

HEALTH & SAFETY BULLETIN

HEALTH & SAFETY HOW DO YOU SHAPE UP?

This issue of the Health & Safety Bulletin looks at the health & safety responsibilities of an organisation and of an individual. Organisations who may well have systems in place still need to think through individual responsibilities and how systems are always dependent on individuals actually taking those steps which policies and risk assessments envisage. Nowadays it will not just be the organisation which will be scrutinised after an incident - the role of the individual is equally important as is evidenced by the guidance issued to prosecuting authorities which highlights the need to examine the part an individual may have played. None of this implies formal action against either organisations or individuals will inevitably follow an incident but if it does the attack may well be two pronged. Therefore in this issue we will look not just at the possible consequences for individuals as well as organisations but also consider practical steps which can be taken by both.



CORPORATE RESPONSIBILITY WHAT HEALTH & SAFETY STEPS SHOULD YOU BE TAKING?

We'll start at the very beginning of course - all organisations should be familiar with the basic requirements of the Health & Safety at Work Etc. Act 1974 and the Health & Safety Regulations which affect them. The Health & Safety at Work Act requires all organisations to keep all employees safe and apply similar standards of care to those who are not employed by them but who may become involved in their business in some way, for example contractors or visitors. Most organisations are required to have a safety policy which should set out details of how they will manage safety in their organisation, including specific responsibilities as well as general principles. All organisations are required to have proper management of health & safety, carry out risk assessments where appropriate and have appropriate health & safety expertise provided to them by what is referred to in the regulations as a "competent" person. Such help can be internal, as is indeed recommended in the official guidance or alternatively can be provided through external advisers.

So what can an organisation do to comply and protect itself? First and foremost, you should have a meaningful health & safety policy. Secondly give proper consideration to the health & safety risks which confront your business. Risk assessments are central to dealing with health & safety issues but it is equally important to have proper training and knowledge to enable individuals to carry out their

role. Promotion of a safety culture is crucial. To say and mean that nothing is so important that it cannot be done safely is fundamental. Those organisations which have such culture thrive not just in health & safety terms but in general terms. An organisation needs policies and procedures: these should be adhered to and proper records of actions and meetings need to be made and kept.

Taking these basic steps will provide the important platform for your business.

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CORPORATE FAILINGS THE CONSEQUENCES

If an accident results from breaches of health & safety law there is every possibility an organisation will be prosecuted. At the very least the opportunity for enforcement against you has been created.

The Courts have consistently made it plain that health & safety laws apply to all organisations whatever their size and status.

The penalties handed down for the most part involve fines but the authorities also have other enforcement ammunition which they can use to compel organisations to improve unsafe working practices or in more serious cases to stop work altogether. Fines vary and are very much dependent on the circumstances of the case. The Courts, however, have insisted that a fine must hit home and have indicated there is no reason in principle why, for example, an organisation should not be fined an amount equivalent to a significant proportion of its profits, perhaps even a full year's profits. One very recent case involved a company who were fined more than their last pre tax profits figure. Such an outcome may be very difficult to get across positively to an organisation's stakeholders!

Some huge fines have been handed down in recent cases. If a case reaches the Crown Court then the Court has unlimited powers in respect of the punishment. In addition the guilty organisation has to pay the Prosecution costs and in many cases these can be substantial.

INDIVIDUAL FAILINGS THE CONSEQUENCES

Individuals can be caught up in health & safety prosecutions as well. This is not as fanciful as you might think. The number of prosecutions involving individuals is increasing. The law permits a prosecution of an individual, typically a director or senior manager, when it is adjudged they have had a part to play in an accident. This can arise in any number of ways but typically is where, perhaps, a blind eye has been turned to unsafe practices or an individual has themselves failed to comply with health & safety law. The consequences for an individual can be devastating both in terms of possible financial penalties but also the stress and upheaval that inevitably accompanies such a prosecution.

If an individual is found guilty the likely punishment will be a fine.

The emphasis is perhaps rather different if you have to pay the fine out of your own pocket! This is where insurance can play a vital part and this is considered elsewhere in the bulletin. If the individual is a director the courts have an additional weapon in their armoury in that they can disqualify a director for up to 15 years. Now that is serious territory! The Government have stated that they intend that Courts should use this power more frequently than presently. And you will have to pay the prosecution costs!

INDIVIDUAL RESPONSIBILITY WHAT HEALTH & SAFETY STEPS YOU SHOULD BE TAKING

Of course it goes without saying that all individuals should help themselves and their colleagues when it comes to health & safety. Indeed this moral duty is reflected in health & safety law. There are a number of practical steps which can be taken. At a basic level all individuals should ensure that they act in such a way as to do the job safely, and report areas where work practices may be lacking. Individuals should also ensure that any health & safety duties delegated to them are reflected in appropriate training and expertise. It is vitally important that job descriptions match the reality of what an individual actually does, and is capable of doing, in practice. Accepting responsibilities will mean an individual is accountable so no individual should accept tasks or duties which are outside their knowledge or capability. If things go wrong individuals need to be able to rely on insurance provided for directors and senior managers. If a company has agreed to meet the legal fees of a director in respect of a health & safety prosecution, if such defence is unsuccessful and the director is convicted those monies have to be repaid. An individual should have knowledge of what cover and protection is actually provided. This position needs to be checked on an individual basis.

Last but not least choose a Lawyer who is not just knowledgeable about health & safety but knows his or her way round the Criminal Procedure Rules. Your reputation, and your guilt or otherwise, may hinge on such choice.

RECOGNITION FOR HEALTH & SAFETY GROUP

A survey of the country's leading law practices has once again acknowledged Rollits as one of the top law firms in the region. The 2006 edition of 'The UK Legal 500' recommends the firm for its work in 17 different areas of law. Rollits featured strongly in its core practice areas and was once again recognised as one of the top firms for health & safety in Yorkshire and the Humber. In fact Rollits is the only practice outside Leeds and Sheffield to be recommended for its work in the area of health & safety with the commentary "Rollits provides a cradle-to-grave health and safety service. In 2005 it continued to advise a construction company in a major HSE investigation, and has also been involved in high-profile inquests and asbestos-related litigation."

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
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***The law is stated as at 14 September 2006
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