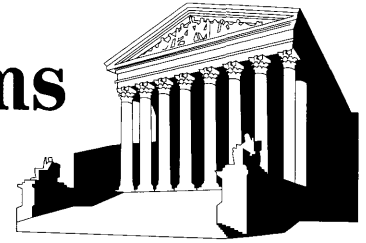


Safety Management Systems



A new type of Safety Management System is about to be introduced in Hong Kong. This month our regular contributor J A McInnis looks at the background to the new system and outlines its major elements and how it will be implemented.

Background

Four years ago the Government released a Consultation Paper on the Review of Industrial Safety in Hong Kong. The central theme of the Paper was that Hong Kong had to change its strategy on industrial safety by moving away from enforcement to promoting safety management. The paper thus marked a major shift in direction. The Consultation Paper proposed putting the primary responsibility for safety at work upon those who create the risks and who are more closely affected by them: proprietors and contractors on the one hand, and workers on the other. The strategy was to be long term, ultimately moving toward a wholly self-regulatory environment. Clearly, once that vision had been outlined, legislative backing would be required to make it a reality. Thus began the recent moves toward more education, training, and safety management in the workplace. They have culminated in the forthcoming release of the Safety Management Regulation (SMR).

The Safety Management System

The Consultation Paper originally proposed a Safety Management System (SMS) covering six main areas: (1) company safety policy; (2) safety plan; (3) safety committee; (4) safety audit or review; (5) general safety training; and (6) special safety training. The proposed SMR now addresses the first four areas while the last two were addressed in amendments to the Factories and Industrial Undertakings Ordinance (FIU Ord) last July. At that time amendments were also passed to the FIU Ord that considerably expanded the power of the Commissioner of Labour to make regulations to require proprietors or contractors to develop SMSs for personnel at industrial undertakings. To make the proposals more user-friendly, 14 Elements of a SMS have been outlined. They are key to the operation and proper understanding of the SMR and should be set out in full:

Elements of a Process Management System

- Promotion, development and maintenance of safety and health awareness in a workplace.
- A programme for accident control and elimination of hazards before exposing workers to any adverse work environment.
- A safety policy which states the commitment of the

proprietor or contractor to health and safety at work.

- A structure to assure the implementation of the commitment to safety and health at work.
- Training to equip personnel with knowledge to work safely and without risk to health.
- In-house safety rules to provide instruction for achieving safety management objectives.
- A programme of inspection to identify hazardous conditions and for the rectification of any such conditions at regular intervals or as appropriate.
- A programme to identify hazardous exposure or the risk of such exposure to the workers and to provide suitable personal protective equipment as a last resort where engineering control methods are not feasible.
- Investigation of accidents or incidents to find out the cause of any accident or incident and to develop arrangements to prevent recurrence.
- Emergency preparedness to develop, communicate and execute plans prescribing the effective management of emergency situations.
- Evaluation, selection and control of subcontractors to ensure they are fully aware of their safety obligations and are in fact meeting them.
- Safety committees.
- Evaluation of job hazards or potential hazards and development of safety procedures
- A programme to protect workers from occupational health hazards.

Staged Implementation

The SMSs will be implemented in stages and the degree of implementation will vary depending upon the size of the undertaking. For contractors with 100 or more workers, and construction sites with a contract value of HK\$100 million or more, 10 of the 14 process elements for the SMS will have to be adopted. Those affected in this category will also have to carry out safety audits of their SMS. Contractors employing 50 to 99 workers will be required to implement 8 of the 14 process elements. Unlike the larger contractors and larger construction site projects, only safety reviews will be additionally required and not the more rigorous safety audits. Contractors employing less than 50 workers will be exempt

for the foreseeable future. It is likely that a review will be carried out one year after implementation of the SMR to determine when compliance with the remaining process elements should become mandatory and also when some or all of them should be extended to those contractors with less than 50 workers. The implementation of the process elements is being done in stages to increase familiarity with the changes and facilitate planning for them. In addition, time will be required to train safety practitioners as the Consultation Paper originally envisioned.

Six Parts of the SMR

1. The registration of persons who may conduct safety audits as well as those who may operate training schemes for those to become safety auditors.
2. The imposition of duties on contractors and others to develop, maintain and implement SMSs, prepare written safety policies, and set up safety committees.
3. The appointment of both registered safety auditors or safety review officers; the conduct of audits or reviews and the actions to be taken following them.
4. The registration, suspension, and disciplining of registered safety auditors and scheme operators by a disciplinary board.

5. The rights to appeal decisions taken in respect of registration, suspension or disciplining of the safety auditors or scheme operators by the disciplinary board.
6. The powers given to the Commissioner of Labour to oversee the conduct of safety audits and safety reviews as well as deal with offences under the SMR.

Conclusion

The introduction of the new SMSs marks a major change in the occupational and safety and health framework in Hong Kong. The move away from enforcement toward self-regulation and prevention is a very positive development. Previous successful trials of the concept by utility companies as well as contractors working under the Airport Core Programme and certain Housing Authority and public works contracts have proved the SMSs work and value of the change. It will now fall to the construction sector to build on these successes and bring home these benefits to the community at large. ■AAC

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Questions & Answers *(continued from pg 45)*

Where the contractor undertook a design obligation the matter is more complex. Employers will then argue, whatever the express terms of the contract, that there is an implied fitness for purpose warranty. Whether the contractor has such an obligation depends on two main factors, (1) whether the contractor makes some choice as to the building blocks for the design, and (2) whether the employer relied upon the contractor's judgement in the design decisions. Both factors may give rise to complex questions of fact, although where an architect, third party engineer or designer is retained by the employer, the contractor will be much less exposed to liability (the other advisers may, however, find the glare of the spotlight fall on them). Indeed, a piecemeal approach to liability may well be required - the designer may not be liable for the cost of upgrading hardware and operating systems (which may well have been specified from the tender stage by the employer) but is liable for a non-compliant choice of software.

Eleventh hour protection

Hopefully in the great majority of cases, especially those where the contract is current, contractors and employers will have already aired their respective views as to Y2K liability and the employer will (so long as he has not been misled by an overly optimistic representation of Y2K compliance) be aware of any impending dangers and

consequences arising from non-compliance.

If, however, the contractor has reason to believe both that his employer or former employer is still using a system he was responsible for delivering and that there is a significant chance of serious damage if the system is permitted to run past Y2K (or any other date for that matter), he should limit his liability by notifying the employer at the earliest opportunity.

Some might see an irony in contractors conducting full risk management exercises in relation to previously delivered contracts, if the effect is to alert themselves to problems which they might have otherwise legitimately never fully understood. Others, however, will surely enjoy the millennium celebrations all the more knowing they have taken steps to avoid uncontrolled losses at Y2K. ■AAC

If you have any particular questions you would like answered, please submit them to the Editor. Unfortunately, separate correspondence with individuals cannot be entered into.

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