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NEW LEGISLATION IN FORCE (1): The Corporate Manslaughter and Corporate Homicide Act 2007 takes effect from 6 April 2008.

Failure by senior management to ensure compliance with Health and Safety Law may leave companies open to being charged under the new offence, should a work-related death occur.

This new Act will make it easier to **prosecute companies who fail to protect people.**

Note: CQMS Limited is running a Seminar on the Corporate Manslaughter and Corporate Homicide Act 2007 on 28 May 2008, email training-events@cqms-ltd.com to reserve your place.

NEW LEGISLATION IN FORCE (2): the existing regulations protecting workers in the music and entertainment sectors from exposure to excessive noise will be replaced by the Control of Noise at Work Regulations 2005.

HSE ENFORCEMENT FOCUS

GENERAL

Local Exhaust Ventilation Systems

The HSE will also be looking closely at Local Exhaust Ventilation Systems (LEV), ensuring that they are fit for the purpose, i.e. have been correctly designed, installed and are being maintained.

LEV systems should be inspected every 14 months, or upon changes to the work or system e.g. addition of another duct. There have been cases where an extra duct has been added to an existing system to accommodate a new work station, however the extraction fan has not been upgraded. This leads to poor performance of the system and a build up of respirable dust on surfaces.

Migrant Workers

We have recently seen a large increase in the number of migrant workers coming over to Great Britain. There may be difficulties in communicating health and safety information comprehensively due to both language and cultural differences.

Whilst it is important to remember that many migrant workers face very little increased risk, it is the workers with little or no knowledge of our language that are most at risk; those who are unable to read signage or understand basic commands such as 'fire' or 'stop'.

Suitable and sufficient induction training is crucial, ensuring that it is understandable by all. An interpreter may be required, or multi-lingual DVDs utilised where appropriate, however the induction training must be specific to the company, work environment and site specific hazards.

Further information is available on the HSE and TUC websites.

CONSTRUCTION

The construction sector remains an area of concern for the HSE, and we are still seeing high numbers of fatalities with no overall downward trend.

The following areas are likely to be focused on during site inspections:

- > Quick hitches;
- > Fire (particularly during the erection of timber frame);
- > Joist hangers.

CQMS Ltd recently attended a 'consultant's workshop' with the HSE during which it was suggested that refurbishment projects will be the focus of HSE activity and enforcement in the construction sector in the coming months.

Refurbishment

Last year over half the workers who died on construction sites worked in refurbishment, and the number of deaths on refurbishment sites rose by 61%.

Following spot checks carried out by the HSE during February 2008 on over 1000 refurbishment sites nationwide, work was stopped immediately on over 30% of sites because they felt "that there was a real possibility that life would be lost or ruined through serious injury" according to HSE Chief Executive.

Over half of the enforcement action taken during this inspection initiative was against dangerous work at height, which led to the death of 23 workers last year.

Also of particular note is asbestos, and the 'duty to manage' requirement (Regulation 3). All buildings to be demolished, or which are to be subjected to major refurbishment works, must have a fully intrusive Type 3 asbestos survey undertaken. Following the survey, all asbestos containing materials identified must be removed in accordance with the Control of Asbestos at Work Regulations 2006 prior to demolition being undertaken.

Recycling and waste management

We are all aware of the importance of recycling wherever possible. The recycling industry, and the number of people employed in this sector, is expected to continue to increase in the years to come and as such the HSE are looking to tackle key health and safety issues.

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DATES FOR YOUR DIARY – OPEN COURSES AT CQMS

BRITISH SAFETY COUNCIL AWARD

What is the course?

Level 1 Certificate in Health and Safety at Work (British Safety Council)

Where?

CQMS training room, Grantham.

When?

08 May 2008.

Time?

09:00 – 17:00.

How many places are available?

A maximum of 10.

Who should attend?

The course is suitable for anyone; it does not require any previous knowledge or experience.

What is the cost?

Free of charge to CQMS Clients.

