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CORPORATE MANSLAUGHTER & CORPORATE HOMICIDE ACT 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 is a landmark in law. For the first time, companies and organisations can be found guilty of corporate manslaughter as a result of serious management failures resulting in a gross breach of a duty of care.

The Act, which will come into force on 6 April 2008, clarifies the criminal liabilities of companies including large organisations where serious failures in the management of health and safety result in a fatality.

HSE welcomes and supports the Act. Although the new offence is not part of health and safety law, it will introduce an important new element in the corporate management of health and safety.

Prosecutions will be of the corporate body and not individuals, but the liability of directors, board members or other individuals under health and safety law or general criminal law, will be unaffected. And the corporate body itself and individuals can still be prosecuted for separate health and safety offences.

The Act also largely removes the Crown immunity that applies to the existing common law corporate manslaughter offence.

DISPOSAL OF CONTAMINATED SOIL

The Landfill Directive (99/31/EC) which will come into force in October this year will change the way contaminated soil is disposed of at landfill. The reasons behind the changes are to increase waste recycling and recovery, and to reduce potentially polluting emissions from landfills.

Liz Parkes, Head of Waste at the Environment Agency, said, "Currently, contaminated soils that are hazardous need to be treated before being sent to landfill. However, from 30th October 2007, new rules mean that all contaminated soils, whether hazardous or non-hazardous, must be treated before they are land filled."

For businesses who produce or manage contaminated soils this will mean that they will have to review how they manage their wastes. Any waste that is destined for landfill will need to be treated and businesses will need to ensure that either themselves, or their waste management company, do this. It should also be noted that liquid waste will no longer be accepted at any landfill.

The Environment Agency has published a new fact sheet offering guidance on the disposal of contaminated soils under new rules. It can be accessed at <http://publications.environment-agency.gov.uk/pdf/GEHO0707BMYN-e-e.pdf>.

LEGIONNAIRES' DISEASE ON THE UP

The number of cases of Legionnaires' disease reported in England and Wales has risen sharply, according to the Health Protection Agency. The agency has launched an investigation after 163 cases of the illness were reported between January and June 2007, compared with 120 cases over the same period last year. The agency's Dr Carol Joseph said: 'The higher number of cases being detected over the past few years is likely to be due to an increased awareness of the disease... and the wider use of rapid testing methods to identify it.'

LIGHTEN THE LOAD

This year's European Week campaign for safety and health at work will focus on MSDs and manual handling issues.

'Lighten the Load' which runs from 22nd – 26th October aims to raise awareness of work related MSDs and support employers, workers and safety representatives in preventing them occurring.

To help employers and safety representatives organise their own activities and events during the week, the HSE has produced action packs containing information and fact sheets on MSDs and manual handling as well as workplace awareness posters.

They can be downloaded from: www.hse.gov.uk/campaigns/euroweek/resources.com.

Call 01476 566665 / 564242.

The Annexe, The Maltings, Wharf Road, Grantham, Lincolnshire NG31 6BH

MYTH OF THE MONTH

The myth:

“Kids must wear goggles to play conkers”



The reality:

This is one of the oldest chestnuts around, a truly classic myth. A well-meaning head teacher decided children should wear safety goggles to play conkers. Subsequently some schools appear to have banned conkers on ‘health & safety’ grounds or made children wear goggles, or even padded gloves!

Realistically the risk from playing conkers is incredibly low and just not worth bothering about. If kids deliberately hit each other over the head with conkers, that’s a discipline issue, not health and safety.

Interestingly, IOSH are sponsoring this year’s World Conkers Championships in a bid to prove that good health and safety management does not mean an end to fun.

IOSH say:

“People often blame ‘health and safety’ for banning hanging baskets, stopping village fairs and taking the fun out of everything. But the people who make the decisions to stop the fun often don’t know how to manage health and safety properly or haven’t asked for advice from someone qualified to help.”

“We are on a mission to prove that good health and safety management gets things done. So this year we’re co-sponsoring the 2007 World Conker Championships.”

MORE THAN A QUARTER OF SITES RECEIVE ENFORCEMENT NOTICES

The HSE stopped work at over one in four construction refurbishment sites it visited this summer, during an inspection blitz it carried out in the wake of the rise in fatalities.

