

Legal Update

Corporate Manslaughter: Sentencing guidelines finally published

The long awaited sentencing guidelines for corporate manslaughter and health and safety offences involving a fatality have been issued.



Gone are the suggestions that fines should be linked to a percentage of gross annual turnover (proposed at up to 10%) and in its place the courts are advised that:

- For corporate manslaughter the appropriate fine will seldom be less than £500,000 and may be measured in millions of pounds.
- The appropriate fine will seldom be less than £100,000 for Health and Safety offences involving fatality and may be measured in hundreds of thousands of pounds or more.
- Publicity Orders should ordinarily be imposed in a case of corporate manslaughter.

The guidelines emphasise that the aim of sentencing for these offences is punishment and deterrence.

So what will this mean in practice?

Over the last few years fines for health and safety offences have certainly increased. A few years ago 'exceptional fines' (over £100k) were rare. Now this is simply not the case. Even without these guidelines the courts are treating health and safety offences with increasing seriousness; the new guidelines simply formalise this.

As a practitioner, the axing of the 'percentage test' is certainly a welcome move. Many businesses will have high turnover and low profit and whilst the guidelines re-emphasise that a wealthy defendant should pay a larger fine than a poor one, it should generally be a fine that the defendant is capable of paying. If the percentage test had been adopted, quite often a defendant would have been left unable to pay the penalty imposed and thus would go out of business. The guidelines remark that in some bad circumstances this may be an acceptable consequence, but it would certainly not be in many instances due to the effect on employment of the innocent.

Publicity Orders for offences of corporate manslaughter are encouraged. In practice, we can see that these will be particularly useful to the courts when dealing with public bodies such as local authorities. The guidelines emphasise that "If a very substantial penalty will inhibit the proper performance by a statutory body of a public function that it has been set to perform, that is not something to be disregarded"; meaning that the penalties for public bodies are likely to be less than that of corporate defendants. However, where a court is unable to impose a substantial financial penalty for this reason, a Publicity Order would certainly have a punitive (as well as deterrent) effect. The reputation of public bodies is as important as ever; particularly in the tendering process or budget allocation. Bad publicity can have a significant impact on public bodies as much as private corporations. We wait to see how the courts will use this power in practice but it is certainly likely to depend on the size and nature of the particular defendant.

It should be emphasised that these are simply guidelines and, whilst the courts are encouraged to follow them, the true impact of the Corporate Manslaughter Act will not be felt until the first cases are dealt with. We wait with baited breath...

One thing is for sure - a company disregards health and safety at its peril!

"Tell employees about health and safety and they'll know about it. Involve them and they'll understand."

This is the latest campaign message from the HSE and from our experience it makes great sense.

The HSE are clear that workplaces where employees play an active part in health and safety often have lower accident rates. They suggest talking, listening and co-operating in order to get the best from your workforce, thereby encouraging closer working relationships, as well as a safer workplace.

Partnership between those 'on the ground' and 'in the board room'; whether through committees representing the full cross-section of the workforce, risk assessments being completed in conjunction with those doing the jobs (a necessity) or the popular concept of all employees 'owning' health and safety, is likely to result in more productive, motivated and safety conscious employees.

Making health and safety a top priority in the workplace is more important than, given the new sentencing guidelines for corporate manslaughter outlined above and the increasing seriousness with which courts are treating health and safety offences. Why not take this opportunity to consider greater employee participation in the health and safety systems in your workplace? Gone are the days when health and safety paperwork can be condemned to the dusty top shelf of the Managing Directors' office; a good practical health and safety system should be evident from first walking through the doors of a workplace.

This is an area we will be exploring in our upcoming health and safety seminar "An accident waiting to happen"; which will focus on considering the importance of employee behaviour in your health and safety systems as well as understanding how the HSE investigate (see details below).

For further advice on this, or any other health and safety issue please contact Laura Thomas in our Corporate Criminal Defence Team on 01473 299173 or laura-thomas@birketts.co.uk.

Upcoming Seminars

An accident waiting to happen

Wherstead Park, Ipswich
Wednesday 31 March 2010
08:00 to 10:30 am

For more information on this event, or to book your place, please visit:

http://www.birketts.co.uk/news-and-seminars/view_seminar.aspx?ID=222

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HSE Myth of the Month

Myth

There's nothing you can do about slips and trips and they don't really hurt anyone anyway

The reality

Most slips and trips are preventable and many happen when spills aren't cleared up or clutter tidied away. Last year, there were four fatalities and more than 10 000 employees were seriously injured when they had a slip or trip at work. This results in broken bones and time off work, costing the economy around £800 million per year. Simple mistakes can shatter lives ... your actions could help stop them from happening.

Don't take things for granted, cut corners or wait for someone else to do it. Clear up!

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