



## Occupational Health and Safety Regulations in the Dairy Industry

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**ABSTRACT.** The application of occupational health and safety (OHS) legislation in the dairy industry varies throughout the world. Generally there is no specific OHS legislation that applies to the dairy industry and mostly in countries the current OHS legislation applies to all workplaces with specific guidelines that apply to agricultural industries. The main difference between countries is in the application of OHS legislation specifically in relation to the size of the farms. In the USA, the OHS legislation, and therefore enforcement, does not, in most cases, apply to farms with less than 11 employees, whereas in other countries there is no minimum number of employees and in some cases such as the United Kingdom and Australia it covers all people who work on the farm. The other area of difference is in the use and publication of guidelines for the industry; some countries have a wide range of guidelines whereas other countries have few. Generally, this relates to the jurisdiction of the OHS legislation, which in several countries is not at a national level such as USA, Canada, and Australia. The main principal of OHS legislation is that all workplaces, including dairy farms, should be a safe and healthy place to work, and does not vary significantly between the countries reviewed even those with prescriptive legislation.

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## **INTRODUCTION**

The legislation that applies to the health and safety of dairy farmers, their families, and farm workers varies around the world. In most cases, it depends on whether the legislative model is either risk based or prescriptive. Originally, the risk-based models are based on changes in legislation in the United Kingdom following Lord Robens report, in the mid-1970s, into occupational health and safety (OHS) in all work places.<sup>1</sup> Risk-based legislation in general states that an employer must provide a safe and healthy place of work and covers all the potential risks and hazards. Risk-based legislation has been adopted in various format in most countries. Although prescriptive legislation, which states what an employer must do in relation to OHS, is in some cases easier for farmers to follow, as it details what a farmer must do to be compliant, it does not cover all potential hazards.

## **LEGISLATION AROUND THE WORLD**

To get an understanding of the differences in legislation, you need to have a brief understanding of OHS legislation as it has been developed and applied in each country, this includes both compliance and enforcement.

### ***North America***

When discussing legislation on the North American continent, you must consider two countries that have different legislative approaches. The additional issue is that often the legislation may be state or region based.

#### ***USA***

With the Occupational Safety and Health Act of 1970 (OSH Act), the Occupational Safety and Health Administration (OSHA) was created in the USA to ensure safe and healthful working

conditions for working men and women by setting and enforcing standards and by providing training, outreach, education, and assistance.<sup>2</sup> According to the OSH Act, any dairy farm that employs 11 or more employees at any time during the previous 12-month period or has an active temporary labor camp during that period is subject to OSHA regulatory oversight. A dairy operation is exempt from all OSHA enforcement if it

1. employs 10 or fewer employees currently and at all times during the last 12 months, and
2. has not had an active temporary labor camp during the preceding 12 months.

According to OSHA regulation 29 CFR 1975.4(b)(2), family members of farmers (farm employers) are not counted when determining the number of employees for OSHA oversight. A part-time employee is counted as one employee. Under OSHA's current appropriations law, OSHA is not allowed to spend any funds appropriated to enforce any standard, rule, and regulation on any farming operation that employs 10 or fewer employees and does not maintain a temporary labor camp. Although current appropriations law forbids federal funds to be spent on enforcement of the OSHA Act on small farms with 10 or fewer employees, the actual OSHA Act does not address enforcement based on operation size. Therefore, despite OSHA being prohibited from inspecting small farming operations, these operations are not exempt from OSHA regulations and the standards are still relevant.

States with OSHA-approved state plans may enforce on small farms and provide consultation or training, provided that 100% state funds are used and the state has an accounting system in place to assure that no federal or matching state funds are expended on these activities.<sup>2</sup>

In addition to regulatory standards outlined for businesses classified as General Industry

employers, seven standards specifically apply to agriculture:

1. slow moving vehicle (SMV) emblem;
2. anhydrous ammonia;
3. pulpwood logging;
4. temporary labor camp housing;
5. roll over protective structures;
6. agricultural machinery guarding; and
7. cotton dust.<sup>2</sup>

When there are no specific standards applicable to a particular hazard found on a dairy operation, the OSHA General Duty Clause may be cited. The General Duty Clause stipulates that each employer shall furnish to all employees a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm.<sup>3</sup>

