

Legal Update

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The new Health and Safety and Corporate Manslaughter Sentencing Guidelines were introduced four months ago and companies are now facing the possibility of multi-million pound fines for health and safety breaches, even in cases not involving fatalities.

Consequently, companies are advised to give even greater priority to risk and crisis management in order to minimise liability. Systems and processes with suitable and sufficient risk assessments will demonstrate to the Court that the company has done everything that is reasonably practicable.

David outlined the typical offences and fines that were now being imposed, in contrast to those awarded prior to the new Guidelines (see presentation slides). As an example, for a health and safety offence which resulted in death, the recommended starting point was £100,000 pre-Guidelines. A medium sized company (with a turnover between £20-£50 million) would now be looking at a starting point of £4 million, depending on the level of culpability.

In the last four months, £10 million of fines have been imposed, with a 'multiplier effect' when sanctioning major corporations. This money goes direct to the Treasury.

The Courts are now looking at the risk of harm and not just actual harm. There have been significant increases in the number and severity of fines for incidents that caused little or no harm to workers.

A substantial investment in Health and Safety by companies could be seen as money well spent if it helps to avoid that appearance in Court, the huge fines and the reputational costs. The level of fines could now put companies out of business, with the consequent loss of jobs. There is judicial recognition that some companies will deserve to go out of business and this will be reflected in the level of the fine. However, judges will mostly wish to hurt the directors and shareholders rather than the employees.

Crucially, fines are being based upon a company's turnover and not profit. The consequences for large corporations, with multiple sites, could therefore be severe. It should be noted that the Judge/Court has the discretion to impose much larger fines than those indicated in the Guidelines.

David advised that it typically takes about three years for a case to come to Court. The heavy fines recently imposed have applied to cases which have been tried since the Guidelines were introduced, although the offences were committed before their introduction.

A member asked what would happen if there were any other offences committed after the one being investigated. David confirmed that the HSE would look very carefully when coming out to site after an incident and any other breaches could result in an Improvement or Prohibition Notice, all of which would harm the company's defence when the case came to Court.

A member asked whether the new Guidelines would apply to foreign companies based within the UK. David confirmed that they would. The case would be tried under UK law and the fine could reflect the resources of the whole operation eg a global turnover of £500 million could be used when calculating the fine.

How Should Companies Prepare and Protect Themselves

Undertake specific risk assessments and ensure they are fully and correctly completed.

Have a robust Crisis Management plan in place for dealing with a fatality - to include a method for informing employees and PR capability to handle the media immediately following the incident.

Have accountability at board level for the risk management system.

Produce financial plans which consider the level of reserve and EL/PL insurance premium implications.

Contain risk. Larger group companies may need to consider operational independence to limit the turnover that could be referred to when sentencing.

Final Comment

The most important priority is, of course, to protect the people.