

Welcome to the latest edition of our newsletter for all your health and safety updates.

## PROPOSED DATE SET FOR CORPORATE MANSLAUGHTER ACT

The date of the 21<sup>st</sup> July 2007 is currently set for the enactment of the Corporate Manslaughter Act.

The Government published a drafted Corporate Manslaughter Bill in March 2005, the revised bill which is set to come out in July 2007 aims to:

- Make it easier to prosecute companies and other organisations where gross negligence leads to death.
- Replace the need to find a "directing mind" (an individual who acted as the directing or controlling mind of the defendant organisation). This was a key difficulty with prosecutions in the past as the Crown would have to identify and prosecute an individual within the company making it virtually impossible to convict large organisations.
- Focus on the overall management of activities within the organisation.

- Lift Crown immunity to prosecution for the first time, ensuring that Crown bodies will be accountable in the same way as private businesses when undertaking similar functions.

In the revised draft bill the most interesting and dangerous parts for organisations are in clause 8 which states that "juries should consider whether a corporate culture existed in the organisation that encouraged, tolerated or led to a management failure".

Therefore organisations which do not have suitable and sufficient health and safety management systems in place are more likely to face criminal prosecution.

### WHAT ARE THE PENALTIES?

Currently the maximum penalty for a corporate manslaughter conviction will be an unlimited fine. There are no sentences of imprisonment, although this could change in the future and



a prison sentence can still be imposed for failure under current health and safety law.

Orders can be imposed on organisations to remedy the breaches which led to the death of a person, should the company fail to act on these then they would be punishable under a further fine.

There is no way of knowing how effective prosecutions will be under the 'Corporate Manslaughter Act' until the first case goes to court.

Organisations have previously been charged with corporate manslaughter and the Crown Prosecution Service continues to attempt corporate manslaughter prosecutions.

### EDITORIAL COMMENT

#### GET YOUR SAFETY MANAGEMENT SYSTEMS IN PLACE

Companies and their employees must do everything reasonably practicable to ensure the health, safety and welfare of everyone affected by their workplace activities. In essence this means ensuring that appropriate safety

management systems are set up; followed, monitored and audited and that staff are provided with suitable information, instruction, training and supervision.

All other documentation required should be carried out including risk assessments, method statements and permit to work forms. Health and Safety

should be a boardroom issue and the HSE recommends the appointment of a health and safety director at board level.

Any company who can show that suitable and sufficient health and safety management systems are in place will have nothing to worry about when this bill is introduced. Please contact the office for more information.



#### STORY 1

Smoking Ban Set for 1<sup>st</sup> July 2007



#### STORY 2

Changes To The Use of Mobile Phones In Vehicles



#### STORY 3

Company Director Sent To Prison For 15 Months

# SMOKING BAN SET FOR 1<sup>ST</sup> JULY 2007



## Smoking within workplaces and public places will be banned from 1<sup>st</sup> July 2007.

Companies need to act now on introducing smoking policies within their own workplaces.

The ban on smoking is included as part of the Health Act 2006 which effectively bans smoking in all enclosed workplaces and public places.

The ban also includes smoking within workplace vehicles, although smoking is permitted where the vehicle is used by one person only.

The smoke free provisions of the Health Act cover tobacco within cigarettes, pipes, cigars and herbal cigarettes. The use of all tobacco is prohibited when lit even if the person is not smoking at the time.

There are some exemptions under the law which include:

- Residential homes.
- Long term residential mental health units.
- Prisons.
- Hospices.

This is because such workplaces are also people's homes. The exemptions relate to the residents and their visitors. Employees will not be able to

smoke on the premises.

## WHAT SHOULD YOU DO TO INTRODUCE A SMOKING BAN?

The following are recommended in order to introduce a smoking ban within the workplace:

- Liaise with all employees with regards to the changes in the law on smoking at work.
- Following consultation with employees, draft a smoke-free policy this should include information on:
  - The rights of non-smokers to breathe air which is free from tobacco smoke.
  - Compliance with all legislation relating to smoking in the workplace.
  - Time allowed for workers who currently smoke indoors to go out.
  - Support to be provided to smokers who wish to stop smoking by the company.
  - What happens to employees who fail to comply with the policy?
  - Procedures for monitoring the effectiveness of the policy and for reviewing it.
  - Procedures for resolving complaints and disputes.

