessment may include the use of tools such as HSE's 'fatigue risk index'.
- Employees should be consulted on working hours and shift patterns. Sleep disturbances can lead to a 'sleep debt' and fatigue.
- Develop a policy that specifically addresses and sets limits on working hours, overtime and shift-swapping, and which guards against fatigue. Implement, monitor and enforce it.
- Develop robust system of recording working hours, overtime, shift-swapping and on-call working.
- Consider resources, and staffing levels.

What's new

- Early Fatigue Detection Systems
- Fatigue Mats
- Nap Pods
- Increased focus on working from home
- Restriction on emailing after 6pm



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