

ARKSAFE HEALTH AND SAFETY NEWS

Published by **ARKSAFE LTD.** Bars Hill, Costock, Leicestershire LE12 6XY E-mail arksafe@virgin.net

No.45

KEEPING YOU INFORMED ON HEALTH & SAFETY ISSUES

Summer 08

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE NOW AN OFFENCE IN THE UK

The Corporate Manslaughter and Corporate Homicide Act came into force on 6th April and has been the culmination of ten years of campaigning by unions and other groups.

Under the new law companies, organisations and, for the first time, government bodies now face a criminal record and larger fines if they are found to have caused death due to gross corporate health and safety failures.

The new law has focussed companies and other organisations on ensuring that they take their health and safety obligations seriously.

Justice Minister, Maria Eagle, said:

"the law ensures improved justice for victims of corporate failures. The Act provides that companies and organisations can be found guilty of corporate manslaughter on the basis of gross corporate failures in health and safety.

"We are sending out a very powerful deterrent message to those organisations which do not take their health and safety responsibilities seriously."

The Corporate Manslaughter Act:

- Does not require organisations or businesses to comply with any new regulatory standards. Well-run businesses who are complying with existing health and safety laws have nothing to fear from the new legislation.
- Makes it easier to prosecute companies and other large organisations, when gross failures in the management of health and safety lead to death, by delivering a new, more effective basis for corporate liability.
- Has reformed the law so that a key obstacle to successful prosecutions has now been removed. Until now, a company could only be convicted of manslaughter if a 'directing mind' (such as a director) at the top of the company was also personally liable.

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- Means that both small and large companies can be held liable for manslaughter where gross failures in the management of health and safety cause death, not just health and safety violations.
- Does not apply to individual directors, senior managers or other individuals: it is concerned with the corporate liability of the organisation itself. However, where there is sufficient evidence, individuals can already be prosecuted for gross negligence, manslaughter and health and safety offences. The Act does not change this position.
- Lifts Crown immunity to prosecution. Crown bodies - such as government departments - will be liable to prosecution for the first time. This means that the Act will apply to companies and other corporate bodies, in the public and private sector, government departments, police forces and certain unincorporated bodies, such as partnerships, where these are employers.

The Government claims that well-run businesses that already have effective systems in place for managing health and safety have nothing to fear from the new legislation. But company employees, consumers and other individuals will be offered greater protection against the worst cases of corporate negligence.

There is no upper limit to the fines that might be imposed as, generally, fines will reflect the relative size of the offender and the scale of the offending. The exact size of the fine will be a matter for the courts. In England and Wales, the Sentencing Guidelines Council is working on a guideline to support the new offence and this is expected to be ready in the autumn of this year (2008).

SCHOOL TRIPS "ESSENTIAL" SAYS HSC

Speaking at a NASUWT conference fringe meeting in Birmingham, recently, Judith Hackitt, Chair of the Health and Safety Commission (HSC) urged teachers to take a sensible approach to risk assessment to ensure that school trips remain "an essential part of every child's education".

Attacking those who look for health and safety excuses to prevent them from happening she said:

"Health and safety is used by many as an excuse for not doing things. My message is to take a common sense and proportionate approach when managing the health and safety aspects of organising a school trip. Share good practice with colleagues. Reams of paper work is rarely the way to effective safety management.

It is essential that those good practices are shared and acted upon; it makes no sense for every school or college to have to learn, when others have found acceptable ways of managing things."

HSE is campaigning to encourage a simple and practical approach to risk assessment. The campaign aims to encourage important recreational and learning activities for individuals where the risks are sensibly managed. More information can be found at www.hse.gov.uk/risk/index.htm

Ms. Hackitt told the conference that by far the biggest issues of concern in relation to health and safety in schools and colleges were stress and injuries caused by slips, trips and falls.

A recent survey found that around 500,000 teacher days were lost in Britain last year due to stress - at an estimated cost of £84 million.

The Chair reminded teachers that slips, trips and falls remain the most common cause of major injury in schools, accounting for 40% of all injuries reported to staff.

SITE WASTE MANAGEMENT PLANS REGULATIONS NOW IN FORCE IN ENGLAND

From 6th April 2008, a site waste management plan (SWMP) must be created for all new construction projects in England valued at more than £300,000 (excluding VAT). It is now illegal to start work unless there is a SWMP in place.