Employees should all be trained in this procedure in order to avoid any confusion.

In addition to introducing a smoking policy the following will no longer be permitted within the internal areas of a workplace.

- Smoking rooms – these will not be permitted under the new law.

Organisations need to provide no-smoking signs on the entrances to their premises and around the premises where smoking has previously been permitted.

There is no ban on smoking to the external areas of buildings under the current Health Act, as this affects the health of the individual who is smoking and not non-smokers.

Organisations who insist on banning smoking to the external areas of their premises would not be covered by the Act at the present time.

For more information on implementing a ban on smoking within the workplace or for assistance in producing a written smoking policy please contact the office on 01604 654111.

## CHANGES TO THE USE OF MOBILE PHONES IN VEHICLES



**From 27<sup>th</sup> February 2007 any drivers caught holding a mobile telephone whilst driving will face additional penalties.**

Any person caught holding a mobile phone from this date will face the following penalties:

- £60.00 fine.
- 3 points on their license.
- £1,000 fine if the case goes to court.
- £2,500 fine for drivers of vans, lorries, buses (if the case goes to court).

The additional penalties have been introduced in order to

reduce the number of road accidents related to the use of mobile telephones whilst driving – it is proven that drivers using mobile telephones whilst driving are four times more likely to have an accident than those who don't.

Employers should ensure that employees do not use their telephones whilst driving and procedures should be in place to state that all calls must remain unanswered whilst driving.

# RECENT CASE LAW IN BRIEF

## Manslaughter boss is jailed following the death of a 22 year old employee

**Company boss Michael Shaw was jailed for 15 months and fined a total of £40,000 following the death of a 22 year old employee.**



David Bail was fatally injured at the Change of Style Limited factory in May 2003 whilst operating a stone-cutting machine.

Mr Bail was using the 'Bavelloni' stone cutter and a fixed part of the unit when his head was crushed between the machining head of the stone cutter. The court heard in the original trial how Mr. Bail had been investigating a problem with the machine when the incident happened.

A light beam system that would have tripped if anyone came too close to it had been deactivated and a hinged guard to prevent access had also been left open, rendering it ineffective.

The prosecution argued that Michael Shaw was the "directing mind" of the company and a hands-on boss who knew what was going on, on the factory floor.

During the trial other employees also alleged that it was all about not losing production time and that is why the light beam had been deactivated because it took time to turn the machine on once it had tripped.

Mr. Shaw argued that "he did not know about the shortcuts being taken" but it was argued that he must have known, as it was obvious to see that guards were not in place.

Michael Shaw and the company pleaded 'not guilty' to all charges. The company was found guilty and fined under the following:

- S2 (1) Health and Safety at Work Act 1974 for failing to safeguard employees - £10,000.
- Regulation 3 of the Management of Health and Safety at Work 1999 by failing to carry out a health and safety risk assessment - £10,000.

Michael Shaw was found guilty and fined and imprisoned under the following:

- Two charges under S2 (1) Health and Safety at Work Act 1974 for failing to safeguard employees relating to inadequate risk assessments.
- Three charges under S37 of the HSWA 1974 relating to failures to ensure a safe system of work, suitable risk assessments and lack of provision of information, instruction and training.

This case highlights the seriousness to individual directors that they need to take account of their responsibilities for ensuring that appropriate steps are taken to safeguard the health, safety and welfare of their employees.

carried out and actions taken on any findings.

- That safe systems of work were drafted including permit to work forms
- The provision of information to employees.

