Birmingham Health, Safety & Environment Association

721 Hagley Road West
Quinton, Birmingham B32 1DJ
Email: secretary@bhsea.org.uk
Website: www.bhsea.org.uk
Tel. No. 07802 973795

Registered Charity No.: 255523

Secretary: Andrew Chappell C.Eng., MIET., Dip.E.E., CMIOSH, MCMI

Newsletter

May 2010

Work at Height, WWT SHAD

Two of the demonstrations of equipment at the SHAD

The WWT Work at Height SHAD at the Birmingham Medical Institute on 18th May was attended by 70 delegates from around the Midlands. As you can see, we booked the sun, as well as the scaffolding!

Monthly Meeting 10th May 2010

Chairman, Ed Friend, welcomed 46 delegates to the meeting, with a special mention of Kevin Guest, of PP Services, who was attending for the first time. The Secretary read out apologies from Gerry Mulholland, Geoff Harvey, Clive Raybould, Brian Dunckley, Malcolm Copson, Bill Parker and Andrew Hornby.

Presentation: Rehabilitation after Injury or Ill-health

Beverley Harrison, Occupational Health Manager, Greggs the Bakers

Ed welcomed Beverley who started her presentation by saying with so much legislation being introduced she herself often felt confused by the apparent overlap in the workplace. Hopefully, she added, she would be able to dispel some of that this afternoon. She went on to say that we had decided to go a little further than the advertised topic by 'adding value' in the form of the closely related topics of "Pre Employment Medical Screening" (PEMS) and "Termination of Emoployment" due to ill-health. The former lays down a sound preparation for an individual's employment, whilst the latter, in some unavoidable cases, is the only option when even a caring employer cannot make adjustments to the workplace, or safety of others is compromised.

Beverley Harrison, Occupational Health Manager, Greggs plc

Beverley continued by saying that modern practice was to use health declarations or simple health questionnaires in most non-indutrial areas of work, instead of invasive medical screening or examinations. An exception to this would be for a "safety-critcal" job, where a health condition may present a hazard for the individuals themselves, their colleagues or the wider community in the case of an airline pilot/train driver/food handler. Beverley emphasised that, although this way assessing a person's ability was a valuable tool, it should be seen sas a way of screening a candidate IN not OUT! Obviously, she went on, information about a person's health is sensitive and is subject to the Data Protection Act and consent must be obtained to collect, hold and process it. Moreover, persons must be told why it is needed, what it will be used for and to whom it may be disclosed. This whole process could be seen as an interference with a person's right to repect their private life, in breach of the Human Rights Act and Equality Bill.

This means that employers must give careful consideration as to whether questionnaires are necessary for the job in question and only **relevant** information should be obtained. A careful balance must be struck, therefore, between intrusion for the individual against the health and safety obligations placed on the employer. the Equality Bill is presently before the House of Lords and a recent key change has been to introduce a requirement to deter employers from asking questions about health until they have shown that candidates meet some of the no-health criteria. This suggests that it may be prudent to divide the recruitment process into two sections, with the health related questions in tha last part.

The reasons for conducting PEMS is broadly as follows: -

- To identify physical and psychological problems wich amy affest the ability of the candidate to carry out the proposed employment in a safe and effective manner, without any risk to their health, other workers and members of the public.
- To determine any medicaal reason why the duties of the position may not be suitable
- To identify any support needed, or adjustments required, to enable the prospective employee to perform the duties.
- To identify any potential attendance issues.
- To provide a baseline health profile for COSHH and other statutory health surveillance (eg. Lung Function Audiometry at Greggs) to measure and detect any changes that masy occur throughout employment.
- to look at any disclosure that may affect the capacity of the candidate to undertake the employment.
- To ensure that legislative standards are met (eg. HGV drivers' DVLA requirements)

In oder to comply with various stautes, Beverley continued, the PEMS should adhere to these principles: -

- It should be job description/ person specification driven and, where appropriate, by Risk Assessment.
- A complete medical and occupational history should be sought, including previous exposures, either through questionnaire or medicaal examination.
- Always bear in mind there is a limit, under DPD and HRA, to what you can ask about social and family history and that it should be restricted to **what is relevant**
- Any examination should only be carried out where necessary to determine suitability for the post. If it reveals a condition that might cause difficulties, then the OH professionals should advise on possible reasonable adjustments under the Disability Discrimination Act (DDA).
- As part of the referral process, an Occupational Health Nurse is able to obtain a medical report about an applicant, provided it is in compliance with the Access to Medical Reports Act.

Beverley commented that the PEMS is totally dependent on the information given by the applicant and failure to disclose can have an adverse effect.

