Contractors and sub-contractors

Introduction

The use of contractors and sub-contractors is increasing in the NHS, yet evidence suggests that a third of trusts believe they have limited control over their contractors’ health and safety.

Both the employer and the contractor have specific responsibilities under health and safety law for staff working in a contract arrangement. However, there can be confusion about who is responsible for delivering information and training on health and safety, providing equipment and protective clothing or undertaking risk assessment. There is also evidence that temporary staff may be placed in greater danger due to their lack of knowledge or familiarity with NHS employers’ policies.

Employers are responsible for protecting contractors and sub-contractors from harm caused by work activities. This chapter aims to clarify these responsibilities and help employers manage the contracting process.

The definition

‘Contractor’ means anyone brought in by a client to work at the client’s premises who is not an employee of the client. This does not apply to an agency worker or mobile workers, nor does it apply to deliveries to the client’s premises or work activities covered by the Construction (Design and Management) Regulations 1994 (CDM) where CDM applies. Clients, contractors and others have a special legal responsibility.

The legal position

Employers have a legal responsibility to ensure the health, safety and well-being of contractors and sub-contractors. The Health and Safety at Work etc Act 1974 states that it is the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all their employees.

It is also the duty of every employer to ensure, so far as is reasonably practicable, that people who are not in their employment, but who may be affected by their activities, are not exposed to health and safety risks.

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1 A safer place to work: improving the management of health and safety risks to staff in NHS trusts (2003), NAO
2 'Reasonably practicable' implies that a balance must be sought and, as an NHS employer, you must have good reason for doing or not doing a particular activity.
Employer responsibilities

When dealing with contractors, employers should consider the following areas:

1. Identify the job
All employers need to clearly identify all aspects of the work they want contractors to carry out, including work falling within preparation and completion phases of the job. Employers will need to assess the level of risk involved and training required for all staff involved. At this stage, employers will need to decide on levels of cooperation, consultation and supervision between all parties to ensure compliance with legislation.

2. Select a suitable contractor
Employers need to satisfy themselves that contractors are competent. That is, that they have sufficient skills and knowledge to do the job safely, without posing risks to health and safety. Employers must ensure that contractors are aware, at the start, of what is expected of them regarding training, competencies and general behaviour in the workplace. They should explain the health and safety arrangements, procedures, and policy statements and draw up a list of the main points to be considered.

Some questions to ask to determine the competency of the contractor are:

- Do they have experience of the type of work you require?
- What are their health and safety policies and practices?
- What is the history of their recent health and safety performance? (How many accidents have they had?)
- What are their qualifications and skills?
- What are their selection procedures for sub-contractors?
- Do they have a safety method statement?
- What health and safety training and supervision do they provide?
- What are the arrangements for consulting their workforce?
- Are their competencies individually assessed?
- Are they members of a relevant trade or professional body?
- Do their employees hold a ‘passport’ in health and safety training, which is a growing trend in some industries?

Both employers and contractors must complete a risk assessment. Employers should already have risk assessments for the organisation’s work and the contractor must additionally assess the risk attached to the job they are carrying out. Both parties should then consider the resulting risks from each other’s work and ensure the health and safety of their own staff, as well as the safety of anyone else who may be harmed by the activities being carried out.

Employers and contractors should jointly agree on the risk assessment for the contracted work and the preventative and protective measures that each party will take.
3. Provide information, instruction and training
Under the Health and Safety at Work etc Act 1974, all employers have a duty to give employees information, instruction and training on anything that may affect their health and safety. This is no different for NHS employers and contractors. NHS employers should consider what information their contractors need and ensure they receive appropriate instruction and training. The information must be specific to the work being carried out and NHS employers must inform contractors and other parties of risks, such as asbestos, which may be unknown to the other party or sub-contractor.

4. Management and supervision
NHS employers should decide what they need to do in order to manage and supervise the work of contractors. The greater the impact the contractor’s work has on the health and safety of individuals, the greater the supervisory and management responsibilities of the NHS employer are. In all circumstances, employers need sufficient knowledge and expertise to manage and supervise the contracted work. It is essential that the nature of the controls exercised by the employer is agreed before the work starts.

When employing a contractor, employers may need to agree with contractors how the work will be done and what precautions need to be taken.

Relevant issues could include:
- what equipment should or should not be used or worked on
- personal protective equipment to be used and who will provide it
- working procedures, including any permits to work
- the number of people needed to do the job
- procedures for reporting accidents and safe keeping of records and plans.

Throughout their working practices employers, contractors and, where applicable, sub-contractors should monitor health and safety performance. This means checking whether the risk assessment is up to date and that control measures are working.

To protect the health, safety and welfare of all concerned, NHS employers should check a contractor’s performance to see if the work is being done in the manner that was agreed. Employers should also encourage contractors and sub-contractors to carry out day-to-day checks to ensure that the work is being done safely.

5. Investigating and complying with health and safety
It is good practice to investigate all injuries, cases of work-related ill health and ‘near misses’ to find out what went wrong and why they were not prevented. NHS employers and contractors should share the lessons learnt from monitoring and investigations undertaken, to ensure that the risk of accidents is minimised.
Where health and safety requirements are not met, the employer and the contractor should find out why this is happening and put matters right. Employers will need to stop the contractor working on the job if health and safety performance does not meet requirements. Upon completion, both the employer and the contractor should review the work in order to assess what went well and to see where performance could be improved for future projects.

More information
A safer place to work: improving the management of health and safety risks to staff in NHS trusts (2003), NAO – Available from the National Audit Office website