

CORPORATE MANSLAUGHTER

January 2008



Introduction

The Corporate Manslaughter and Corporate Homicide Act 2007 will create a new criminal offence in England, Wales and Northern Ireland of 'corporate manslaughter' and, in Scotland, of 'corporate homicide'. The Act covers companies and not for profit bodies irrespective of their size.

Under the new Act, companies will be convicted of corporate manslaughter if the senior management of the organisation is in gross breach of their health & safety duties, which as a result causes death to an employee, client or member of the public. The prosecution is no longer required to find a single person who is responsible for a company's failings.

What is a gross breach?

A gross breach can be either your company's action or lack of action, which falls below what can be reasonably expected in the circumstances. Many factors will be taken in to consideration when deciding upon what a gross breach is.

The courts will check whether or not your company or organisation has fulfilled its health & safety obligations, by analysing what is known as the 'corporate culture', which consists of the attitudes, policies, systems or accepted practices within your organisation.

Who are considered as senior management?

Generally 'senior management' is defined as being the individuals who play significant roles in the making of decisions about the whole or a substantial part of your organisation's activities. It is crucial that you identify who the senior management are, as these will be the group of people ultimately responsible for management decisions, and liable for any subsequent failings.

What is a management failure?

This will depend on the nature of the offence and the seriousness of the consequences. A management failure could be omitting to put adequate systems in place (i.e. health & safety risk assessments) or blatant disregard for implementing measures, such as training or auditing systems.

Potential penalties

A conviction under the Act carries a heavy penalty. Companies can be punished in a number of ways if they are prosecuted. Unlimited fines can be imposed on those found to be guilty; these are likely to be substantial.

Remedial orders are also likely to be the prominent form of punishment. Here, the Courts will impose a duty upon an offending organisation to remedy any deficiency that caused the fatality in the first place. This will include changes in policies, procedures and practices which led to the breach, to be achieved within a specified period of time. In the case that a remedial order is not implemented, the organisation will be punished by an unlimited fine.

In summary

The Act comes into force in April 2008. In the interim period, we strongly recommend that you ensure that your health & safety obligations are met. Some simple steps can be taken to ensure compliance.

Firstly, determine who is considered as the 'senior management'. Ensure that this group are aware of their responsibilities and the potential consequences. Once identified, the senior management must also receive training in their role in satisfying the company's health & safety responsibilities.

You must make sure that you regularly review your health & safety policies to ensure that the standards set are achievable. This can be achieved by increasing the senior management's scrutiny of health & safety compliance through allocating time for discussion and review on the agenda of every board or management meeting, for example.

Our health & safety partner, MBHS, can help with this activity and with any other health and safety issues that you face or which are concerning you.

Thank you for your Feedback

In December, HR Insight had a prize draw for clients who have completed our client satisfaction survey. We are delighted to announce that the winners were the UK Golf Group who received champagne and chocolates. They nominated Meningitis Research Foundation Charity to receive a cheque for £200 from HR Insight.

Can We Help?

If you need help on any issue associated with the employment, performance or conduct of employees, please call us on **0845 603 1610**. Alternatively visit our Website at **www.hrinsight.co.uk**. We look forward to hearing from you during 2008!

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