

Is your practice fit for practise?

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INTRODUCTION

Veterinary surgeons and veterinary practice are subject to audit as they carry out their professional duties, for example while working for the competent authority (e.g. meat inspection, or tuberculosis and brucellosis testing) or in the prescribing, dispensing or using veterinary medicines.

A veterinary practice is also audited in compliance with practice accreditation standards. However additional aspects of veterinary business that need preparation for audit are health and safety and employment law. This article examines the legislation and considers how a typical practice might fare under a practice audit against employment law and health and safety legislation. For the purpose of this article we carried out an audit for compliance with health and safety law and employment law on a typical veterinary practice X. Veterinary practice X is 'a multivet practice, with 11 employees in total consisting of four vets, two vet nurses and five support administrative staff in two centers (large and small animals) providing clinical, herd health, meat inspection, educational and knowledge transfer services and products to its clients'. This mixed veterinary practice wishes to become compliant with current employment law and health and safety legislation and to be prepared for the Health and Safety Authority (HSA) and National Employment Rights Authority (NERA) inspections. It also realises the importance of having good health and safety systems in place to prevent accidents and also mitigate against the risk of an employee bringing a case against the practice under employment law.

PRACTICE DOCUMENT AUDIT

Evidence of practice employment documentation in relation to Employee Handbooks and Contracts of Employment in many practices including veterinary practice X was not to the required standard. There were no written contracts of employment for any employees and there was an over reliance on a 'verbal understanding' of terms and conditions which consisted of four weeks holiday per year and statutory sick pay. This is not to say a contract of employment does not exist. In every employer/employee relationship, there is a contract of employment, whether it is written, oral or through the conduct of employer and employee (e.g. work being done in return for pay). Job descriptions were ill defined in the veterinary practice.

For vets and vet nurses, they were expected to carry out veterinary practice and commit to a weekend and night duty rota sharing the workload with their colleagues. Record of holidays were kept on a calendar in an ad hoc manner and administered by a senior secretary. Also, support administration staff did not have a written contract of employment. Accordingly, there was no access to written disciplinary procedures or no Organisation of Working Time Act forms detailing annual leave, public holiday, sick leave, other leave, working hours and break periods. There was no staffing manual detailing policies and procedures. Safety Statements, handbooks and risk analyses were absent. A review of relevant safety and health documentation at our typical veterinary practice was carried out and was followed by a workplace inspection using a sampling approach, covering the key risks, not only in the offices and surgeries (both large and small animal), but also considering the substantial health and safety risks on farm.

In summary, documentation was poor or absent. It should be said that the partners were very reasonable and empathetic with their employees and dealt with employee requirements on a 'needs' basis. With respect to pending NERA or HSA audits, the initial question is: 'Does the employee have a written contract or written health and safety statement?' Unfortunately, in the veterinary practice, the answer is 'no'.

Non Compliances

For both employment law and health and safety legislation major non-compliances exist in terms of documentation and application. The veterinary practice is vulnerable and open to censure not only from NERA and the HSA, but also from litigation in the event of employee employment issues arising or an accident involving employees in the practice or on farm.

Suggested documentation available for inspection by the HSA and NERA, included:

- Copies of Contracts of Employment, including written disciplinary procedures;
- OWT forms - annual leave, public holiday, sick leave, other leave, working hours and break periods (can be accommodated through the OWT 1 form for each employee);
- Staffing manual with policies and procedures - maternity, parental, carers, etc; and,

- d) Safety statement, policies and procedures, copies of assessment documents.

Recommendations

With regards to employment law, written contracts need to be prepared and preferably signed by both parties in order to meet legal requirements. Contracts should include details of disciplinary procedures. Contracts should meet requirements for written terms and conditions required under the Terms of Employment Acts. The contract needs to contain at a minimum the 15 specific items referred to in the Acts. There are also requirements under various other pieces of legislation to have written policies/procedures/notifications, and these can either be contained specifically within the written contract, or at the very least within a 'Staffing Manual'. Some HR practitioners say to include everything in the contract, while others say include everything apart from the minimum in the staffing manual. Regardless, any changes to terms and conditions (unless expressed and hence agreed to in a written contract) must be agreed by both employee and employer. It is practically easier to change the staffing manual rather than the written contract. In any case, if a written contract has not been issued, there are legal requirements on employers to issue written statements to employees within specific periods of time containing the following detail.

Terms of Employment (Information) Act 1994-2001

Although the practice had employed new vets and administrative staff in the last year, the practice had failed, within two months of commencing employment, to provide the new (or indeed existing) employees with a written, signed and dated document, outlining the full terms and conditions of employment, including: employee and employer details; practice address; place of work (surgery or on farm); job title, nature of work; date of commencement; how remuneration is calculated and how often payment is made; hours of work (including overtime); paid leave, sick leave and pension arrangements; periods of notice and any collective agreements in place.

