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News

Health and Safety (Offences) Act 2008 - HSE Chair Welcomes Tougher Penalties

The Act, which came into force on 16 January 2009, has been welcomed by the Chair of the HSE as a real deterrent to those businesses and individuals who do not take their health and safety responsibilities seriously.

She said: "This Act gives lower courts the power to impose fines for some health and safety offences. Everyone has the right to work in an environment where risks to their Health and Safety are properly managed, and employers have a duty to deliver this.

"Our message to the many employers who do manage health and safety well is that they have nothing to fear from this change in law. There are no new duties on employers or businesses, and HSE is not changing its approach to how it enforces health and safety law. We will retain the important safeguards that ensure that our inspectors use their powers sensibly and proportionately. We will continue to target those who knowingly cut corners, put lives at risk and who gain commercial advantage over competitors by failing to comply with the law."

The Act, which received Royal Assent on 16 October 2008, fulfils a longstanding Government and HSE commitment to provide the courts with greater sentencing powers for health and safety crimes.

For more information concerning how the Act will affect businesses and individuals please refer to the Legislation section.

Prosecutions

£75,000 Fine after Worker Receives Electric Shock

Part of the National Express Group received a substantial fine and was ordered to pay over £8,500 in costs after a court ruled it had failed to ensure the health and safety of people working in one of its maintenance depots.

Maintrain Limited pleaded guilty to two offences under the Health and Safety at Work etc. Act 1974 at the prosecution, brought by the Office of Rail Regulation (ORR).

The incident in question occurred on 16 February 2007 when a maintenance worker received an electric shock while working in Maintrain Limited's Soho light maintenance depot in Handsworth, Birmingham.

As the worker was removing a cover used to protect train axles, he was electrocuted, as the train was electrified at the time, not isolated as he believed it to be.

The man suffered significant muscle damage to his chest and had burns on his hands. He also required treatment on his legs, which resulted in him being off work for two months.

On investigation ORR discovered inadequacies in the risk assessment process by the company, and a failure to implement a safe system of work.

Maintrain Limited pleaded guilty under the following two sections of the Health and Safety at Work etc. Act 1974:

- section 2(1) – which requires an employer to ensure, so far as is reasonably practicable, the health, safety and welfare of its employees.
- section 3(1) – which requires an employer to ensure, so far as is reasonable practicable, that the way in which they conduct their undertaking does not affect the health and safety of other people.



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Guidance

Preventing Falls from Vehicles

Employers have a legal duty to try to prevent falls from vehicles in the workplace under section 6 of the Health and Safety at Work etc Act. The Health and Safety Executive (HSE) has issued guidance for employers to help them prevent falls.

The more common causes of falls from vehicles include:

- climbing on loads
- attempting to join a moving vehicle
- slippery surfaces
- uneven ladders or walkways
- broken ropes or torn sheets causing overbalancing
- inappropriate footwear
- bad weather
- lack of awareness and training
- using inappropriate parts of the vehicle as support.

Advice on conducting a risk assessment is included. The HSE recommends that a risk assessment should include the answers to the following questions:

- what tasks might involve a person climbing on to a vehicle or a structure? This should include all activities whether frequent, irregular or less frequent
- what are the risks of doing these tasks?
- can you eliminate these risks?
- if not, how can you reduce these risks?

This is followed by guidance on how to minimise or eliminate the risk. In particular it covers:

- access to vehicles by authorised personnel only and how to ensure their safety. For example, by locating gauges and controls that are accessible from the ground, automatic sheeting systems (easysheets), using permanent loading stations with fixed platforms, or installing a harness system
- how to gain access to the top of a vehicle. For example, via a well constructed ladder, a walkway, the fitting of additional safety features or finding an alternative means of access
- passengers, who should only be allowed on a vehicle if it is designed to accommodate them safely, with suitable seating
- the instruction and training of workers to use the work equipment competently
- ensuring correct visibility for workers climbing into or on to vehicles, or walking on vehicles
- using the three-point hold rule for workers climbing onto vehicles – that is, keeping at least three points of contact with the vehicle they are climbing, moving one limb at a time and testing the new hold before moving on
- Coordinating safe access at the employer base and at the destination of the vehicle.



Legislation

Health and Safety (Offences) Act 2008 – Now in Force

The Health and Safety (Offences) Act 2008 received Royal Assent last year after several failed attempts by Parliament to increase penalties for breaches to health and safety law. It came into force on 16 January 2009.

The new Act makes three main changes, namely:

- raises the maximum financial penalties available to the courts
- making prison an option as punishment for a wider range of Health and Safety offences
- making certain offences, that would have been tried in a lower court, eligible for trial in a higher court (meaning that more offences will be open to larger or unlimited fines and imprisonment).

Whilst increasing penalties the Act does not impose any new obligations by way of new offences. The principal duties of employers will remain as before under the Health and Safety at Work etc Act 1974.

In the past Courts, under summary procedure, have had less powers, they:

- have only been able to impose fines up to £20,000 for a limited number of breaches of the Health and Safety at Work Act 1974 (HSWA)
- were unable to impose fines higher than £5,000 for a breach of Regulations.

Until now the courts only imposed prison sentences on limited cases, for example where an improvement or prohibition notice was breached.

The new Act will enable the courts to:

- increases the maximum fine for most summary cases to £20,000
- Impose prison sentences in both higher and lower courts.

Individual liability and imprisonment is significant within these changes and it is important to note:

- section 7 of the HSWA – under which an individual can be prosecuted if they have not taken reasonable care for the health and safety of themselves or other persons affected by their acts or omissions
- section 37 of the HSWA – under which direct action can be taken against directors, managers and officers if a failure is attributed to their 'neglect, consent or connivance
- under the new Act punishment can take the form of imprisonment for up to two years.

Because of these changes, companies (in particular, directors) should carry out a document review to ensure compliance with health and safety legislation; in particular within their policies procedures and practices.

**Law – Now
January 2009**

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