SWMPs are not yet mandatory in **Northern Ireland, Scotland or Wales**, but are being promoted by the Environment Agency as "best practice", as a means of effectively managing waste created during a project and reducing the amount of waste produced.

The cost of the project will normally be determined at the tender stage.

Each project should have **one** SWMP, which should be maintained and updated throughout the project's course.

Because it is produced at the very beginning of a project, designers can consider ways that waste can be reduced and site-gained materials be reused or recycled as part of the project. Early identification of waste materials that cannot be reused on that project will make it easier to find other alternative uses for them.

Who's responsible for the SWMP?

Clients are responsible for:

- *producing the initial SWMP before construction work starts*
- *appointing the Principal Contractor*
- *passing the SWMP to the Principal Contractor*
- *updating the SWMP at least every three months (only if the Client manages the project themselves).*

Principal Contractors must:

- *obtain relevant information from sub-contractors*
- *update the SWMP at least every 3 months, as the project progresses*
- *keep the SWMP on site during the project, and ensure that other contractors know where the SWMP is kept*
- *allow other contractors and the Client access to the SWMP during the project*
- *hand the completed SWMP back to the Client at the end of the project*
- *keep a copy of the SWMP for 2 years.*

What should the SWMP contain?

The level of detail that your SWMP should contain depends on the estimated build cost, excluding VAT.

For projects estimated at between £300,000 and £500,000 (excluding VAT) the SWMP should contain details of the:

- types of waste to be removed from site
- identity of the person who will remove the waste
- site to which the waste is to be taken.

For projects estimated at over £500,000 (excluding VAT) the SWMP should contain details of the:

- types of waste to be removed from site
- identity of the person who will remove the waste and their waste carrier registration number
- a description of the waste
- site to which the waste is to be taken
- environmental permit or exemption held by the site where the material is to be taken.

At the end of the project, the plan must be reviewed and the reasons for any differences between the plan and what actually happened documented.

Because all waste movements will need to be recorded in one document, it will help to ensure that sites comply with the duty of care on waste management and disposal.

Sub-contractors have duties under the regulations and it is likely that contract terms will include new requirements, including:-

- purchasing strategies or methods of work aimed at reducing waste
- requirements for the on-site reuse or recycling of site-gained materials
- procedures for the disposal of waste
- information required to be provided to the Principal Contractor or client on the contractor's waste management and disposal arrangements.

For further information visit the Office of Public Information Website http://www.opsi.gov.uk/si/si2008/uksi_20080314_en_1

HSE WARNINGS AFTER FOOD COMPANY PROSECUTION

The Health and Safety Executive (HSE) warned employers to ensure they manage health and safety risks in the workplace, following the prosecution of a Thetford company.

Tulip Ltd. was fined £265,000 with £21,653 costs, at Norwich Crown Court in May, following several breaches of health and safety regulations.

On 4 October 2005, Tulip employee Michael Warnes had three fingers amputated in a machine used to seal plastic food packaging. The HSE investigation identified that the machine was not adequately guarded and Tulip was found in breach of section 2(1) of the Health and Safety at Work etc Act 1974.

Then on 28 Nov 2005 self-employed contractor Korim Richardson suffered a severe electric shock while changing a light fitting at the same site. Mr Richardson was working on a ladder at the time, and the electrical surge caused him to swing back with the ladder leading to cracked bones in his shoulder. The HSE investigation identified a failure to maintain the electrical system at the site breaching of section 4(2) of the Electricity at Work Regulations 1989.

Finally, on 26 February 2006, the company was served a Prohibition Notice after allowing their employees and contractors from Ecolab to access wooden walkways over a suspended ceiling at the site. The walkway did not have full guardrails at the sides so employees and contractors risked falling some 60ft through the ceiling onto the production floor. Ecolab was sentenced at an earlier hearing.

HSE Inspector, Steve Gill said:

"Tulip has received fines consistent with the failure to manage health and safety issues at their site in Thetford. The company has exposed their employees to potentially dangerous situations and HSE will not hesitate to take action against those who fall short of the law in such a way."

HSE WARNING AFTER WORKER LOSES FINGER IN UNGUARDED SAW

Employers must assess workplace machinery risks properly to ensure they have adequate safeguards in place. This warning follows HSE's investigation and prosecution of a Staffordshire fence manufacturing company.