On the topic of Rehabilitation, Beverley commented that the Med 3 **'sick note'** had changed in the last month to a **'fit note'** after long overdue reforms, started in 2007 by the DWP. The crucial message is that "A person does not have to be fully recovered to return to work". Although GPs were cautious at first, there are signs of improvement, despite only having received four hours of training in the process. The overwhelming motivation for the new note is that there is strong evidence that being signed off from work for extended periods actually hinders the healing process and is not good for the patient. It's not too good, either, for the employer or the economy in general!

It is hoped that the new note will encourage more beneficial dialogue between GPs and OH professionals. This collaboration was inspired by Dame Carol Black's report, "Working for a Healthier tomorrow" on the health of the working population in the UK and will also be helped by the Welfare reforms to the benefit system. Speaking five weeks after its introduction Beverley said that, in her experience: -

- GPs are using the notes
- Employers still have a say on 'Reasonable adjustment' and whether recommendations can be accommodated.
- Although inconsistencies exist, GPs are certainly trying to bring people back into a workplace setting.
- Beverley had received one telephone call from a GP when a patient remarked "we have a Nurse at work". This resulted in the person's return to work, albeit on less hours, with definite signs of improvement and an expectancy of full capability within a few weeks!

Beverley remarked that the scrapping of Incapacity Benefit and Income Support, plus the introduction of Employment and Support Allowance and Jobseekers Allowance will result in an even larger return to work. The added complication is that they will have either chronic health and/or chronic motivational problems that will distort the rehabilitation process. It is estimated that ¾ of all existing claimants have manageable medical conditions such as back pain, depression and mild circulatory problems, rather than a severe disability.

The introduction of proactive Rehabilitation, Beverley added, is the core function of Occupational Health would give OH Nurses a chance to show their skills in looking at health in work, rather than just occupational illness. A good plan is essential and most Phased Return and Rehabilitation Plans, with 'reasonable adjustment' statements, should be included in in all absence management plans. Smaller companies can forge links with the NHS or other OH Services to procure the required professional expertise.

Beverley emphasised that rehabilitation 'starts' on the first day of absence and it is crucial for OH to establish contact with the absent employee as soon as possible and maintain that contact throughout the absence. She explained that a six week delay, say, in contact was too much and that contact could be enhanced with an invitation to attend workplace meetings. Beverley added that employers should encourage the message that "work is good for your health' and that a return to work can happen safely before sypmtoms cease! The OH Role is one of Assessing, by gathering information including recommendations on Fit Note and taking responsibility for meeting the precise needs of the injured or sick employee. There is also a role of co-ordination of the medical and therapeutic services, organising additional assessments. In this respect, she commented, the organisation REMPLOY had a good history

A good rehabilitation plan must be devised to assist the person to overcome their disability or injury so that they can return safely to work. It should recommend strategies to assess the workplace and identify suitable/alternative duties. These could include reallocation of minor or subsidiary duties to another employeei the disabled person has difficulty doing them because of the disability. Other rmeasures of reasonable adjustment could be: -

- Change working hours or place of work.
- Modify methods of supervision or giving instruction
- Modify equipment or work environment
- Give time off for physio/rehab treatment.

Sometimes a Transferrable Skills Assessment may be required to identify skills and aptitudes if alternative employment is necessary. This must be monitored regularly to ensure that it is operating effectively and liaison with all professionals is essential to make them aware of the OH provision and the availability of a phased return to work with restricted or alternative duties to facilitate rehabilitation. This is totally compatible with the OH role to advise other professionals about how illness may affect ability to work, using clinical knowledge and an awarweness of operations in the workplace. The primary objective is always to return the employee to work. It would be an absolute waste of medical treatment if employers denied that person a place in work, if reasonably practicable.

Beverley went on to remind that a nother section of the DD Act said: -
"It is more likely to be reasonable for an employer with substantial financial reources to have to make an adjustment with significant cost but these adjustments have to effective and practicable. She commented that SMEs were less likely to able to do this and warned that if practices are not fair and consistent, or policies are not robust, then employees might resort to cases in the Employment Tribunals!

Moving on the subject of **"Termination of Employment on Health Grounds"** Beverley said that the twin aims of both OH and Human Resources were to ensure business protection at all times and to comply with the law, thereby preventing

Tribunal appearances. Termination on health grounds is unlikely to be an acceptable option without employers providing evidence that they have attempted, and could not make, 'reasonable adjustment'. The difference now is that employers have to look at the work that employers 'can do', rather than what they 'cannot do'! Important things to consider are: -

The Legal Framework, including

- Disability Discrimination Act
- The Equality Bill
- The human Rights Act
- Data Protection Act
- All other Employment Laws (incl. Sex Discrimination)

Also

- In-house Managing Attendance Policies
- Medical Advice and reports regarding capability from Doctor, Nurse or Consultant
- Reasonable adjustment

The Disability Discrimination is the most significant legislation that makes it unlawful to discriminate against a disabled person in the field of employment in two ways: -

1. The employer treats the disabled person less favourably and
2. An employer fails to comply with a duty of reasonable adjustment imposed on him.

