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Health and Safety Expert > Feature Articles > When is an accident not an accident? The problem of unwitnessed events

When is an accident not an accident? The problem of unwitnessed events

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An accident is reported, but there are no witnesses. What do you do? Andrew Christodoulou considers how organisations can best handle such a situation.

Unwitnessed accidents are remarkably common and they pose a number of difficulties and issues for organisations. Was the reported event really an accident? Did it really occur? Was there a genuine injury? If so, did it occur at work? Will the organisation be liable? Is there any dishonesty involved? How should the organisation deal with the issue? How is reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) affected? How will the organisation's accident record be affected?

Organisations need to put in place an effective strategy to deal with these issues.

Reasons for unwitnessed accidents

There are a number of reasons why an accident may be unwitnessed.

- A prime reason for unwitnessed events is where people are working alone. This

may include lone workers; for example, those driving for work, or working alone in a shop or kiosk. Other examples of those working alone may include those working in remote parts of a workplace, such as an employee visiting a storeroom or “back office” alone or walking a stairway alone. Lone working may also include those working from home.

- Some accidents are dishonestly contrived for the purposes of a civil claim or to take sick leave. This may include situations where an injury was sustained out of work; for example, a back injury incurred at home while performing DIY or a sporting injury incurred in the employee’s own time. In other cases the injured party may have contributed to their accident through their own negligence. This may include not wearing PPE that has been provided to them or not following a procedure, safe system of work or protocol. In very rare cases it has been known for a person to self-inflict an injury. This may be for the purposes of a claim or to simply get time off from work.
- Some accidents are witnessed but witnesses deny seeing anything. This can be to support a work colleague or to avoid getting involved. This may also be due to peer pressure or the fear of retribution. Others genuinely dislike the thought of the whole process of accident investigation and the role of witnesses which can sometimes culminate in court appearances, with the provision of statements, dealing with the enforcing authorities, and so on.
- In some cases there can be a genuine lack of recollection of the events which led to an accident, particularly where the events were complex, occurred very quickly or were not recorded at the time of the accident, and witnesses asked to recall sometime later.
- Where a fatal accident occurs, the “prime witness” is deceased. Shock and trauma may lead to poor recall of events or even a complete lack of recollection from other people.
- Unwitnessed accidents can also affect the public, eg a visiting member of the public who slips on a floor or access route of a workplace, or an elderly person who falls over in their room in a care home or hospital while alone.

RIDDOR and unwitnessed accidents

Under RIDDOR, the responsible person, eg the employer, has legal obligations to report certain events which “arise out of or in connection with work activities covered by the Health and Safety at Work, etc Act 1974”. The responsible person will need to have all the necessary information available to determine if the criteria for reporting under RIDDOR have been met, normally provided by the person directly affected, corroboration through witnesses to the actual event, those who assisted after the event and those investigating the event. Where there are no witnesses, it is up to the responsible person to take the appropriate action to determine whether the accident is reportable or not.

RIDDOR does not distinguish between unwitnessed events and those which are witnessed. Organisations will need to establish a strategy for dealing with unwitnessed events in order to achieve compliance with RIDDOR. Such compliance is, of course, a legal requirement and non-compliance can lead to legal proceedings. Any such strategy is likely to include detailed investigation.

Civil claims and unwitnessed accidents

When a civil claim is pursued by an injured party he or she will have to prove that the defendant, most usually their employer, has been negligent. Employers and others will not automatically be liable for an accident simply because an injury has been sustained: negligence has to be proven, and where there are no witnesses the claimant will independently need to be able to prove that negligence.

When the event leading to the injury is unwitnessed it will be more difficult for both the claimant and the defendant to prove their case. In such situations it will be doubly important for organisations to have an established a policy with procedures for dealing with unwitnessed accidents.

Strategy for organisations for unwitnessed events

It is important that every organisation has a written policy determining how it will deal with unwitnessed accidents. Such a policy may become useful in any legal proceedings or disputes that may follow an unwitnessed accident. The policy should form part of any safety management system that the organisation has in place.

Wherever possible, an investigation should be instigated as soon as practicable after the accident is reported. Where there are no witnesses the investigation must be “forensic” in detail, in which case inconsistencies and inaccuracies on behalf of the injured person are more likely to be detected. Skilled interviewing will be necessary and all those involved in accident investigation must be adequately trained.

For unwitnessed accidents there must be particular emphasis on medical diagnosis of injuries sustained and medical practitioners with experience of occupational injuries should be used. Some types of injury, for example back injuries, are notoriously difficult to diagnose and expert diagnosis will be necessary. The medical history of the individual should be examined to highlight any previous injuries or sickness absence, both work and non-work related.

The personal work history of those injured in unwitnessed accidents should be examined, including absenteeism, disciplinary record and so on. There may be an indication of unhappiness at work, a running dispute or even a history of dishonesty.

Where potential witnesses were in the vicinity of the accident, statements must be taken from them as soon as possible after the event. For those reluctant to get

involved, skilled interviewing techniques are key. It is important to explain that the purpose of investigation is accident prevention and not the allocation of blame.

Any policy must indicate that those involved in bogus or false accident claims will be liable for disciplinary action or even dismissal. You may wish to consider the inclusion of a similar statement about refusal to cooperate with accident investigations to deter reluctant witnesses.

Conclusion

Unwitnessed accidents are problematic for organisations. They can lead to spurious claims; they can pose difficulties in terms of RIDDOR reporting; they can distort the organisation's accident and ill-health statistics.

It is only by setting out a strategy through a policy with established procedures that an organisation will be able to properly deal with the issue. Any successful strategy is likely to include detailed investigation of any unwitnessed event and organisations need to invest in this area as part of their strategy. Sometimes a reported accident is not an accident, and organisations need to be prepared for that eventuality, and know what action to take.

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