The Fence Factory Ltd was recently fined a total of £2,000 and ordered to pay costs of £2,645 at Stafford Magistrates' Court following an incident where an agency worker lost his index finger and damaged his little finger, while using an unguarded circular saw to cut lengths of timber.

The investigation found that the company had failed to carry out a suitable and sufficient risk assessment of the machine that would have identified the need for guarding. Adequate training should also have been given for the operation of the circular saw.

HSE PROSECUTES FORKLIFT DRIVER

Gerald Wyatt, a forklift truck driver working at Eardisley Sawmills, Herefordshire was recently prosecuted, and fined £1,750 at Worcester Crown Court, in April 2008, following serious injuries caused to a colleague in January 2007. Wyatt was found guilty of failing to take reasonable care for the health and safety of other persons (under Section 7 of the Health and Safety at Work Act 1974).

Wyatt was driving a rough-terrain forklift truck, loaded with a stack of 12 modular sheds. As he moved forwards, the load significantly obscured his vision and a fellow employee was struck by the load causing a fractured pelvis, cuts and bruises.

HSE's investigating inspector, Anne Robinson, said:

"It is important that individuals are aware that they, as well as their employer, have duties under the law to take reasonable care of the health and safety of others who may be affected by their acts or omissions at work. Mr Wyatt's employer had employed an in-house forklift truck trainer and he had received regular refresher training and re-testing.

APPEAL CLEARS HEAD OF "BATMAN BOY" DEATH

A Head Teacher, originally fined £12,500 over the death of a three-year-old boy who fell from play-ground steps while pretending to be Batman, was cleared on appeal recently after a judge said the child had been exposed only to the risks of "everyday life".

James Porter, 66, the head teacher and owner of Hillgrove, a private school in Bangor, North Wales, was convicted of breaches of safety rules after Kian Williams wandered into an out-of-bounds area and jumped down a set of steps. He tripped on the last one and landed on his head.

Kian suffered swelling of the brain as a result of the fall and was moved to Alder Hey Hospital in Liverpool, where he subsequently died from a strain of pneumonia five weeks later.

Although an inquest returned a verdict of "accidental death", a jury convicted Mr. Porter on the basis that he exposed Kian to a risk of injury by failing to prevent unsupervised access to the steps from which he fell.

The teacher, who was said to have been of "impeccable character", was originally fined £12,500 and ordered to pay £7,500 costs by Mold Crown Court.

The original conviction was challenged in the Court of Appeal recently by Patrick Harrington QC, representing Mr. Porter, on the grounds that there was nothing to suggest that the steps were a risk and nothing "reasonably practicable" that could have been done to completely remove the risk of a child jumping and hurting themselves.

Setting aside the original conviction, Lord Justice Moses said that Kian had been exposed to no "real" risk beyond those of everyday life.

"The fact that a child might slip or trip or chooses to jump from one height to a lower level is part of the ordinary incidence of everyday life"

To view the original article reporting Mr. Porter's conviction, see Arksafe newsletter no 43 (Winter 2007-08)

PRESIDENT OF IOSH RESPONDS TO POLICE RELUCTANCE TO STOP LATE NIGHT RAVES

Ray Hurst, president of the Institute of Occupational Safety and Health (IOSH) recently went into print in the Daily Telegraph to respond to one of the more controversial policing decisions made earlier this year.

Kent police had declared themselves unwilling to get involved in preventing drug abuse and petty crimes committed at a late night rave, or to break up such events when the noise was causing public nuisance, citing "health and safety" as a reason for the decision.

Ray Hurst overtly challenged this view in a letter to the paper in April

After musing whether the police officers were in fact "afraid of the dark" Mr. Hurst continued:

"As president of Europe's largest health and safety professional body, I respect the officer's judgment on the best tactics to employ in dealing with difficult situations. However, I do not agree with the use of health and safety as an explanation of why they did not act.

Health and Safety does not prevent the police from doing their duty - the fear of lawsuits does. I and thousands of other health and safety professionals resent the fact that our work is seen as an easy excuse to justify unpopular decisions".

We at Arksafe would like to congratulate Ray Hurst in making these comments and for making it clear that "health and safety" is too often made a scapegoat for preventing actions which would be for the benefit of a great number of people. Well done Ray!