Will I receive a certificate?

Successful delegates will receive a certificate within 2 weeks.

CQMS SEMINAR CORPORATE MANSLAUGHTER

What is the course?

Corporate Manslaughter: Awareness of the New Act

Where?

CQMS training room, Grantham.

When?

28 May 2008.

Time?

10:00 – 13:00.

How many places are available?

A maximum of 16.

Who should attend?

The course is **essential** for all Senior Management

What is the cost?

Free of charge to CQMS Clients.

Will I receive a certificate?

Delegates will receive a certificate of attendance within 2 weeks.

To book your place on the any of the detailed training courses, please contact CQMS' offices on either:

- > Tel: 01476 566665 / 564242
- > Email: training-events@cqms-ltd.com

VETTING OF SUBCONTRACTORS

All companies have a duty to ensure that persons/companies appointed to undertake work on their behalf are competent with regards to health and safety.

This requirement is strengthened by the CDM Regulations 2007, which place greater onus on Clients and Principal Contractors to ensure that the companies they appoint are sufficiently resourced and competent for the job. With the impending introduction of the Corporate Manslaughter Act, it will no longer be necessary to identify a single controlling mind to convict a company in the event of a site death.

Ensuring a robust system is in place for the vetting of subcontractors is therefore crucial.

We have heard reports from some of our Clients who have applied to pre-qualification schemes that their documentation submission has not been approved the first time. Upon re-submission however it has passed the assessment. The scheme in question charges the subcontractor for the initial assessment and again for re-assessment following initial failure. There are also some schemes which do not request documentation or evidence to validate the answers to the questionnaire.

CQMS Ltd have a dedicated Subcontractor Vetting department which assesses the documentation supplied by subcontractors, in conjunction with the answers to the questionnaire, to ensure competence and compliance with legislation and best practice.

The Subcontractor Vetting procedure can accommodate the use of Client-specific documents, e.g. questionnaires, to ensure compliance with the Client's own Health and Safety Management Systems and the associated audits.

The Client pays an initial fee for the assessment of the subcontractor, which covers the vetting for a year. During this time, we request a completed questionnaire, H&S Policy, risk assessments, method statements, insurance and training certificates. If any amendments are required, CQMS contact the subcontractor directly with details of why the documentation is not considered suitable, however neither the Client nor the subcontractor incurs an additional charge. Likewise, if the H&S Policy is due for review, or the insurance certificate lapses, we request and review the updated documentation at no additional cost.

All details and comments are entered into a database, which is available to Clients via our website. The database clearly shows whether each item of documentation (e.g. Policy, risk assessments) is considered acceptable. The Client can then make an informed decision as to whether to invite the subcontractor to tender for a specific site.

In the event of a death on site, a slack or non-existent subcontractor vetting system could make a company vulnerable to a manslaughter charge, which could result in unlimited fines (typically up to 10% of turnover*) and a publicity order.

* Figure taken from Construction News.

HSE MYTH OF THE MONTH

MYTH: Toy 'weapons' in a play had to be locked-up and registered with the police.

THE REALITY: Reports said that the theatre company were just following HSE's guidance sheet.

HSE's guidance is clear; it deals with real weapons and the kind of accurate replicas that can cause serious injury or be used in robberies. Not plastic toys.

We trust the play did well with all the free publicity!



WHAT COULD GO WRONG?

HSE WARNING – UNDERTAKE SUITABLE AND SUFFICIENT RISK ASSESSMENTS

Two companies within the JCB group (JCB Earthmovers Ltd and JC Bamford Excavators Ltd) have been prosecuted by the HSE after two employees, Mr. Paul McNamara and Mr. Darren Ellis, died in separate incidents whilst undertaking routine tasks.

Mr. Ellis was testing the fuel tank for leaks, however investigations revealed that he was standing close to the tank when the inspection plate below off after he connected a high pressure airline instead of using low pressure. It was also revealed that Mr. Ellis had not received enough training for the job. He suffered fatal head injuries. JCB Earthmovers Ltd was fined £200,000 and ordered to pay costs of £31,366 for breach of Section 2(1) of the Health and Safety at Work etc Act 1974 (ensure the health, safety and welfare of an employee).

