

EMPLOYMENT LAW BULLETIN 16 September 2016

Health and safety: business development briefing

This business development briefing sets out the potential implications for a business that a conviction for a breach of health and safety legislation can have on its operations.

What impact can a prosecution for a safety-related breach have on a business?

A conviction for a safety-related breach can have an immense impact on a business and the individuals within it. It is a criminal offence to breach the obligations contained within health and safety legislation. If a safety breach within a workplace causes a death, then those responsible may also face prosecution for gross negligence manslaughter (in the case of individuals) or corporate manslaughter (where the defendant is a business).

Fines

Fines imposed following a conviction for a health and safety breach range from a £50 to £10 million. Coupled with the need to pay not only the business' own legal costs but also the prosecutions', non-compliance with health and safety law is a costly exercise.

Reputational damage

Increasingly, companies look carefully at the safety record of potential business partners and requests for details of any safety convictions have become standard on tender questionnaires. The damage caused to a business' reputation by a criminal conviction could last longer than the initial financial outlay.

Prosecution of individuals

When investigating safety breaches, inspectors routinely consider the role of individuals in workplace accidents. Although the level of fines imposed against individuals convicted may not be as large as a fine imposed on a business, the potential impact on the individual can be severe.

Individuals can be imprisoned for breaches of health and safety law, with sentences of up to six months in the Magistrates' Courts and up to two years in the Crown Courts. Even individuals that avoid a custodial sentence will have to live with the stigma of a criminal conviction, which could restrict their ability to travel abroad or work in certain industry sectors.

Who can be prosecuted for safety offences?

There are a number of groups that can face prosecution for breaching health and safety requirements, these include:

- Employers (including limited companies, unincorporated associations, partnerships or individuals).
- The self-employed.
- Owners of premises used as a workplace.
- Individual employees.

- Designers, manufacturers, importers or suppliers of work equipment.

What factors will the HSE consider when deciding whether to prosecute safety breaches?

The HSE has published a number of documents that set out how it will investigate and prosecute the health and safety breaches for which it is responsible. The documents highlight the factors that the HSE considers will favour a prosecution, for example, where:

- Death was a result of a breach of legislation.
- There has been a reckless disregard of health and safety requirements.
- Inspectors have been intentionally obstructed in the course of their duties.
- False information has been supplied, or there was an intent to deceive, in relation to a matter which gives rise to a significant risk.

How can a business influence the decision to prosecute?

In some less serious cases (for example, where it is a purely technical offence), it may be possible to influence the enforcing authority's decision to prosecute. This could be achieved in a number of ways, for example:

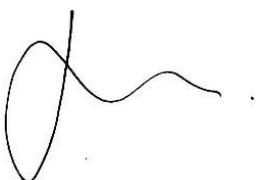
- By co-operating with the regulator's investigation.
- If appropriate, by accepting an invitation to send a representative of the business to an interview under caution or by providing written answers to questions under caution.

Insurance and criminal liability

- Check whether the business' existing insurance policy includes legal expenses cover in the event of an investigation and a criminal prosecution being brought against the business for a safety-related breach.
- Many insurance companies have panels of preferred lawyers to whom they refer their insured for legal advice. Nevertheless, a business is entitled to be represented by the lawyer of its own choice.
- Most policies cover defence legal costs. However, if several members of staff are also prosecuted, the cover may not extend to all of them. Check whether the existing policy includes protection for senior managers and directors.
- Although defence costs may be covered by such policies, any fine imposed on the business following conviction certainly will not be. Similarly, where the court orders the defendant to pay the prosecution's reasonable costs in bringing the case, these costs are rarely covered by business insurance.

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Kind regards



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