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RESPONSIBILITIES OF MEMBERS OF THE BOARD AND DIRECTORS

New Legislation

The Corporate Manslaughter and Corporate Homicide Act 2007 comes into force on 6th April 2008.

Companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.

The Ministry of Justice, not HSE, leads on this

Act. Prosecutions under this Act will be of the body corporate, but the liability of directors, board members and other individuals under health and safety law or general criminal law remain unaffected. The corporate body and individuals can still be prosecuted for separate health and safety offences.

With some exemptions, the Act removes the Crown immunity that applies to the existing common law corporate manslaughter offence.

Existing Situation

● A COMPANY DIRECTOR

received a 12 month custodial sentence for manslaughter after a fatal injury to an employee. Investigation found that there was no safe system of work and that instruction, training and supervision were inadequate. The director had not followed the advice of his health and safety adviser.

● A MANAGING DIRECTOR was

sentenced to 12 months imprisonment for manslaughter after the death of an employee. The defect in machinery guarding which led to the fatal accident was said to be something of which the director was not aware; the view of the judge was that he should have known about it. An area manager also received a custodial sentence. The company was also fined and made to pay costs.

● A COMPANY AND ITS

OFFICERS were fined a total of £245,000 with costs in addition of £75,500. The directors were also disqualified from holding any company directorship for two years.

If a health and safety offence is committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the organisation, then that person (as well as the organisation) can be prosecuted.

Recent case law confirms that the directors cannot avoid a charge of neglect by arranging to be left ignorant of circumstances which would trigger their obligation to address health and safety breaches.

Those found guilty are liable for fines, imprisonment and in some cases disqualification as directors.

Individual directors are also potentially liable for other offences, such as the common law offence of gross negligence

manslaughter. This offence is punishable by a maximum of life imprisonment.

Comment

The summary of the consequences of failure to manage health and safety given above is worth your awareness. However, we know that the vast majority of organisations in our sector are genuinely concerned to do the right thing, and to protect staff, service users and others from harm to the fullest extent of their powers.

It isn't easy to be categorical about what the Board or the senior team should do in practice. We welcome the publication of HSE's new leaflet "Leading Health and Safety at Work", available to download at www.hse.gov.uk/leadership, which offers some useful advice. We also hope to give organisations the opportunity to share good practice in this area at our forthcoming seminar – find out what other Boards do.

CONTINUED OVERLEAF

Responsibilities of Members of the Board and Directors continued

To help you assess whether you should be worried about those frightening penalties, we reproduce below the checklist from “Leading Health and Safety at Work” this checklist is designed to see how well you are leading on health and safety.

Leading Health and Safety at Work

- How do you demonstrate the board’s commitment to health and safety?
- What do you do to ensure appropriate board-level review of health and safety?
- What have you done to ensure your organisation, at all levels including the board, receives competent health and safety advice?
- How are you ensuring all staff - including the board - are sufficiently trained and competent in their health and safety responsibilities?
- How confident are you that your workforce, particularly safety representatives, are consulted properly on health and safety matters, and that their concerns are reaching the appropriate level including, as necessary, the board?
- What systems are in place to ensure your organisation’s risks are assessed, and that sensible control measures are established and maintained?
- How well do you know what is happening on the ground, and what audits or assessments are undertaken to inform you about what your organisation and contractors actually do?
- What information does the board receive regularly about health and safety, eg performance data and reports on injuries and work-related ill health?
- What targets have you set to improve health and safety and do you benchmark your performance against others in your sector or beyond?
- Where changes in working arrangements have significant implications for health and safety, how are these brought to the attention of the board?

SAFETY ALERT

Most housing providers will already be keenly aware of the recent death of a baby by scalding, after a defect in the domestic hot water system caused scalding water to pour onto the cot where she slept.

This horrifying incident is not the first of its kind, although it has received more public attention than previous incidents. Although serious incidents are rare, the situation in which these incidents occur is not.

Systems at risk are domestic hot water systems including a fixed electric immersion heater in conjunction with a plastic cold water storage cistern in the roof space.

Failure of the thermostat on the immersion heater allows the water in the cylinder to boil and to percolate back into the cold water storage. If a plastic tank then contains boiling water it may fail, releasing its contents. If the tank is above a bedroom where people are sleeping, serious or fatal consequences may follow, as in the case mentioned above.

The technical teams within housing providers will be aware of this risk, and will probably already be working on a programme to identify potentially vulnerable systems and to fit safety cut out features, independent of the immersion heater thermostat.

It is also important, though, that housing workers and customer services teams are aware of this risk, and can communicate it to tenants as appropriate.

If a tenant reports:

- Excessive noise or bubbling from their hot water cylinder or pipes
- Excessive heat from the hot water cylinder
- Excessively hot water from hot outlets
- Hot or warm water from cold outlets
- Hot water when flushing the toilet
- Steam or moisture in the roof space

They should be told to immediately switch off the immersion heater. A plumber should attend the dwelling as an emergency.

Fire Safety & Your Responsibilities

Many of you will be aware by now of the Regulatory Reform (Fire Safety) Order 2005 that came into force in October 2006.

The order replaced or consolidated many existing pieces of legislation, which have now been revoked.

The Order places responsibility for fire safety onto the organisation. An important element of this is the ability to review and manage premises fire safety. This element is normally proven by completing a suitable and sufficient fire risk assessment. During the last year most organisations will have undertaken this task either internally or with competent outside assistance. The results of the assessment will usually have to be recorded and any significant findings must be reported to a ‘responsible person’. It is the responsible person who must ensure that fire precautions are ‘reasonable and practicable’.