During a 10-year span from 2003 through 2012, a total of 614 US dairy farms received OHSA inspections. Of these, 57% were planned inspections, 19% were the result of an accident, 12% were the result of an employee complaint, and 8% were the result of a referral.<sup>4</sup> From 2003 through 2012, the General Duty Clause has only been cited 29 times on US dairy farms. Some other more common citations were related to the following<sup>4</sup>:

- Lack of proper injury and illness prevention program;
- Lack of work injury recording and reporting;
- Lack of mounting or proper tagging of portable fire extinguishers;
- Inadequate communication program about hazardous chemicals;
- Inadequate process safety management of highly hazardous chemicals;
- Inadequate hazardous waste operation management and emergency response;
- Inadequate respiratory protection;
- Lack of roll-over protective structures (ROPS);
- Inadequate guarding floor and wall openings and holes;
- Inadequate eye and face protection;
- Inadequate medical services and first aid;

- Inadequate guarding of field and farmstead equipment;
- Lack of training and injury prevention strategies related to animal handling.

### *Canada*

In Canada, although principles of occupational health and safety legislation are fairly consistent across provinces, occupational health and safety legislation is primarily a provincial responsibility, with a few exceptions that fall under federal jurisdiction. Provincial ministries of labor (whose names vary slightly from province to province) are each responsible for their own occupational health and safety Acts and Regulations. Most, but not all, provinces in Canada cover farming, including dairy production, under their respective OHS Acts and legislation.<sup>5</sup> The one agricultural exception to this rule are grain elevators licensed by the Canadian Grain Commission, certain feed mills and warehouses, flour mills, and grain seed clearing plants, which fall under federal jurisdiction.

Occupational health and safety Acts and Regulations in Canada have General Duty clauses that outline general responsibilities of employers, including farmers, with respect to looking after the health and safety of their farm workers. Dairy production is typically covered under more general OHS requirements for hazard identification and risk reduction strategies, often centered around specific hazards such as chemical, biological, physical, and ergonomic hazards. For example, in cases where specific legislation for hazardous exposures exists, such as noise exposure, those regulations would apply equally to the dairy industry. There is an overriding expectation of workplace safety based on principles of hazard recognition and control measures that applies to all industries, including agriculture and the dairy industry.

### *European Union*

General legislation in Europe must meet standards set by the European Community (EC); but as with most legislation, each country has made minor changes to suit the local conditions.

### *United Kingdom*

The current OHS system in the United Kingdom has been in place for over 30 years and its foundation was established by the Health & Safety at Work etc. Act 1974 (HSWA).<sup>6</sup> One fundamental principle of the system is that those who create risks in the course of carrying out their work activities are responsible for controlling these risks, by assessing them and taking appropriate action to reduce them “so far as is reasonably practicable.” This means that a duty holder must take all possible precautions up to the point where taking further measures would be grossly disproportionate to any residual risk. This principle applies to the self-employed as well as to employers and, in addition, employees also have a duty to take reasonable care for the health and safety of themselves and others.

Since the HSWA was passed, the Health & Safety Executive (HSE) has been engaged in progressive reform of the law, seeking to replace detailed industry-specific legislation with an approach in which regulations, wherever possible, express goals and general principles. More detailed requirements are placed in codes and guidance. Legislation has also been refined by European directives and/or regulations.

The HSWA and related legislation are primarily enforced by HSE or local authorities, according to the main activity carried out at individual work premises. In general, HSE will enforce in “higher-risk” industries, including agriculture. As well as its enforcement role, HSE has statutory responsibilities to propose health and safety law and standards to ministers and to provide policy, technological, and professional advice.

Although dairy farming and agriculture in general, have very specific health and safety issues,<sup>7</sup> including high and increasing levels of self-employment and an aging workforce, UK OHS legislation applies in exactly the same way as it would in any other industry. HSE is responsible for enforcing health and safety law in dairy farming and has a number of operational inspectors and visiting staff who deal with the industry by a range of methods, including on-site visits (announced and unannounced); investigation of accidents and complaints; providing

guidance and support at visits, by phone, or at agricultural events; safety and health awareness days (SHADs); and enforcement where necessary. Enforcement can take several forms, from the informal (verbal or written), through the issuing of Improvement or Prohibition Notices to the initiation of a prosecution.<sup>7</sup>

In addition to operational staff, HSE has an “Agriculture and Food” sector that takes an active role in working with the industry and other key stakeholders. The sector is also responsible for writing the wide range of industry-specific guidance, which is available on the HSE Web site.<sup>8</sup>

### *Italy*

In Italy, agriculture and dairy industry are not specifically addressed by OHS legislation, and the sector falls in the field of application of the more general OHS legislation of Italy, which was reformed in 1996, with the law decree 626/94, and amended in 2008 (law decree 81/08) and 2009 (law decree 106/09).<sup>8</sup> All these changes (law decrees) relate to the adoption in Italy of EU directives and/or regulations. Therefore, in many aspects, the Italian OHS legislation is similar that in other European countries. In particular, especially in Italy, it has been established that those who create occupational risks are responsible, at their own expense, for risk assessments, management, and control of the risks as well as for health surveillance of the exposed workers.