JC Bamford Excavators Ltd was fined £266,000 and ordered to pay costs of £31,701 for breaching of the same section of the Health and Safety at Work etc. Act 1974 when an employee, Mr. McNamara, suffered fatal head injuries in a separate incident after being crushed by the boom of an excavating machine. A fault on the hydraulic system resulted in a control lever not working properly which caused the boom to continue moving, resulting in the fatal injury. The investigation undertaken by the HSE revealed that it was common practice for workers to operate the controls for the boom whilst standing outside the cab of the machine and leaning through the back window.

HSE Inspector Lynne Boulton said:

“All employers must learn from these tragedies that, whatever the task, it is crucial to undertake a suitable risk assessment that deals with the significant risks of that task.”

OVERLOADED FLOORS UNDER CONSTRUCTION LED TO COLLAPSE

Four construction workers were working on the second floor of a site in Kent when the floor collapsed moments after a second load was delivered onto it. The first and ground floors below also collapsed, sending the workers falling into the basement area. They suffered spinal fractures, broken shoulders and fractured ribs among other serious injuries as a result of the accident in May 2003.

HSE Inspector Amanda Huff said:

“It is unacceptable that workers have to be seriously injured before companies realize that they have to comply with health and safety legislation. This incident could easily have been avoided by proper planning, and by using a suitably experienced and trained workforce.”

Exelcare Developments Ltd pleaded guilty to breaching Regulation 8(1) of the Lifting Operations and Lifting Equipment Regulations 1998 (*LOLER*) and Regulations 6(1) and 6(2) of the Construction (Health, Safety and Welfare) Regulations 1996, and was fined £20,000 and ordered to pay costs of £7500 at the Central Criminal Court in London on 23rd January 2008.

Following the case, the HSE warned construction companies about the need to ensure that systems for lifting goods are safe, floors under construction are not overloaded, and adequate safety measures are in place to prevent falls from height. Exelcare Developments Ltd have since appointed a Health and Safety Adviser and a Contracts Manager.

£250K FINE FOLLOWING PUMPER DEATH

Corus Packaging Plus was fined £250,000 following an investigation into the death of an employee which occurred as a result of being struck on the head by a piece of machinery.

The incident occurred while Mr. Coles was working on a five stand mill, where five sets of rollers squeeze and stretch steel strips to make them thinner. He was walking in gaps between the rollers to assist with a roll change, which was common practice, when a deflector plate descended which struck him upon the head and caused fatal injuries. The deflector plate had a facility for pins and bolts to prevent such an incident, however the frequency with which workers had to walk through the gaps meant that some employees did not use this system.

A deflector plate also struck an individual in 1997, although the incident was quite different to that involving Mr. Coles, an internal investigation undertaken by Corus failed to alert it to the existence of a potential problem.

HSE Inspector Alan Strawbridge said:

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“The key messages to get across are that, firstly, on safe systems of work – unless they are enforced and policed, then they don’t really exist. The second point is that when accidents do happen, you have to take the full opportunity to investigate them and learn all the lessons.”

HOT OIL CAUSED SEVERE BURNS AND SCARRING TO KITCHEN WORKER

On 2nd February 2007, kitchen worker Claire Swainger came into contact with cooking oil nine times hotter than the recommended temperature, resulting in burns to her lower body.

Two large cooking pans had been placed on the kitchen floor below the discharge pipe to drain the oil in preparation for the cleaning of the fryer. The temperature of the oil would have been about 350°C and had been left to cool for only half an hour, instead of being left to cool to 40°C over a period of approximately 7 hours as per HSE recommendations. Ms. Swainger was walking past the fryer when she slipped and placed one leg into one of the pans full of hot oil. On descent, she struck the second pan and the oil spilled across the floor, coming into contact with her lower body.

