

Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:

- the seriousness of the harm risked (A, B or C) by the offender’s breach; **and**
- the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care • Health condition resulting in significantly reduced life expectancy 	<ul style="list-style-type: none"> • Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer’s ability to carry out normal day-to-day activities or on their ability to return to work • A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
High Likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

2) The court must next consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

i) Whether the offence exposed a number of workers or members of the public to the risk of harm. The greater number of people, the greater the risk.

ii) Whether the offence was a significant cause of actual harm.

Consider whether the offender’s breach was a **significant cause**¹ of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims are unlikely to be considered contributory events for sentencing purposes. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be reasonably foreseeable.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

¹A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

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