

# LEGAL ALERT

JULY 2001

# Rollits

SOLICITORS

## CHARITY BULLETIN

*Rollits charity group provides across the board advice to numerous charities, international, national and local. The group sees itself as a forerunner in being able to provide a complete and specialist service to charities. It comprises individuals drawn from various legal disciplines from across the firm, including employment, property, commercial, trusts and tax, health & safety, intellectual property and charity law to name but a few. The members of the group have regular meetings to discuss the particular needs of charities and developments in areas of law which may affect them. We produce our charity bulletin and hold a number of seminars throughout each year.*

*If you would like any further information about our charity group, please contact Ros Harwood on 01904 625790 or e-mail [ros.harwood@rollits.com](mailto:ros.harwood@rollits.com)*

### HEALTH & SAFETY - THE COSTS OF ACCIDENTS AND ILL HEALTH

Accidents and ill health impact on any organisation in so many ways. All organisations are under a legal duty to implement safe systems of work and work practices whereby they can offer the best level of protection not only to their employees but also others who may be affected by their business, for example, visitors or members of the public generally. Health & safety law is becoming more and more complex and the burden on employers and onus to get it right is commensurately increasing. This process is likely to continue given that the present Government is committed in its second term, as it was in its first, to increasing health & safety standards. It clearly takes the view that the estimated £18 billion cost of health & safety failure to society each year is too high and that, in effect, all organisations should give health & safety a higher priority.

Costs to any organisation are varied. Some are more apparent than others. Injuries or ill health can mean an individual is absent from work, often on a long term basis so that this has a human cost for the individual concerned, but also a cost for the organisation where resources may be stretched, or further costs incurred as a result of a need to retrain or employ others. If there is a claim, damages may be payable - your insurers will pay in the short term, but you will pay in the longer term by a higher premium.

Other costs are less obvious. Accidents generally make any business a less attractive proposition, whether as an insurance risk, or to prospective new employees, or to other businesses for whom you may want to work. Also a prosecution by an enforcing authority may follow an accident and both the Government and the Courts have made clear it is their intention to bring fines to a more realistic (obviously higher) level. The Court of Appeal have pre-empted formal legislation by indicating that all Courts when deciding health & safety fines after successful prosecutions should work on the principle that any fine must be large enough to bring home to those who manage an organisation the need for a safe environment for their workers and the public. Additionally, if you are prosecuted successfully you will find your name in lights, for entirely the wrong reason, because each year the Health & Safety Executive will be producing an enforcement report which will identify organisations who have been convicted of health & safety offences. The first one was published in October 2000 and there is no doubt that this attempt to impose pressure on organisations in this way will continue.

Time devoted to accidents and their aftermath can too be a significant factor, when such time could be utilised more positively elsewhere. This is very often a hidden cost which impacts in different ways.

The Government is intent on changing the face of health & safety. They are certainly keen on novel types of penalties and placing greater emphasis on the business case for health & safety to be taken seriously. This is likely to result in further costs which could apply to both an individual or an organisation. There is talk of linking fines to turnover or profit, suspension of pay, compulsory health & safety training and even a fixed point penalty system for health & safety matters, rather similar to that for driving licences.

The overall message must therefore be that in order to avoid all these costs, whether obvious or otherwise, each organisation should endeavour to have a systematic approach to health & safety matters. If you need help in that, perhaps by way of a health & safety audit including an outline of your legal responsibilities, then please contact Chris Platts, head of the Health & Safety Group on 01482 323239.

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#### IN THIS ISSUE

HEALTH AND SAFETY -  
THE COSTS OF ACCIDENTS AND  
ILL HEALTH

HOLIDAY FOR ALL

QUESTION TIME

ROLLITS CHARITY ROADSHOW

## HOLIDAY FOR ALL

Few pieces of legislation have caused as much practical impact on employers as the Working Time Regulations.

The introduction of the right to 4 weeks paid holiday has caused particular problems. However, the Regulations provided that workers who had not been continuously employed for 13 weeks had no such entitlement.



The European Court of Justice, however, in a case brought by the Union BECTU has held that this restriction is unlawful. As a result the UK Government has no choice but to amend the Regulations to give full holiday entitlement to all workers regardless of their length of service. This will have a serious impact on organisations who engage workers on short term temporary contracts or, for example, on an only seasonal basis.

The consequences of this change are all the more significant given that rights under the Working Time Regulations apply to "workers" and not just to "employees" - a trend in much new employment legislation. Workers can include individuals who for other purposes might be regarded as self employed contractors. Also, many people who may be seen and indeed regard themselves as volunteers might be caught.

Clearly, employers are going to have to review their working practices and contracts of employment.

## QUESTION TIME

**Q.** We have been asked by the Charity Commission to respond to certain questions concerning the running of our charity. At what stage should we be seeking legal advice? Would the involvement of lawyers be a bad sign as far as the Charity Commission is concerned?

**A.** Under the Charities Act 1993 the Charity Commission have certain powers enabling them to instigate and enquire into the administration of a charity. Any member of the public can write to the Charity Commission about a charity suggesting that perhaps some enquiry would be advisable. More often than not, the Charity Commission may simply write a letter to the charity in question and the matter would be taken no further when the charity replies giving the information required.

If you are fully confident that the trustees of the charity have acted properly and the charity's affairs have been administered in a proper and regular manner, then you may be able to deal with the matter without consulting lawyers. If you can supply without difficulty the information which the Charity Commission have requested, this may satisfy the enquiry so that the matter goes no further. However, if you are at all uncertain about the charity's position or the information which you have been asked for, or if you supply the information and the Charity Commission are still not satisfied, you should take legal advice. The Charity Commission will not regard the involvement of lawyers as a bad sign. It is very common for charities to have solicitors advising them on a regular basis.

*If you have a question that you would like answered in the next edition of our bulletin, please send it to Ros Harwood.*

## ROLLITS CHARITY ROADSHOW

*Rollits Charity Roadshow visits charities free of charge to talk about one of a range of topics. For further information or to book a visit, please complete the enclosed form and fax it back to us. Alternatively you can contact Ros Harwood on 01904 625790 or by e-mail at [ros.harwood@rollits.com](mailto:ros.harwood@rollits.com)*

### "CHARITIES AND THEIR INVESTMENTS" SEMINAR

October 2001 in conjunction with  
Leopold Joseph & Sons Private Bankers  
for further details please contact Pat Coyle on 01482 323239  
or by e-mail at [pat.coyle@rollits.com](mailto:pat.coyle@rollits.com)

### INFORMATION

**If you have any queries on any aspect of Charity Law please contact:  
Ros Harwood on 01904 625790**

This Bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

**The law is stated as at 1 July 2001  
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