The HSE conducted 1,586 inspections as part of its rolling inspection plan during June and July, which resulted in enforcement action on 426 whole sites or work on sites.

“We stopped work on site immediately during 244 inspections because we felt there was a real possibility that life would be lost or ruined through serious injury,” said Stephen Williams, the HSE’s Head of Construction. “It is completely unacceptable that so many lives have been put at risk. Our inspectors were appalled at the apparent willingness to ignore basic safety precautions”.

“The simple fact is that despite knowing what they should be doing, too many people are prepared to allow bad practices to continue, even though 39 people died on refurbishment, repair and maintenance sites last year”.

“We are determined to tackle this issue head on and will continue to take enforcement action against three rogues who flout safety precautions”.

“Let me be clear to all those who put lives at risk – we will continue to carry out further inspections and will take all action necessary to protect workers, including closing sites and prosecution.”

FALLS FROM VEHICLES CAMPAIGN

The HSE have launched their ‘falls from vehicles’ campaign, aiming to raise awareness of the risk of falling that workers are exposed to when accessing and/or working at height on vehicles, and the actions which should be taken to minimise the risks.

Vehicles buyers, managers and workers all have a part to play. Many of the risks can be eliminated by purchasing the correct vehicle, i.e. one that has ground-based controls wherever possible. Managers should ensure that workers are given a safe system of work and are adequately supervised. Simple measures such as reporting of faults and good housekeeping are also important in the prevention of accidents.

Further information can be found at <http://www.hse.gov.uk/fallsfromvehicles/index.htm>

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MANUAL HANDLING

Definition

Manual handling is defined by the Manual Handling Regulations 1992 as “any transporting or supporting of a load (including the lifting, putting down, pushing, pulling, carrying or moving thereof) by hand or bodily force”.

The problem

Injuries are usually caused by incorrect lifting, pushing and pulling, and carrying loads. The effects tend to be culminative, i.e. they are the result of a long period of incorrect handling, rather than being attributable to a single incident.



The result

More than a third of over three day injuries reported each year to the HSE and local authorities are caused by manual handling, and over £100 million per year is lost due to injuries at work associated with incorrect manual handling.

Heavy manual labour, awkward postures, manual materials handling and previous or existing injury are all risk factors implicated in the development of musculoskeletal disorders (MSDs).

Prevention of MSDs has been identified by the Health and Safety Commission as a priority issue because:

- MSDs can be prevented or minimised;
- They affect large numbers of people across most industries and occupations;
- They have the potential to ruin people's lives; and
- They impose heavy costs on employers and society.

Prevention

Prevention and management are the key to reducing injuries from manual handling.

A risk assessment should be undertaken to identify the significant risks of injury and implement any necessary controls to reduce the risk so far as is reasonably practicable, if it cannot be eliminated. All assessments should be brought to the attention of employees, and regularly reviewed.

The Manual Handling Regulations 1992 require employers to implement the hierarchy of controls and:

- Avoid the need for hazardous manual handling so far as is reasonably practicable;
- Assess the risk of injury from any hazardous manual handling that cannot be avoided; and
- Reduce the risk of injury from manual handling so far as is reasonably practicable.

Controls

Use mechanical lifting aids (i.e. cranes, forklift, pallet trucks etc) wherever possible to avoid the need for manual handling.

Do not attempt to lift and/or move any object without first assessing whether it is in your capability to do so. Assess it for size and weight and also where you are going to move it to. Check the conditions in which you are working e.g. weather, ground conditions, wind, rain, above or below ground level and working alone etc.

Where possible break down the load into smaller, more manageable portions.

Get someone to assist when lifting heavy loads.

Employees should be provided with manual handling training to equip them with the skills and knowledge to correctly carry out manual handling tasks, with refresher training provided at regular periods thereafter.

What else is being done?

The HSE and the local authorities have launched the national 'Better Backs' campaign to tackle back pain and limb disorders at work, with information being provided on their website for employers.

'Lighten the Load' is the subject of this year's European Week campaign to raise awareness of manual handling injuries and how to prevent them.

CQMS will repeat the recent free of charge seminar focusing on manual handling in January 2008. Please see the 'Dates for your Diary' section for further information.