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HSE WARNS CLIENTS AND CONTRACTORS WHO FAIL TO ALLOW "SUFFICIENT TIME" TO MAKE SUITABLE HEALTH AND SAFETY ARRANGEMENTS FOR PROJECTS

One of the more radical reforms contained in the Construction, (Design and Management) 2007 Regulations (CDM 07) was the requirement for Clients, Principal Contractors and other contractors to allow sufficient time to make preparations for work on a project site, to risk assess their tasks, and have adequate welfare arrangements and safety precautions in place, before work starts.

Time is also needed to gather essential information such as contamination and asbestos surveys and to liaise with other site users and adjoining occupants. Finally, adequate time is necessary for project notification and to create a health and safety plan and other documentation before work starts on site. This requirement applies to both notifiable and non-notifiable projects.

Despite this legal requirement, many Clients, and also Contractors are allowing contracts to start - and indeed pushing for early project commencement - before the correct documentation has been prepared and adequate physical arrangements and precautions are in place.

Clients are generally unaware of the liability they take upon themselves in so doing, and contractors are often unwilling to counter requests for an early start. Indeed, contractors often push for an early start date on the basis of having free labour, rather than having properly addressed the health and safety issues.

In the first instance, it is the Client who has the duty to appoint a CDM Coordinator to advise him on the key health and safety issues inherent in the project. CDM 2007 now requires the Client to appoint the CDM Coordinator early in the project, as soon as the stage at which a viable project design is on the table.

Indeed, it is the Designer's duty to advise the Client of his health and safety duties in the first instance, and so, any failure to make an early appointment, could leave the Designers involved in a project open to charges of failing to give the necessary advice to the Client.

Both Clients and Contractors are taking an enormous risk in pushing for early project starts. To fail to allow sufficient time for preparation is now an offence affecting Clients and Contractors. To start a project over 30 days without notification to the HSE is a further offence. More serious still is to start a notifiable project with no Construction Phase Health and Safety Plan, risk assessments, or safe methods of working in place.

It is simply not good enough for project management teams to put health and safety on the "back burner", going ahead with design and tendering, while leaving the CDM Coordinator appointment until later. The Coordinator has a duty to comment on design health and safety issues, long before the construction phase, and late appointment may preclude any input of value.

Nor is there much point in leaving the CDM Coordinator's appointment until the Principal Contractor has been appointed. The whole point of the Coordinator's role is to work with the Client to gather information that would have a bearing on the tendering Principal Contractor's site arrangements and risk precautions.

For example, if a Client is told, having received the tenders and appointed a contractor to do the work, that an invasive asbestos survey needs to be undertaken for a project involving intrusive work. The Client may, of course, ignore this advice, which exposes him to severe legal sanction under the Control of Asbestos at Work Regulations, or he may follow it, albeit late in the day. If a survey is then commissioned, and asbestos is found, it could delay the project significantly, and raise major cost issues affecting the viability of the project itself.

Also, the appointed Principal Contractor may not have made sufficient health, safety or welfare provision. If appointed before he has his Construction Phase Health and Safety Plan in place, how will any objective judgement be possible to ascertain whether his health and safety competence and construction phase planning is adequate?

There is simply too much risk for all parties when key health and safety issues are ignored or are addressed too late in a project.

CDM is not a "quick fix" paperwork exercise to be undertaken a week or two by the start and, on notifiable projects, the CDM Coordinator is not simply there to document decisions that have been made on health and safety. The Coordinator has an active role to play from the beginning in all decisions affecting project and design health and safety. This is why the appointment needs to be made at the early design stage.

On notifiable projects, the Coordinator's work is not just something that takes a couple of days either. Coordinators need to visit project sites, engage Clients in the construction process, advising them of their duties. They need time to assess the health and safety issues, and advise on the adequacy of surveys and whether more detailed work should be undertaken as part of the pre-contract risk assessment process. Finally, they need time to prepare information for tendering contractors, and to liaise with the successful contractor so that suitable construction phase arrangements, plans and documents are all in place before work starts. This takes weeks, if not months, and the Coordinator should advise when the project is ready to start and not simply be told by the other parties, regardless of the adequacy of the arrangements in place.

And it is not just Clients who are in the firing line when appointments are made late in the day or projects are started without the necessary documentation. Contractors have a duty under CDM 2007 to check with Clients that the necessary appointments have been made and that the Client is aware of his duties. Therefore, the Contractor who starts without sufficient preparation could be potentially guilty of not advising his own Client of the shortfall in the project, in addition to his own omissions.

For more information on the above issues see L144 Managing Health and Safety and the free leaflet "Want Construction Work Done Safely" both available from HSE Books