Each enterprise (workplace), independently of the size, must undertake risk assessments, under the guidance of a person responsible for the process being assessed, prepare a written “Risk Assessment Report” (RAR), and provide workers with the level of training/education appropriate to risks. In small-sized enterprises with less than 10 employees, which is the case for the majority of the agricultural and dairy enterprises in the Italy, characteristics and contents of the report are simplified and the responsible person may be the employer himself.<sup>8</sup>

Health surveillance of workers is mandatory when RAR identifies significant health risk(s), and an occupational health physician (OHP)



must develop a health surveillance protocol specifically targeted, in periodicity and contents, to the health risk(s) identified in the RAR.<sup>8</sup>

Workers must be involved in the OHS risk assessment and management process through one or more representatives elected or appointed, based on the enterprise's size or trade unions. At least once per year, for enterprises with more than 10 workers, all the participants in the enterprise prevention system (employer, responsible for preventive activities, OHP, and worker's representatives) must meet, discuss, and share contents and priorities of RAR and any epidemiological and/or statistics data available to the OHP. Health surveillance and training/education must be provided to all employees, whereas family and self-employed workers "have the right ask to be provided with health surveillance as well as training/education."<sup>8</sup>

In theory, the OHS legislation seems very sound and suffers several weaknesses, but in reality it seems to be hardly applicable in the dairy industry. The main problem in the Italy, similar to many other countries, is that more than 95% of agricultural enterprises are family or self-employment based. Consequently, these enterprises seldom decide to activate health surveillance and training/education programs. This situation brings about not only a lack of preventive activities, but also a significant under-reporting of occupational diseases and injuries, which makes epidemiological data from agriculture and dairy industries very weak. The second problem is the difficulties faced in undertaking risk assessments in very small enterprises, where the variability of job and tasks is very high, and consequently the significant variability of occupational exposures. The third problem is the high proportion of seasonal/transient workers, who are often ruled out from OHS health prevention programs. Finally, the increase in the proportion of migrant workers (in Italy a significant proportion of dairy milkers come from Asia) makes it difficult to undertake health surveillance in addition to providing training/education programs.

The final issue in the Italian situation is that OHS legislation is strongly connected to EU legislation that addresses food production, which

generally relates to animal welfare, which highlights animal needs that in many cases may conflict with protecting the workers, robustness of the farms, and traceability of food. It is worth noting that with the increase in the size of farms, the situation becomes more similar to the situation that exists in industry and the specifics relating to agriculture tend to disappear. This is happening most importantly in dairy food production regions.<sup>8</sup>

### *Sweden*

The statutory foundations are laid in the Work Environment Act (AML), passed by the Riksdag (Sweden's parliament). The Work Environment Act defines the outer framework of work environment regulation.<sup>9</sup>

The Work Environment Authority has been tasked by the government with issuing more detailed regulations on the subject. This is done by issuing, in their own statute book, AFS, provisions and general recommendations specifying the requirements to be met by the work environment.

Provisions can, for example, refer to hazards, mental and physical strain, dangerous substances, or machinery. They are drawn up in consultation with the labor market parties.

It is always the employer who is responsible for the operation being conducted in such a way that ill health and accidents are prevented and a satisfactory work environment achieved. The task of the Work Environment Authority is to verify that the employer lives up to the stipulations made in the Work Environment Act and in the provisions issued by the Authority itself. This verification is usually based on inspection.<sup>9</sup>

Work environment inspections at workplaces in Sweden are carried out by inspectors from the Work Environment Authority. The inspectors are stationed in 10 districts. In the course of an inspection, they check that the employer has an effective organization for systematic work environment management. They also check the work environment in the holistic perspective of the risks (physical, mental, and social) that the operation entails, but there are cases of an inspection targeting a particular hazard (such as a certain type of machine or a certain type of job). The

choice of workplaces for inspection is based on an assessment of the workplaces presenting the greatest risk of ill health or accidents.

