

LEGAL ALERT

MAY 2003

HEALTH & SAFETY BULLETIN

Rollits
SOLICITORS

THE COURTS HAVE BEEN BUSY

Health & Safety matters have occupied the attentions of the Court of Appeal over the last few months. In one case the Court reduced fines imposed on a company for serious injuries that resulted from a workplace accident from £350,000 to £200,000. In doing so however it decided that comments it had made in an earlier case were in fact inappropriate. The Court specifically stated that there is no rule whereby fines of half a million pounds or more for breaches of Health & Safety Laws should be restricted to major public disasters. On the contrary the Court said that penalties of up to around half a million pounds are appropriate in cases where death or serious injury can occur of even a single employee and they indicated that they "would not wish the sum of £500,000 to appear to be set in stone or to provide any sort of maximum limit for such cases". The warning could hardly have been more explicit particularly as the Court quite clearly included cases of injury to only one employee.

In another case the Court quashed two manslaughter convictions, which a Company Director had received when two workers were killed whilst demolishing a tunnel kiln. The Court decided that the convictions were unsafe but still nonetheless substituted a conviction under the Health & Safety at Work Act 1974.

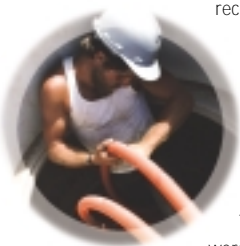
In a further case the Court confirmed that employers have an absolute duty under the Control of Substances Hazardous to Health Regulations 1994 and 1998 (since of course replaced by the 2002 version) to ensure that they prevent exposure of employees to hazardous substances or

where this is not reasonably practicable to ensure that such exposure is adequately controlled. The Court stated that reasonable practicability only applied where the discussion centred around prevention. This presents to an employer an absolute duty whereby exposure to hazardous substances has to be prevented or controlled. The latest version of the regulations repeats the language of earlier versions.

The Court of Appeal rejected an argument that was advanced by a business to the effect that the part of the Health & Safety at Work Act which puts the burden on the employer to show that

it had not been reasonably practicable to have done more to keep an employee safe was in fact incompatible with the presumption of innocence which is contained in the Human Rights Act. The Court decided that health & safety justifiably involved imposition of absolute duties on employers and in these circumstances it did not follow that this burden of proof on the defendant was outside what could be regarded as reasonable. This judgment demonstrates that the Courts will continue to examine closely any defence to a charge which asserts that the company had done everything that is reasonably practicable. It is clear that it will be a very brave company that tries to advance the argument that it has done everything reasonably practicable.

Lastly, recent events locally have demonstrated that in fatal accidents the most serious of charges can be advanced and the most serious of sentences have been imposed. Better to get it right in the first place!



m o v i n g t o w a r d s a s a f e r w o r l d .

IN THIS ISSUE

THE COURTS HAVE BEEN BUSY

●
ASBESTOS

●
ELECTRICITY

●
IS YOUR WORKPLACE EQUIPMENT
UP TO SCRATCH?

ASBESTOS

The last newsletter gave warning of new rules involving a duty to manage asbestos. The Control of Asbestos at Work Regulations 2002 duly came into force on the 21st November 2003. This duty, described in some detail in the last bulletin, is contained in these new regulations. Although further time is allowed by the regulations for implementation (21st May 2004 is the all important date) there can be a lot of work to be carried out and that time can soon be eaten into.



It is worthwhile considering where asbestos is likely, particularly in older buildings. It can be found in lagging for pipes and boilers, various types of fire protection including insulating boards, ceiling tiles and asbestos cement products which typically can be corrugated sheets used for roofing works. Asbestos cement can also have been used in gutters and water tanks.

It is important as a first step to try and identify whether a building has any asbestos present or not. This may be easier said than done but it is only when you can show that there is strong evidence to suggest a building does not contain asbestos that you can make that assumption. Otherwise the regulations require the reverse presumption whereby if you are in any doubt you must work on the basis that asbestos is present. Those who are wishing to acquire properties should ensure they have sufficient information and knowledge about asbestos and in particular whether asbestos is within a building but has remained undisturbed. A Landlord will also have to ensure that, if he/she has to take on board repairs pursuant to the lease, in carrying out surveys and undertaking asbestos work the terms of the lease are complied with.

The number of damages claims arising from asbestos exposure continues to rise and it is likely that insurers will demand compliance with the regulations before granting indemnity on any claim that is made in the future. In an ever tightening insurance market it is important therefore that action takes place as quickly and as fully as possible.

ELECTRICITY

We all know the disruption that can be caused when electricity supply is cut off or interrupted in any way. It impacts on all areas of business. It is self evident that electricity can be hazardous and indeed it is believed that around 1000 accidents each year occur which involve electrical shock and which result in reports to the Enforcing Authorities. This suggests that the actual number of electrical incidents may be substantially higher. Electricity represents a risk to any business in that individuals can be injured or fires can occur because of faulty electrical installations or equipment.



The requirement to carry out a risk assessment applies just as much to electricity as other hazards within a workplace. Such hazards can be controlled by safe installations and then regular maintenance but also proper instruction so as to ensure that equipment is used in a suitable way and put in a suitable location. Carrying out checks is relatively straightforward when you consider that simply looking at an item of equipment or an installation can give a warning as to actual or potential defects. If anything untoward is spotted it goes without saying that the item of equipment in question should be taken out of use immediately and a system enforced whereby such equipment is not re-introduced into the work environment until proper repairs have been carried out by somebody who is competent to do so. Periodic testing of equipment in addition to full maintenance should ensure that electrical equipment presents a low risk to business and can be used safely.



IS YOUR WORKPLACE EQUIPMENT UP TO SCRATCH?

The Provision and Use of Work Equipment Regulations 1998 have substantially been in force since the 5th December that year. However the requirements governing mobile work equipment contained in Regulations 25 to 30 only came into force on the 5th December 2002 where old equipment was involved. Mobile equipment will include items such as forklift trucks and tractors and these are all now covered by all the regulations. This means that any employee who is carried by mobile work equipment should only be carried in this way if the equipment is suitable and if it incorporates features which reduce to the lowest level practicable risks to the employee's safety. In addition there are requirements as to the rolling over of mobile work equipment, including the overturning of forklift trucks. The Regulations and Approved Code of Practice are detailed but vital reading to ensure full compliance and safe use of such equipment.



INFORMATION

***If you have any queries on any aspect of Health & Safety law please contact:
Chris Platts at Hull on 01482 323239***

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.

We hope you have found this bulletin useful.

If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 1 May 2003

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