A catalogue of errors was uncovered, including failure to appoint a member of staff as a first aid officer, or give any employee first aid training, and a failure to report the incident to the Incident Contact Centre.

Ms. Swainger’s employer, Mr. George Tambaros and his restaurant, The Omelette, pleaded guilty to five breaches of health and safety law including failing to provide and maintain a safe system of work, and failing to implement a suitable and sufficient risk assessment. They were fined £6250 in total, with charges of £2500.

Norma Cottis, Environmental Health divisional manager, said:

“This incident occurred as a result of a long-established practice of draining oil from a fryer while it was still extremely hot. This demonstrates a continuing state of affairs at the restaurant rather than an isolated lapse by the company.”

REVERSING LORRY KILLED SCRAPYARD EMPLOYEE

Metal scrap and recycling company Easco (Midlands) has been fined £200,000 and ordered to pay costs of £55,000 following the death of an employee, Mr. Ronald Barnacle, in June 2005 under Section 2(1) of the Health and Safety at Work etc Act 1974.

Mr. Barnacle had been working as a burner using a gas flame cutter to cut metal into small pieces, and was killed by a reversing lorry. An exact conclusion as to how Mr. Barnacle came to be struck by the vehicle has not been reached, however he had been working in the central area of the scrapyard where vehicles and pedestrians were not segregated.

The HSE Inspector who investigated the case, Jenny Skelton, said:

“Scrapyard owners need to ensure that they make a suitable and sufficient risk assessment of the movement of vehicles and pedestrians on site, and identify and implement appropriate control measures to prevent people being struck by moving vehicles.” She concluded, “Had basic health and safety precautions been observed, it is most unlikely that such a fatality would have occurred.”

TEENAGER DIED AFTER 18M FALL FROM UNSAFE SCAFFOLDING

A 17 year old died in hospital from the injuries he sustained as a result of an 18m fall from unsafe scaffolding on which he was working, which was being erected inside a 20m-high sewage tank.

He was employed by 3D Scaffolding Ltd, and under the control of a visiting Contracts Manager who was contracted to work for RAM Services, itself a subcontractor to Mowlem Group Plc. All four parties were sentenced on 8th February 2008 in connection with the incident, which occurred in January 2004. 3D Scaffolding Ltd had tried to claim that the employee had four years’ experience as a scaffolder.

The HSE Inspector had found a number of unsafe practices going on at the site, with key safety components being left out including transoms and guardrails. All the workers had were harnesses, however these were in such a poor condition that they were effectively useless.

On the day of the incident, the young person was working with the foreman in the fifth of a series of eight tanks, on the sixth lift level. To gain access, the men had climbed down on the tubing from the eighth lift level. He was asked by his foreman to collect some boards, so decided to climb back up. His harness had not been fitted correctly, which his foreman had failed to point out, and he fell approximately 18m to his death.

3D Scaffolding pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc Act 1974 for failing to maintain a safe system of work and was fined £50,000 plus costs of £17,500. Mowlem Group Plc and RAM Services Ltd, which employed 3D, each pleaded guilty to breaching Section 3(1) of the same Act for failing to ensure the safety of people not in their employment. RAM also admitted a charge of under Regulation 29 of the Construction (Health, Safety and Welfare) Regulations 1996 for failing to ensure the safety of the scaffolding. Mowlem was fined £75,000 plus costs of £20,000, whilst RAM was fined £75,000 plus £70,000 costs. The Contracts Manager pleaded not guilty to a charge under Section 7 of the Health and Safety at Work etc Act 1974 for failing to take reasonable care for the health and safety of other persons who might be affected by his acts or omissions at work. He was found to be guilty and ordered to pay £7500 plus costs of £15,000.

HSE Inspector Nick Rigby said:

“This was a complex scaffolding job inside a confined space, but the team working on it consisted of two trainee part-1 scaffolders – of whom the [deceased] was one – and two labourers.”

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