So who is the ‘responsible person’? In the workplace, this is the employer and any other person who may have control of the premises such as a manager or owner. In premises where local management is in place, the person in control of the premises becomes the responsible person. A premises with multiple occupancy, such as a shared office complex, will have multiple responsible people. In practice within a housing association or charitable organisation this person is likely to be the chief executive.

In addition to the risk assessment element outlined above the order places further duties the responsible person must comply with:

- You must appoint one or more competent persons to carry out the preventative and protective measures required. A competent person is someone with enough training and experience or knowledge to be able to implement the measures properly. Note that the ‘responsible person’ and the ‘competent person’ can be one and the same.
- You must provide your employees with clear and relevant information on the risks to them identified by the fire risk assessment, about the measures you have taken to prevent fires, and how these measures will protect them if fire breaks out.
- You must consult with employees (or elected representatives) about nominating people to carry out particular roles in connection with fire safety and about proposals for improving fire safety precautions.
- You must inform non-employees, such as residents, temporary and contract workers, of the relevant risks to them, and provide information about the nominated competent person and fire arrangements for the premises
- You must co-operate and co-ordinate with other responsible persons who also have premises in the building, inform them of any significant risks you find and how you will seek to reduce/control those risks.
- You must provide the employer and employees of any outside organisation who is working in your premises (e.g an agency providing temporary staff) with relevant information and appropriate protective measures and instructions.

CONTINUED OVERLEAF

Fire Safety & Your Responsibilities continued

- You must consider the presence of any dangerous substances and the risk this presents from fire
- You must establish a suitable means of contacting the emergency services and provide them with any relevant information regarding dangerous substances and other relevant information on the ability of people to leave the premises safely.
- You must provide appropriate information, instruction and training to your employees, during their normal

working hours, about the fire precautions.

- You must ensure that the premises and any equipment provided in connection with fire fighting, fire detection and warning, or emergency routes and exits are covered by a suitable system of maintenance and are maintained by a competent person in an efficient state, in efficient working order and in good repair.

If you are not the employer but have Control over the premises then you are also responsible for ensuring the requirements of the Order are complied with in those parts over which you have control.

WHO SAYS SAFETY IS NO FUN?

I have to admit that I get a lot of laughs out of my job one way and another. To prove the point, I thought I'd share some of my favourite risk assessments, gathered over the years.

My first contender is reproduced below. I was viewing risk assessments on a construction site where groundworks were in progress. If you have a funny risk assessment to share, please send it in to us.

Hazard	H	L	People	Controls	Risk	Recommended Improvements	Final Risk
Earth moving machinery	Fatal injury – crushed to death	High	Site workers	Wear safety boots	Low	None	Very Low



...but his feet are still o.k!

Next newsletter – find out about the fatal risk associated with swirly patterns on the office carpet! All risk assessments strictly anonymous.

SAFETY ALERT

HSE has issued a warning to “Hospitals and other Care Providers” that they have a duty to ensure that vulnerable people are not put at risk of falling from open windows.

This warning follows the prosecution of Stockport NHS Foundation Trust after a patient was injured when he climbed out of a window.

It is necessary to assess the risk of someone climbing out of or falling from an open window. The risk assessment of falls from windows is probably most sensibly conducted as part of a wider assessment of the risks associated with the building and its use.

Points to consider include:

- Vulnerability of building users, including mental health issues, alcohol and drug use, age and emotional considerations
- Sill height
- Height of window from ground and surface below
- Extent of opening of window
- Window restricters, restraints or locks and particularly whether these can be easily overcome

There can be conflict between the need to restrict the opening of the window and its use as an emergency escape, provision for window cleaning from the inside, and, of course, ventilation needs.

Health and Safety Advice for the Social Housing and Voluntary Sectors

SafetyWise Ltd is a specialist health and safety consultancy working with the social housing and voluntary sectors. We have been operating since 1999 and cover the UK.

Our approach is based on a good knowledge and understanding of our sectors, and results from much experience of what is most effective in these sectors.

Our newsletter is produced every two months, and focuses on legal changes and developments in good practice relevant for social housing and voluntary organisations. We also provide an email update service, which you can sign up for on our website. There is no charge for these services.

For our clients, we also offer telephone and email advice and support, without additional charge.

Our expertise is in finding the most appropriate route to compliance with the health and safety requirements for the individual organisation. This means that we will help to build good practice in health and safety into the existing management practices of the organisation. We aim for excellence in health and safety practice, integrated into the rest of the management systems.

We therefore do not use any template or generic documentation. When we help an organisation to develop systems or policies, the systems will be those of the organisation, not imposed from outside.

For some clients, we will have close ongoing involvement, and work with many individuals in the organisation on different aspects. For other clients with in house competence, our involvement may be limited to audit and review. We charge a simple day rate which is always the same.

TYPICAL SERVICES

- Health and safety audit
- Systems and policies development
- Risk assessment support and mentoring
- Training
- Specialist risk assessment including fire
- Planning supervision and construction services
- Contractor vetting and monitoring
- Monitoring and review

We are aiming to provide a one stop shop for our clients' health and safety requirements, and will therefore be offering fire, first aid, food safety, personal safety and manual handling training during the coming year, as well as developing our construction services to support responsive repairs, planned maintenance and development activities.



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Newsletter

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