Alternatively, CQMS can provide manual handling training at your premises at a competitive price based on our ½ day training rate.

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RECENT PROSECUTIONS

PILE DEATH FINE

A civil engineering contractor has been fined £100,000 after the death of an employee whilst dismantling heavy machinery. Bedfordshire based Dawson-Wam was also ordered to pay £76,000 costs after pleading guilty at Croydon Crown Court in south London to breaking Health and Safety rules. Employee John Walsh was killed in September 2002 when the auger drive unit of a piling rig he was attempting to dismantle flew off its stand and struck him.

CORRODED LADDER LEADS TO £21K FINE

The Health and Safety executive has warned contractors to ensure they maintain their equipment properly following a case in which a worker was disabled after falling 3 metres from a ladder that snapped.

Lancashire brickwork cleaning contractor Gazelle Steam Cleaning was fined £7000 plus £14257 costs for breaching the Health and Safety at Work Act.

The worker, Gary Jaundrill, suffered serious spinal injuries after falling from the seventh rung of an aluminium ladder that had been corroded by the power washing fluid the firm was using.

The hydrochloric acid in the solution had caused the ladder to snap in two. HSE construction inspector Rob Hodgkinson said after the case: Gazelle failed to give its workers proper instructions or training for the use and care of ladders while brick washing. "The ladders were regularly exposed to the corrosive effect of the acid without being the subject of rigorous and regular checking."

CONSTRUCTION WORKER DIES AFTER MORE THAN A TONNE OF GLASS FALLS ON HIM

The HSE has warned construction firms to ensure the safety of employees at risk of being crushed by building materials. This comes after a worker died of crush injuries when more than a tonne of glass fell on him at a construction site in the City of London. The Old Bailey heard that Steven Conlon, 29, was working for glass-installers Newnorth Ltd from Hartlepool at the site of the development of the Old Spitalfields fruit and vegetable market when five large panes of glass fell from an A-frame and landed on him. He was freed by co-workers, but died in hospital six weeks later of massive organ damage. Newnorth has been sub-contracted by Italian firm Permasteelisa (UK) Ltd to fit glass on the development project for Sir Robert McAlpine. Prosecuting, James Ageros, said that Conlon was

helping install a glazed canopy. The glass for this was packed into crates which were placed on wooden blocks and A-frame stillages, which left the crates perilously close to vertical; under safety rules, glass on an A-frame should be stored at a six degree incline to prevent toppling. The only way to remove the front of the crate to unpack the glass was to remove the strap used to restrain the whole crate against the stillage. As Conlon and his colleagues worked to removed the front of a crate, glass weighing over 1,200 kg fell out onto him.

Investigating HSE inspector Sarah Snelling said: "Construction, as an industry, suffers more than its share of fatalities every year. It is imperative that employers and those controlling how work is done on-site work closely together to control risks. In this case, if those supplying the large panes of canopy glass and designing the working method and those supplying the men to undertake the installation had properly assessed the risks arising from unpacking the glass, Steven Conlon could be alive today." Permasteelisa (UK) Ltd, the company supplying the glass and managing the subcontractor, pleaded guilty to a charge under Section 3(1) of the HSWA 1974 and was fined £100,000 with costs of £31,847.20. Newnorth Ltd, Conlon's employer, pleaded guilty to a charge under Section 2(1) of the HSWA and was fined £25,000 plus costs of £7821.80. In mitigation, both companies said they have since adopted simple precautions to prevent similar accidents occurring in the future.

£30K FINE FOR DUMPER TRUCK FATALITY

A construction company from Salisbury was fined £30,000 with costs to the HSE of £13,715 following the death of an employee.

Mr. George Rogers, an employee of Castleway Construction, was thrown from a dumper truck when he hit an inadvertently backfilled trench while driving along a haul route, resulting in fatal head injuries.

The HSE's investigation into the incident revealed a number of failings by Castleway Construction, amongst which were that even though Mr. Rogers had not formally been authorised to drive a dumper truck, he had been using it to help tidy the site at the end of the day. Also, there were no precautions taken to prevent a fall from the truck.