Terms of Employment (Additional Information) Order 1998

This requires that any new employee to be given written details of times and duration of rest periods under the Organisation of Working Time Act 1997. This is a challenge for many, including the cited veterinary practice as, traditionally, vets employed participate in an out of hours rota, which in spring time would mean working 20 hours on call over the weekend in addition to weekday work.

Section 14 of the Unfair Dismissals Act 1977

Within 28 days of commencing employment, the employer must provide the new employee with a written statement on the dismissals procedure to be used. Should this procedure be changed at any time, all employees must be advised in writing within 28 days of the change.

The National Minimum Wage Act 2002

Under this Act, the practice must notify the employees of the pay reference period (in the case of practice X, weekly for administrative staff, and monthly for the vets and vet nurses).

In order to comply with the above legislation, it is advisable to include all of the above in a written contract.

Recruitment issues

The Organisation of Working Time Act 1997 (OWT 97) sets out statutory rights for employees in respect of maximum working time, rest periods and holidays, and imposes upon the employer the duty to ensure that these rights are upheld and that adequate records are maintained.

As with any employment law, the OWT 1997 applies to employees, those workers who are employed under a contract of service. Working time is defined as being any period of time that the employee is at their place of work, or is at the disposal of their employer, and is carrying out or performing the duties or activities of their work. In our example veterinary practice working time does not include time on duty while waiting for calls. Only time spent actually doing calls etc. is considered to be part of working time. Conversely, a rest period is defined as any part of the employee's time that is not working time, and the net working time is exclusive of these rest periods.

In setting out an employee's statutory rights for rest, maximum working time and holidays, the key provisions of the OWT 1997 are, in summary:

- Net working time, averaged over a four-month period must not exceed 48 hours;
- There should be a daily rest break of at least 11 consecutive hours;
- There is at least one weekly rest period of 35 hours (11 hours daily rest break, plus a 24-hour weekly rest period), or at least a 70-hour rest period over a two-week period;
- There is at least a 15-minute rest break after four and a half hours of work, or a 30-minute rest break after six hours of work; paid annual leave, at the employer's discretion, is earned against time worked and is four weeks for full time employees, or pro rata for part time employees; and that the nine specified Public Holidays are given and that there are eligible alternatives if Public Holidays are worked at the employer's discretion.

In the same way that many practices have a set of clinical standard operating procedures, practices should compile a staffing manual, covering details about the worker's employment from the moment they apply for a job, to the moment they retire or move on. Some policies and procedures will generally apply to all practices, such as disciplinary procedures, while others will be specific in terms of the place of employment, for example procedures and rules governing employee behaviour in reception, surgeries or on farm. Once formulated, a copy of the staffing manual should be given to each employee, who should be required to read it, and acknowledge by way of a

written form that he or she has read it and understands its contents. New employees should be given the document on arrival and given a period in which to read and then revert with any requests for clarification, before signing an acknowledgement. Regular review is essential and revisions should be made when and if required. Staff should be reminded on a regular basis of its contents, particularly where it is identified that certain aspects of the manual are not being adhered to.

Health and safety compliance

From a health and safety perspective, there was no written Safety Statement at our veterinary practice and although there was a 'general awareness' of health and safety issues both in office and surgeries and also while on farm or meat factory, the policies and risk analyses pertinent to the practice were absent. As an employer, the practice is required to manage safety and health at work so as to prevent accidents and ill-health (including mental health). Controlling dangers at work is no different from tackling any other task. There is a need to recognise the problem, know enough about it, decide what to do and put the solutions into practice.

The main legislation providing for the health and safety of people in the workplace is the Safety, Health and Welfare at Work Act 2005. This Act consolidates and updates the provisions of the Safety, Health and Welfare Act 1989. It applies to all employers, employees (including fixed-term and temporary employees) and self-employed people in their workplaces. The Act sets out the rights and obligations of both employers and employees and provides for substantial fines and penalties for breaches of the health and safety legislation.

Employer's duties

Under Section 8 of the Act the employer has a duty to ensure the employees' safety, health and welfare at work as far as is reasonably practicable. In order to prevent workplace injuries and ill health the employer is required, among other things, to:

- Provide and maintain a safe workplace which uses safe plant and equipment;
- Prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration;
- Prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk;
- Provide instruction and training to employees on health and safety;
- Provide protective clothing and equipment to employees; and,
- Appointing a competent person as the organisation's Safety Officer.

Employees' duties

The duties of employees while at work are set out in Section 13 of the Act. These include the following:

- To take reasonable care to protect the health and

safety of themselves and of other people in the workplace. This is especially important carrying out duties e.g. TB testing on farms where sub-standard chute and handling facilities may result in injury to a third person and the vet may be held responsible;

- Not to be under the influence of drink or drugs in the workplace;
- To undergo any reasonable medical or other assessment if requested to do so by the employer; and,
- To report any defects in the place of work or equipment which might be a danger to health and safety.