If inspection shows that the employer is not discharging his obligations under the Work Environment Act, they can issue him with stipulations. Applied in the agricultural sector, this means in practice that

- Some provisions are issued with agriculture as the main target, such as “Pesticides, working with animals, and use of tractors,” whereas others, such as “Ergonomics for the prevention of musculoskeletal disorders,” are more general but also includes agriculture.
- The farmer has the main responsibility for the working conditions on the farm. Employees has a responsibility to help out and follow the safety rules and alarm if they discover any major health and safety issues.
- The farmer has a responsibility to have an effective organization for systematic work environment management. The farmer has to provide instructions for risky work operations such as working in a silo, moving animals, working with animals, working alone, or handle dangerous substances.<sup>9</sup>

### *Australia, New Zealand, and the Pacific Region*

The general legislative approach to OHS in this region is similar as it is all risk based.

#### *Australia*

OHS legislation is state-based legislation, which means that over the last 100 years there have been differences between states on how OHS legislation is been applied to the dairy industry. Until the mid-1980s little general OHS legislation applied directly to dairy. What did apply, related mainly to safety issues such as rollover protection for tractors and provision of services such as housing for rural workers.

Following the publication of Lord Robens report, most Australian states held their own review into OHS legislation and changed their

legislation to risk based and included all workplaces. This was the first time most agricultural businesses really had to worry about ensuring a health and safe workplace, but it did not go far enough in that it did not cover self-employed or family-run farms where there are no employees.

In the last few years, there has been major revision of the OHS legislation in Australia with the publication of model Workplace Health and Safety (WHS) legislation, which includes an act and regulations, which have been enacted in five states as well as the Commonwealth of Australia by the beginning of 2013.<sup>10</sup> The revision in legislation not only has broadened its application to employers, employees, and suppliers, but also has strengthened the act in relation to people conducting businesses that includes farms. This means that this legislation will apply to all dairy farms in the states that have adopted the WHS legislation, which are Queensland, New South Wales, Australian Capital Territory, Tasmania, and Northern Territory. It is interesting to note that the largest dairy state in Australia, Victoria, announced that they would not be implementing current model.<sup>11</sup>

The new WHS legislation<sup>10</sup> requires the dairy farmers to ensure that their farm is safe and that they meet the new regulations, which are very lengthy and include codes of practice on specific topics, such as

- Electrical Risks in the Workplace;
- Hazardous Chemicals Risks in the Workplace;
- First Aid in the Workplace;
- Plant Risks in the Workplace;
- Hazardous Manual Tasks;
- Confined Spaces;
- Managing the Work Environment and Facilities;
- Managing Noise and Preventing Hearing Loss at Work;
- Managing the Risk of Falls at Workplaces;
- Excavation Work.

The changes in the OHS legislation will be a challenge for many of the smaller dairy farms as they move to meet all the new requirements over the next few years.<sup>11</sup>

### *New Zealand*

New Zealand's legislative framework was based on a prescriptive model until the early 1990s. The rural sector was administered by Health Act 1956, Shearers Act 1962, and the Agricultural Workers Act 1977, to name but a few.

When the Health and Safety in Employment Act 1992 (HASE Act) was introduced in April 1993, it resulted in 14 regulations being repealed, but the Agricultural Workers Accommodation Regulations until the HASE Act were enacted in Regulations 1995.<sup>12</sup> The primary requirement of the HASE Act was to identify hazards, and assess them to determine whether they could cause serious harm (defined in Schedule 1). Hazards are managed by a hierarchy of control that was to be followed, to eliminate, isolate, or minimize the consequence of the exposure.<sup>12</sup>

Elimination means that the hazard was engineered out or the hazard was discontinued completely. This control measure is seldom practical. Isolation means machine guards, barriers, or distance or time frames; this measure is used where practicable. Minimization means controls including PPE, training, signage, supervision, etc. Where minimization is used, atmospheric sampling must be done plus individual monitoring conducted to ensure the controls are effective. This by far is the control of choice by many employers.

Underpinning the HASE Act is the term "all practicable steps." All duty holders are required to use this test when considering their obligations and duties under the Act and regulations. The term includes concepts of

1. the nature and severity of the harm;
2. the likelihood of the harm occurring;
3. the current state of knowledge about the harm;
4. the means available to manage the issue; and
5. the availability and cost of those means.

