

21st May, 2020

Re: Health & Safety and Occupational Injury

Dear Minister

I refer to the role of the Health and Safety Authority (HSA) in relation to employees and workers who have remained at work during this pandemic, due to their role in frontline health care delivery.

Currently this virus is a significant and dangerous occupational health risk for Health Care Workers (HCW). The latest figures published on 19th May recorded 7,661 HCWs infected with the virus, representing 31.7% of all infections in this country and the highest recorded infection rate among HCWs in Europe. The numbers of admissions to ICU in general is recorded as 390 of those 34 are HCW and of those 14 are nurses. This would represent 9% of all ICU admissions as HCW and of those 41% are nurses. This serious illness in our view is disproportionately higher than in the general population, this indicates that the exposure of HCW is at a higher risk and a more serious level than exposure generally. Seven HCWs have lost their lives as a result of contracting the virus in the Republic of Ireland.

Week on week the number of infections among HCW is growing- 12% in past week alone. (See attached information). This is in the context of testing not being carried out routinely in acute hospitals - it is only undertaken if the HCW becomes symptomatic. Therefore, if international studies, which confirm asymptomatic positives, is to be considered we can conclude that the infection rate among HCWs is in fact much higher.

It is our view that if a worker acquires an illness in the workplace, it must be reportable to the HSA, and must be examined by the HSA to identify how the injury/ illness was acquired and how future injury/infections can be prevented.

It is our view that if and when an injury at work occurs it should not matter what the underlying cause of the injury is, it should only matter that it occurred when the worker/ employee was engaged in the job they were employed to do.

The objective would be that the HSA would then examine each incident where HCW's have acquired Covid 19 in the workplace, to identify the causes, and to identify improvement in practices that will reduce future infections.

This is currently not the case. Employers are not reporting incidences of HCW infection or death from Covid 19 to the HSA. We believe this is too narrow an interpretation of the Act and we set out our argument in this regard here: Commented [n1]:

The functions ascribed to the HSA by the Safety Health and Welfare at Work Act 2005 (the Act) are set out at section 34(1) of the Act. They include, at paragraph (a) of that subsection:-

“To promote, encourage and foster the prevention of accidents, dangerous occurrences and personal injury at work in accordance with the relevant statutory provisions”

The term “accident” is defined by section 2 of the Act as follows: -

“accident” means an accident arising out of or in the course of employment which, in the case of a person carrying out work, results in personal injury;

The term “personal injury” is defined by the same section as: -

*“personal injury” includes—
 (a) any injury, disease, disability, occupational illness or any impairment of physical or mental condition, or
 (b) any death,
 that is attributable to work;*

The combined effect of these definitions is that, **a disease**, the contracting of which is attributable to work, constitutes an ‘accident’ for the purposes of the Act. In that context, it seems clear that the HSA is statutorily obliged to promote, encourage and foster the prevention of Covid-19 in the workplace.

We submit, therefore, that it is incorrect to say that the HSA has no function in that regard. It should, however, be pointed out that paragraph (f) of subsection (1) of section 34 of the Act requires the HSA to: -

“promote, encourage and foster co-operation with and between persons or bodies of persons that represent employees and employers and any other persons or bodies of persons, as appropriate, as regards the prevention of risks to safety, health and welfare at work in accordance with the relevant statutory provisions”

As the Minister with responsibilities for this area we believe that your interventions are needed to resolve a matter arising from the regulations that seems to complicate the clear position in the Act. This is the provision regarding the reporting of accidents contained in the *Safety Health and Welfare at Work (General Application) (Amendment) (no.3) Regulations 2016* (S.I. 370 of 2016).

These Regulations were made pursuant to section 58 of the Act and impose an obligation on employers to report accidents and dangerous occurrences in the workplace. However, unlike the Act, the Regulations, at Regulation 224, define the term 'personal injury' as **not including** "any disease, occupational illness or any impairment of mental condition"

The effect of this provision is that employers are arguing that they not obliged to report occurrences of occupational disease or illness. The reason for this exclusion is unclear. In that context, it should be noted that a report entitled "**A Review of the Occupational Diseases Reporting System in the Republic of Ireland**" published in November 2007, and undertaken jointly by the HSA and UCD recommended, at recommendation 6: -

"Review the requirements of the Notification of Accidents Regulations to require that employers report accidents resulting in personal injury (including disease and illness) or death, and record occupational diseases and work- related illnesses contracted as a result of an exposure over a period of time to risk factors arising from work activity, and report to the HSA when requested"

However, while there is no statutory obligation on employers to report occurrences of occupational illness or disease, that does not absolve the HSA from the duty to promote, encourage and foster the prevention of accidents, which for the purposes of the Act, includes occurrences of occupational disease. In that regard, Covid-19, if contracted in the course of employment, is an occupational disease.

It is our view and our request that a more practical and effective means of achieving that end, would be for you, as Minister for Business, Enterprise and Innovation, to amend Reg.224 of the Regulations to expressly **include** Covid-19 in the definition of 'personal injury'. This is a much more straightforward process than amending primary legislation and could be done relatively quickly.

As you are aware regulations made by the Minister under section 58 of the Act must be laid before both Houses of the Oireachtas as soon as possible after they are made, but they remain valid from the time of their making unless and until they are annulled by the Oireachtas. Consequently, it would be possible for you as Minister to make amending regulations immediately and they would take effect as soon as they are made.

We await your consideration of this request and are available if any clarifications are required.

Thanking you

Yours sincerely



Patricia King
GENERAL SECRETARY

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