Risk assessment

Under the Safety, Health and Welfare at Work Act 2005 every employer is required to carry out a risk assessment for the workplace which should identify any hazards present in the workplace, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks.

The employer must also prepare a safety statement which is based on the risk assessment. The statement should also contain the details of people in the workforce who are responsible for safety issues. Employees should be given access to this statement and employers should review it on a regular basis.

Veterinary practices have very specific health and safety considerations, compared to other businesses, including personal protective equipment, storage and disposal of sharps and animal remedies, protection from radiation/X-rays, use of animal remedies and other dangerous goods, and safe transportation/disposal of the same. One approach is to use the HSA website and access the online risk assessment tool 'Be Smart' which has a section dealing specifically with veterinary practice. The risk assessment in 'Be Smart' is excellent for small animal practice but is somewhat lacking in addressing some of the risk categories associated with farm animal ambulatory practice. Using 'Be Smart' our veterinary practice carried out a risk assessment of both our small animal and large animal sections of the business which identifies 'to do' list to become compliant with the health and safety legislation. In addition to the risks identified in 'Be Smart', the veterinary practice must give special attention to the handling of animals on farm, integrating safe handling and excellence in welfare to ensure vets remain safe on farm. Such risks include:

- 1) Suckler cows, especially around calving, present challenges because of the risk of changes in cow behaviour. There is a need for good facilities, holding pens and plenty of help to assist the vet.
- 2) Our veterinary practice uses two ultrasound scanners for pregnancy testing with head goggles which potentially can interfere with full vision as the vet introduces the probe into the rectum of the cow. Help to hold the tail up is necessary when scanning to avoid the risk of getting kicked.

- 3) Surgery on farms (e.g. Caesareans, displaced abomasums) may be performed in the standing position using local anaesthetic, therefore good headgates and extra help are necessary to avoid kicks or injury.
- 4) Many bovine and ovine diseases are zoonoses. E coli O157; H7; Salmonella; Rotavirus; cryptosporidia and listeria are examples of common zoonoses, originating on farm, so extra vigilance in hygiene dealing with these cases is required. Full protective clothing with gloves are a pre-requisite when handling these animals.
- 5) Toxoplasmosis is a particular risk for pregnant females. This risk needs to be managed when allocating duties.
- 6) Handling medicines and anaesthetics present a particular risk because of the risk of self injection, development of antibiotic resistance or needle stab injuries.
- 7) Mental health needs to be catered for. A recent report from the Federation of Veterinarians of Europe (FVE) identified vets were four times more likely to take their own lives through suicide than the average population. This spring, with animal food shortages, not only were farmers and animals under severe strain but vets were also feeling considerable mental strain. The practice is responsible for the safety and wellbeing (including mental health), not only of its staff, clients, and animals under its care, but also anyone who enters onto its premises, or with whom the vets and vet nurse assistants work with.

Health and safety is everyone's responsibility, so it is not only the vet who is responsible for health and safety on farm - the farmer/herdsman/helpers also have a responsibility.

The Safety, Health and Welfare at Work Act 2005 requires documentation of a Safety Statement, although the HSA will also be looking for the processes undertaken to derive the document, as well as the document itself. Also health and safety should be reviewed on a regular basis - depending on circumstances, reviews may take place even as often as once a day, once an hour, once a year or longer. The employee signs on a regular basis to say that they have read and understand the Safety Statement, policies and procedures, which should be available for inspection by the HSA.

There should also be a clear procedure for responses to any accidents in the workplace.

CONCLUSION

Health and safety and employment legislation are inextricably linked and interdependent on each other. Many issues relating to safety and its management are closely linked to issues concerning human resources and employment law. However, one significant difference between the two is that health, safety and welfare is dealt with under criminal law whereas employment law is dealt with under civil law. Criminal law carries a higher burden

of proof i.e. beyond reasonable doubt, with the offender being subject to punishment. With civil law (employment issues) the proof only has to be 'on a balance of probabilities' and the purpose of the proceedings is to seek redress and compensation.

The veterinary practice we looked at is probably typical of many Irish veterinary practices in that although it is well-intentioned, the employers lack the written detail and possible application of health and safety and employment contracts and procedures. Therefore the practice is vulnerable on two fronts:

- 1) Non availability of written employment contracts, handbooks or a meaningful Safety Statement, would leave the practice vulnerable from legal action should any employment issue or indeed an injury arise.
- 2) It is ill-prepared for a NERA or HSA audit with both financial and legislative consequences. On foot of these assessments, it would be prudent to prepare an internal audit check list against the legislative requirements. Compliance, by following the steps described above will go a long way towards risk mitigation in order to keep employees happy and safe, and provide protection for the practice against expensive legal consequences.