## Q & A: IN THIS EDITION WE HAVE A LOOK AT THE CHANGES TO THE CDM REGULATIONS

### AS THE 'CLIENT', WILL THE CHANGES IN THE CDM REGULATIONS 2007 AFFECT OUR RESPONSIBILITIES?

Yes there is a new definition of the term 'Client'. The Client will now be required to provide pre-construction information which will need to include:

- Existing information known to the client.
- Information needed by designers and contractors for their work.
- Other information 'which is reasonably obtainable'.
- Information concerning the proposed use of the structure as a workplace and
- 'The minimum amount of time before the construction phase which will be allowed to the contractors for their planning and preparation work.

There is also a duty on the client to ensure that there is an allocation of sufficient time and other resources for safe construction work and the design to take place.

### WHAT OTHER CHANGES ARE THERE TO THE CDM REGULATIONS?

There is only one structural change to the regulations. There are enhanced duties to be fulfilled by the client, designers, the principal contractor and other contractors but the role of the 'planning supervisor' will disappear and a new role and duties of a CDM co-ordinator will be introduced. Such duties may include ensuring that designers have complied with their duties with regards to eliminating health and safety hazards. For further information on the changes to the CDM regulations please contact the office on 01604 654 111.

## EDITORIAL COMMENT

The Director in the above case could have avoided a prison sentence and fines by ensuring:

- Health and safety policies and procedure procedures were in place and trained out to staff.
- That risk assessments were

# POSITIVE STEPS UPDATES

## RECRUITMENT

Positive Steps are pleased to announce that we have recruited a high calibre consultant.

## HEALTH & SAFETY CONSULTANT

Carina Kennedy joined Positive Steps in October 2006. Carina has previously worked for the HSE and brings with her a great deal of enforcement experience. She has also worked as a Health and Safety Advisor at a college for 16-19 year old students.

Carina is a graduate member of IOSH and is working towards Chartered Membership.

Carina will be responsible for undertaking our training services, risk assessments and disabled access audits. We believe Carina will be a value asset to our clients and to the success of Positive Steps.

## DISABILITY DISCRIMINATION ACT UPDATES



The DDA 2005 addressed the limitations of current legislation by extending disabled peoples rights in respect of premises that are let or to be let as well as common hold premises.

From 4<sup>th</sup> December 2006 landlords and managers of let premises and premises that are to let will be required to make

reasonable adjustments for disabled persons.

Under the new duties, provided certain conditions are met (i.e. that a request has been made) landlords and managers of premises which are let must make 'reasonable adjustments' and failure to do so will be unlawful unless it can be justified under the Act.

Landlords/managers might need to:

- Alter their policies, practices and procedures.
- Provide auxiliary aids or services (i.e. provide information in large print, use Typetalk services etc).
- Change the terms of the letting (but only in respect of premises which have already been let)

From the 4<sup>th</sup> December landlords and managers of let residential properties will not be able to refuse consent unreasonably if a tenant seeks permission to make a disability-related improvement at the tenant's expense.

If a tenant wishes to widen a door or install an accessible shower the landlord will not be able to refuse consent unless the landlord can prove that it would damage the structural integrity of the building. The landlord can also request that improvements are carried out to a certain standard and that any costs incurred are passed onto the tenant.

For more information on our disability access services please contact the office.

## EFFECTIVE HEALTH AND SAFETY MANAGEMENT STARTS WITH A POSITIVE STEP...

Positive Steps was founded on the basis that health and safety should help, not hinder the growth of a business. By understanding your company's aims and objectives we can identify workable solutions to meet your everyday and long term health and safety goals.

Our service based approach will enable your company to make the welfare of employees, contractors and clients a core part of your business aspirations.

We offer a comprehensive range of safety management services some of which are detailed below:

- **Access to Chartered Health & Safety Practitioners**
- **Health and Safety Risk Assessments**
- **Fire Safety Risk Assessments**
- **Disabled Access Audits**
- **Company Health and Safety Policy**
- **Display Screen Equipment Assessments**
- **Health & Safety Audits**
- **Health and Safety Training, including basic health and safety, fire safety awareness and fire warden training, disability awareness training, manual handling and DSE assessors training.**
- **Method statements**
- **Contractors Approval Scheme**

For further information on any of our services, please call **01604 654111** or e-mail **office@positive-steps.net**, one of our consultants will be happy to assist.



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