Next there is the Employment Rights Act that sets out five potentially fair reasons for dismissal, one of which is capability, which covers ill-health. Capability and the decision to terminate on tgrounds of ill-health must be evidenced by means of full reports from any of the following professionals: -

- GP
- Consultant
- company Occupational Health Doctor
- Occupation Health Practitioners

Beverley commented that the Tribunal would take the view of the OH Practitioner, who thought that employment could continue, against the opinion of a GP who thought it could not. Before going down the Termination route, she went on, there are several things to consider: -

Firstly, in Mental Health cases

- Has appropriate psychological or psychiatric specialist help been provided (eg. Cognitive Behavioural Therapy)?
- Can adjustments be made to workload if there is a degree of work related debility?
- A phased return is essential so that the employee does not feel overwhelmed at the prospect of returning to work full time and
- Is positive aattendance at work likely to be sustainable with adjustments

Secondly, in Work-related/exacerbated problems and chronic health disorders

- Have all treatments beene provided
- Have all 'reasonable adjustments been discussed, including changes to areas of work?

Finally, Beverley descended down the Mountain with her Eight Commandments for Termination on Health Grounds: -

1. Is the employee currently able to perform the duties for which they were employed?
2. Is the situation likely to be permanent?
3. Is the employee's medical condition likely to worsen or or be aggravated by remaining in their present role?
4. Does their medical condition make it unsafe, either for themselves or others, for the emplyee to as before?
5. Can the content, working hours, or location of the employee's job be changed, or is the employee fit for another post the Company might reasonably offer, having regard to the individual skills, experience and Terms of Contract?
6. Has all Medical information been sought about the employee's current medical condition and prognosis?
7. Has any underlying problem with work practices or work environment been a contributory factor?
8. Have you been totally fair and consistent in your approach and in application of your policies?

Members' Questions

Dave Lilley of National Grid Metering asked if a GP entered criteria recommending continued absence, could the OH Nurse's opinion over-ride this? Beverley replied that it could, if she wanted to keep the person at work on justifiable grounds. David then added another question on what is the OH role and time scale? Beverley answered that with strong co-operation it could be a variable time scale from a self-certified Certificate within 7 days. After three months action should certainly have been taken to keep contact. Preferably a line manager should visit after one week. Dave suggested that could be considered to be harassing!

Dalvindar Masaun of Sandwell and West Birmingham Hospitals NHS Trust commented that it was wise to have a written policy on this procedure, agreed by consultation with employees. As part of the procedure, written notes would be made of the contacts with absent employees. Beverley commented that consultation should be carried out about any changes in the workplace. Mark Hoare of University of Birmingham suggested that Managers must be more involved in the whole process and this required a culture change. George Allcock agreed and said that, all too often, line managers abdicated these duties to Human Resources. Beverley added that the operation of an Absence Policy was definitely

the responsibility of line managers – but with support from HR. David Hughes reinforced this thought with a recollection of a supremely effective Managing Director he knew some years ago who made the pithy remark that "If you want to create trouble, establish a Personnel Department"! His implication was, of course, that Line Managers should show a sincere, personal commitment to the well-being and rehabilitation of their employees and deal with them at first hand!

Chairman, Ed Friend asked if there were any sources of professional help for SMEs? Beverley replied that the NHS was a good contact point.

Secretary's Note:

BHSEA Members

4Safe Health Ltd.	4safehealthltd@googlemail.com	01905 729162
MOHS workplace Health	info@mohs.co.uk	0121 601 4041
IOM Consultancy	jerry.slann@iomhq.org.uk	01785 764810

Other

Access to Work, Cardiff Regional Centre Telephone: 02920 423 291

atwosu.cardiff@jobcentreplus.gsi.gov.uk

As there were no more questions, Ed Friend closed the meeting and asked the audience to join him in showing their appreciation to Beverley for such an informative presentation

Date of the next Meeting

2.00 pm on Monday14th June 2010

at the Birmingham Medical Institute

Management of Asbestos

Wayne Williams, Director, DMW Environmental Safety Ltd.

Not for nothing did the HSE label Asbestos as the "Hidden Killer" in its latest campaign to protect workers in a wide range of occupations from this long running workplace risk.

The latest step forward in this continuing struggle is the Asbestos Survey Guide, which aims to simplify the process of identifying the killer amongst us, in our attempts to manage the risk.

We are fortunate in having BHSEA Member, Wayne Williams, today as his company has been in the forefront of the Asbestos Contracting business for many years.