These provisions only apply where the person knows or ought reasonably to have known about the issue(s).<sup>13</sup>

The Regulator has produced around 130 codes of practice, guidance notes, and fact sheets on a wide range of topics. These are sector specific and can include business collaboration in the development stages.<sup>13</sup>

There are 25 specific codes of practice or other information documents relating to agriculture, for example, "Guideline for the provision of safety, health and accommodation in agriculture." This is a wide scoped general information guidance note.<sup>13</sup>

There are several groups assisting the rural sector. These include Farmsafe, Growsafe, AgITO (training), DairyNZ (information on farming and being an employer), ACC, and Min BIE. Farmers are better informed and are more willing to address OHS issues by being proactive and demonstrating a systems approach to OHS.

At the time of writing (October 2012), the entire OHS regulatory framework was under a ministerial review. The final outcomes and recommendations from this are due in April 2013.

### *Pacific Region*

As the dairy industry in most countries in the Pacific Region is nonexistent, no local OHS legislation will apply. It should be noted that most dairy-based products in this region are imported.

### *South America*

The size of the dairy industry varies throughout South America dependent on the country. The OHS legislation that may apply also applies to all farmers, but in this region it is very dependent on the general OHS legislation framework in the country concerned, which in most cases is aimed at mining, manufacturing, and construction, all of which are large employers.

### *Africa*

The dairy industry in African countries varies depending on the country, as does the related OHS legislation. In many African countries, the dairy industry is relatively small, except South Africa where the dairy industry has farms that are similar in size to farms in USA, Australia,



and New Zealand, with an average herd size greater than 100 head/farm.

In South Africa, the dairy farms are covered by the same risk-based OHS legislation as all work places (except mines), the Occupational Health and Safety Act (No. 85), which was enacted in 1993 and is designed to cover all workers. There appears to be no restriction on the minimum number of workers except in relation to the provision of safety representatives. Worker exposure to biological agents and chemical substances is monitored through the Regulations for Hazardous Biological Agents and Hazardous Chemical Substances, respectively, under this Act. Health and safety measures comply with ISO14000 (Environmental Management).<sup>14</sup>

### *Asia*

OHS legislation throughout of Asia varies significantly in respect to its design and implementation, but the majority is risk based. In many cases, it only applies to large organization or worksites, in particular mine sites and manufacturing and construction industries. As the dairy industry in most Asian countries is relatively small and in most cases is family based, little OHS legalization applies.

## **DISCUSSION**

An analysis of the OHS legislation that has been briefly reviewed shows little applies directly to the dairy industry. The majority of the OHS legislation uses a risk-based approach that applies to all work places. In most cases, this legislation only relates to farms where the workers are appointed as employees and not on farms where they are either family farmed or classified as self-employed. The exemptions to this are the United Kingdom and the new Australian model legislation, which requires all people at a place of work and/or business activity (paid workers, volunteers, self-employed, and family members) be covered, this includes dairy farms. In many countries, dairy farms are classified as small businesses and employ less than

10 people, which is an issue in countries that have a minimum of employees before the legislation needs to be considered, for example, USA. The other consideration in relation to the impact of OHS legislation on the dairy industry is that in some countries, such as USA, Canada, and Australia, the OHS legislation is regionally based. This means that similar types of farms, even in close proximity such as over the state/province border, may have to meet different OHS legislative requirements. In some cases, this may put an additional cost on the dairy farmers and their workers.

It has been suggested that the agricultural industries should have their own OHS legislation, similar to mining and the resources industries. But this may have a negative impact on the farming community because of the lack available funds to support major OHS programs and OHS professionals working extensively in the field. This is strengthened, because in many countries the move is away from industry-based OHS legislation and towards generic legislation that applies across all industries. A major problem for many farmers is keeping up with the changes in legislation, codes of practice, and standards, as it is very time-consuming. In some countries, the farm workers need to have specific OHS training, which is difficult for the farmer to provide. A solution to this is that all farm workers should have completed an agriculture-specific OHS training program prior to working in the industry.

## **CONCLUSION**

There is little OHS legislation in the world that applies directly to the dairy industry. For many, this is an issue that is unlikely to be resolved as the move is towards generic OHS legislation. The major question is how OHS legislation can improve the health and safety of all people who work on dairy farms. The easiest way of doing this is to improve the OHS training to farmers, farming families, and farm workers. A generic training, which covers the major health and safety issues, should be required for any work on a dairy farm.

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