



Reaching a milestone

PUWER and LOLER turn 20

What impact have PUWER and LOLER had over the last 20 years? Have these regulations made working practices safer for those individuals working with equipment and machinery? Where have we seen the most prosecutions? And will they celebrate another milestone birthday? Sarah Valentine and Claire Watson, health and safety lawyers at Eversheds Sutherland (International) LLP, reflect on the impact of these regulations within the workplace and the Courts.

Top of the Prosecutions – the main prosecutions brought under PUWER and LOLER

In response to our request under the Freedom of Information Act the HSE confirmed that the main prosecutions brought under PUWER and LOLER in recent years relate to a failure to prevent access to dangerous machinery (regulation 11 of PUWER) and a failure to plan, supervise and safely carry out lifting operations (regulation 8 of LOLER). Both regulations include the words “*shall ensure*” which impose an absolute obligation on an organisation to adhere to the requirements of the regulations.

According to the HSE, across all industries from 2013/14 to 2017/18 the fourth-highest cause of death in the workplace was due to contact with machinery. Indeed in 2017/2018, 4% of non-fatal injuries and 9% of fatal accidents at work reported in the UK involved contact with moving machinery. It is estimated that half of all machinery accidents arise during maintenance activities. For example, Tata Steel was recently fined £1.4 million after a worker carrying out maintenance work was killed by an overhead crane.

In comparison, 21% of non-fatal injuries across all industries in 2017/2018 reported in the UK involved handling, lifting or carrying. Nevertheless, this type of accident, as well as slips, trips or falls from the same level, accounted for only 2% of fatal injuries to workers over the period 2013/14 – 2017/18. Interestingly we are seeing fewer reported prosecutions under LOLER, with such prosecutions currently attracting lower fines than breaches of PUWER. In 2017, Buchan Concrete Solutions Limited (now in liquidation) received a fine of £300,000, one of the largest reported to date, for breaching regulation 8 of LOLER.

Guarding against machine risks

Machinery is of course diverse and found in a range of industrial, commercial and other establishments, not just within manufacturing industries. While some premises contain a considerable number and often eclectic variety of work equipment, others have little more than a drill, a press and a set of hand tools. In all cases it is important to ensure adequate guarding and controls.

A machinery risk assessment should be completed which will typically involve identifying significant hazards and for each one, evaluating the likelihood of occurrence, frequency of exposure, degree of possible harm and the numbers of persons at risk.



"Poor machine guarding is an accident waiting to happen. Machines with well-designed guards deter users' attempts to bypass them, eliminating risk of injury and leading to greater operating efficiency."

Machine safeguarding technology has greatly improved over recent years. This means that systems can be deployed which cause minimal disruption whilst being effective at preventing access to dangerous parts of machinery. PUWER has been one of the driving forces behind these developments – whenever any measures to prevent access to dangerous parts of machinery are considered, the hierarchy set out in Regulation 11 of PUWER is the starting point."

Simon Jones, HSE Technical Director at leading risk management consultancy Alcumus Group

To prevent access to dangerous parts and to achieve compliance organisations should adopt a control strategy which considers both physical and softer controls. This best practice strategy should include a risk assessment which involves careful consideration of the hierarchy of controls. Matters to review include the use of fixed guarding where possible, interlocked guards, protection devices and appliances (jig, push-stick), isolation points (emergency stop controls), service and maintenance risks (permits to work), training, SOPs setting out procedural steps, a dynamic risk assessment process and communication of safety alerts (both internal and external) to the workforce.

In our experience, when investigating a breach of PUWER, the HSE will often ask to see a documented review of an organisation's assessment as to how the hierarchy of controls applies to a particular piece of machinery; for example, has the organisation formally recorded why fixed guarding cannot be applied? Explaining that a certain piece of machinery meets European standards in terms of the guarding which has been applied will not always satisfy the HSE if further guarding could be added by the company to meet the hierarchy of controls under PUWER.

Organisations should keep up to date with technological advances relevant to the hierarchy of controls which can be applied to their machinery. Separately, organisations should also be mindful that even if an item of machinery carries the CE mark, this is no indication that the machine is safe and compliant with UK regulations.



Raising the bar on lifting operations

A wide range of equipment and attachments fall under the definition of lifting equipment from cranes and hoists, scissor lifts and fork lift trucks, passengers lifts and vehicle tail gates to bath hoists and pallet trucks. The most common types of accidents involve fork lift trucks and lift trucks, cranes and lifts.

In relation to each item of equipment organisations have a duty to ensure that all lifting operations are properly planned, appropriately supervised and carried out in a safe manner.

Organisations must ensure that lifting operations are organised by a competent person who has appropriate practical and theoretical knowledge and experience and does not undertake routine maintenance of the equipment. A plan should be produced to consider any foreseeable risks. It is advisable to review visibility, environment, location, overturning, integrity of equipment, security of the load, working under suspended loads, proximity hazards, pre-use checking and lifting persons. It is recommended that the lifting plan sets out a step by step guide which identifies the responsibilities of those who are involved at each stage of the lifting process.



"Avoiding accidents is often a case of thinking ahead and using common sense, but LOLER is an essential element in helping organisations to ensure that safety procedures are not overlooked. Adhering to the regulations will minimise the chances of injuries as well as the risk of large fines due to non-compliance. The requirement for lifting operations to be properly planned is central to LOLER. Getting the basics right from the start will significantly reduce the potential for lifting operations to go awry. The regulations also establish frequencies at which lifting equipment should be thoroughly examined, thus helping to ensure the safety of equipment on a long-term basis."

Simon Jones, HSE Technical Director at leading risk management consultancy Alcumus Group

Is the double act here to stay?

Whilst the Government is committed to reducing the cost of regulation in the UK by £10 billion in two years' time, the overall reduction in accidents under these regulations over the years confirms that they have been effective and will no doubt continue to remain in force for many years to come. These regulations impose absolute obligations on organisations to ensure proper consideration and planning to safeguard employees, contractors and others who come into contact with work equipment.

In our experience advising clients subject to HSE investigations for alleged breaches of PUWER and LOLER, those organisations who have suitable and sufficient risk assessments in place and who actively enforce the control measures identified (through training and supervision) tend to have a significantly better chance of avoiding prosecution and, more importantly, of keeping their employees safe.

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