

Spring 2020 Newsletter

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Useful Websites:-

- HSE Website www.hse.gov.uk
- British Standards Institute www.standardsuk.com
- Trades Union Congress www.tuc.org.uk
- Environment Agency www.environment-agency.gov.uk

COMMENT

A season of doubt and uncertainty has arrived. Companies have gone into lockdown too, and even some of my clients are operating in 'radio silence' – no phone or email responses to my vain attempts to communicate. I am running a main PC and four laptops in order to have VPN's set-up but only one of my clients has taken up that option so far. I am quiet now in terms of work coming in but once this is over, no doubt I will be inundated with catch-up requests. I guess that this is the situation for many of you out there. I hope we all survive, both as individuals and companies, and can pick-up where we left off. I suspect that we'll have a very different world when we do!

Tony Payne

Council prosecution

A child who was attempting to leap-frog a 0.9m high bollard suffered severe head injuries when it collapsed under her weight. She subsequently underwent 6 months of treatment and until her brain matures, it will not be known for certain as to what the permanent effects will be.

During their investigation, the HSE discovered reports that had high-lighted the defects in the bollard from just two weeks before the incident. A council highways engineer had also inspected the bollard a few days prior, but he concluded that the work was not urgent as it was not a safety defect.

The Council were found guilty and fined £1.4m with costs of £130k added. The HSE concluded that Councils have a duty to assess risks to the public from street furniture. Despite having a good system in place, the council failed to identify the level of risk hence the fine under section 3.1 of HASAW. Councils, who often have enforcement powers themselves, should really know better than to allow such practices to occur.

Director banned

A skip hire company boss has been banned from being a Director for five years after HSE investigators found continuing breaches of health & safety law at Companies he had set-up. He was initially prosecuted following the death of an employee who was struck by a skid-steer loader. He was later prosecuted for further offences at another company he had set-up next door. Unsafe equipment, unsafe buildings and no welfare facilities provided evidence for the HSE. For the other offences the Director was given a six-month prison sentence suspended for 18 months and ordered to complete 190 hours of community service.

Farm Safety in the spotlight

Farmers are being told they must pay closer attention to health and safety after the HSE raised concerns over recent livestock handling incidents.

Each year, a number of people are killed or injured in incidents involving cattle and most of these incidents can be prevented.

HSE inspectors had planned on visiting farms to remind farmers of their duty to protect themselves, their workers and members of the public from the risks of cattle. If they are not inspectors will not hesitate to use enforcement to bring about improvements. Of course, this programme will be delayed for the time being as Inspectors do not wish to put themselves or farmers at risk during the pandemic.

Once inspections start again, Inspectors will be reminding farmers and workers that when working with livestock, they should have the appropriate controls in place:

- proper handling facilities, which are kept in good working-order;
- a race and a crush suitable for the animals being handled;
- trained and competent workers; and
- a rigorous culling policy for temperamental animals.

The focus on livestock is part of a programme of inspections over for 2020 to ensure farmers are employing the correct controls and complying with the law in order to prevent death, injury and ill-health.

The HSE's Head of Agriculture, Andrew Turner, said: "The campaign focus is timely as last year eight people died on farms in cattle related incidents, nearly one quarter of the total deaths on British farms."

"Last year 33 people were killed in agriculture across Britain and those working in the industry need to realise that death, injuries and cases of ill-health are not an inevitable part of farming and can be prevented."

"We must not become complacent and accept this as the norm. Farmers should plan their work, know the risks and use the right controls to ensure that everyone can go home healthy from their work."

The HSE has a range of resources and guides available to help farmers to manage the risks appropriately.

RIDDOR reporting of COVID-19

You must only make a report under RIDDOR (The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) when:

- an unintended incident at work has led to someone's possible or actual exposure to coronavirus. This must be reported as a **dangerous occurrence**.
- a worker has been diagnosed as having COVID 19 and there is reasonable evidence that it was caused by exposure at work. This must be reported as a case of **disease**.
- a worker dies as a result of occupational exposure to coronavirus.

Source: www.hse.gov.uk

Decline in HSE prosecutions

In 2018-19, there were 394, down by 23% on 2017-18. However, 92% of these were successful, up by 1% on 2017-18.

Amongst the reasons for this are the sizeable number of Inspectors who are under training still, so one can safely assume that the figures will rise in subsequent years (figures for 2019-20 are not yet available) despite a temporary suspension of routine visits during the Coronavirus outbreak.

Also, it is likely that as fines have increased, it is more likely that Companies will fight cases rather than simply roll over and admit guilt. This also implies that an Inspectors time will be taken up building a prosecution rather than getting onto the next case. With an average fine of £150k, total fines during 2018-19 were down from £71.6m to £54.5m, though the income under Fees for Intervention will have lessened the impact somewhat.

Blue Tape

This new term for what was once called 'gold plating' of health and safety requirements is the subject of research by the HSE.

It refers to the stringent rules that businesses impose upon one another. This could be framed within contracts, or perhaps be built into standards that businesses must achieve in order to be accredited by an awarding body or third-party quality standards body.

The report shows concern that the burden placed on small businesses is out of proportion to the risk they present and discredits sensible regulation and good practice.

Over 99% of businesses in the UK are 'small to medium' (SMEs), 2000 of which took part in the survey. 40% of those found that the policies and procedures they are forced to have in place were excessive and disproportionate, with 35% stating that they could see no relationship between the policies and actual employee safety. It seems that insurers and civil law compensation claims are also responsible for some of this blue tape.

'Understanding the impact of business to business health & safety rules' (bit.ly/2XVboPv) is the snappy title of the report!

Property Management

A Property Management company has been fined £1.3m following the death of a member of the public near a shopping centre. The company received the fine following a prosecution by a city Council for breaching section 3.1 of the Health & Safety at Work etc. Act 1974. The dead woman was struck by a large wooden panel that was detached from a disused water tank on the plant room roof during a storm. The company had not carried out any inspections of the tank so had not realised that the panel was attached to rotten wood and corroded fixings. Costs of £375k were also awarded.

Electric vehicles

An EU regulation has made it mandatory to fit sound generators to electric cars so that pedestrians are aware of their presence. Research has shown that they are more than 40% more likely to be struck by a hybrid or electric vehicle than one with a conventional engine.

Although the legislation came into force in July 2019, it might be many years before we see all cars with the new system installed in the UK.



And Finally...

The comments, observations, views and advice contained in this newsletter are for general guidance only and are not a substitute for competent expert advice or reference to Acts and Regulations or other legal sources in individual cases and circumstances. Advice can be obtained from, amongst others, Insurers and Solicitors, Enforcing Authorities and your own competent person. You should always ensure that you obtain competent professional advice in individual situations.

I hope that you like the (rainbow) coloured headings in this edition!