Principal HSE Inspector Andrew Kingscott said:

"There is a need for controls, including the maintenance of plant (including tyre pressures), and of clear traffic and haul routes, use of lap belts, the formal authorisation of drivers and supervision of plant operation. There should also be formal procedures to ensure control over access to the keys to start plant to prevent unauthorised use."

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WORKER CRUSH LEADS TO COMPANY FINE

W E & I Wright Ltd pleaded guilty to Section 2(1) of the Health and Safety at Work etc Act 1974 for failing to ensure the safety of an employee who sustained serious injuries as a result of being crushed between two lorries.

Durham Magistrates Court heard that a worker at the company's premises was crushed between two heavy-goods vehicles as one reversed past the other. A subsequent investigation by the HSE revealed a number of deficiencies in the company's arrangements to ensure safety during reversing operations.

The company had been alerted to the risks less than a year before the accident, when it commissioned the Road Haulage Association to carry out risk assessments. The precautions identified by the risk assessments were not implemented, and the company had almost no physical or organisational measures in place to control workplace transport risks.

The company was ordered to pay £4000 plus a contribution of £2500 to HSE costs.

GRANTHAM COMPANY PROSECUTION

Grantham Engineering, of Harlaxton Road Grantham, has been fined £1,500 plus costs of £1,252.60 for breach of health and safety regulations which lead to a worker falling from an insecure ladder.

A maintenance worker climbed up a wooden ladder to take measurements of the fascia board when the ladder slipped to the right and he fell off, dropping approximately 8 feet. He sustained bruising and soft tissue damage to his back, arms and legs.

The incident was easily avoidable; no measures had been taken to ensure the ladder was secure, and the operation was not planned. Other options were available on site – a fork lift cage, mobile elevated work platform and tower scaffold. The injured person had not received any instructions and was left to his own devices.

POOR TRAFFIC SEGREGATION LED TO LIFT-TRUCK LEG-BREAK

A Northampton company has been hit with a £150,000 fine for an incident in which a visitor was injured by a fork-lift truck. Bill Williams, 60, a visiting IT consultant, suffered a serious multiple fracture of his left leg when he was run over by a reversing forklift truck as AGC Automotive (UK) Ltd's premises in Round Spinney Industrial Estate in September 2006. Northampton Crown Court heard that Williams had been following a designated pedestrian walkway line. A forklift in front of him was repeatedly crossing the line as it was moving stillages stored too close. It stopped temporarily on the walkway line itself, so Williams walked behind it to

continue on his way, at which point the truck reversed, knocking him over and running over his lower leg and foot. AGC had failed to heed a warning about its forklift truck operations a few months before the accident. In May 2006, following a routine HSE inspection, an improvement notice was served on the company requiring it to assess, control and monitor forklift truck movements both inside and outside its factory units. The company complied with the notice in June 2006 but a few weeks later it shut down one of the three units and decided to store stillages from there into the yards of the other two units. This is how stillages came to be positioned dangerously close to the walkway line on the day of the injury. AGC did not risk assess how this change would affect its forklift truck operations, the court heard. AGC pleaded guilty to breaching Section 3(1) of the HSWA 1974 and was fined £150,000 with costs of £9,460.00.

DATES FOR YOUR DIARY

The series of Free of Charge* training events held at CQMS offices have gone down very well with all attendees; and we are happy to advise dates for training events planned for early 2008.

30 January 2008

MANUAL HANDLING AWARENESS SEMINAR

Providing a sound knowledge of the requirements of current legislation and practical safe working practices when carrying out manual handling tasks.

26 March 2008

CDM 2007 AWARENESS SEMINAR

Enabling delegates to understand the CDM Regulations, roles, duties & responsibilities and identify the duties of various parties together with the practical duties

28 May 2008

H&S AWARENESS FOR SENIOR MANAGEMENT

This course will provide delegates with the necessary overview and understanding of the way in which Health and Safety plays an integral part in a successful workplace. Delegates will learn how an understanding of current legislation will help to minimise the risk of accidents, prosecution and costly fines and compensation claims.

Courses run bi-monthly on the last Wednesday of the month at 10am – 1pm.

To book your place on any of the above seminars please contact CQMS' offices on either:

- > Tel: 01476 566665 / 564 242
- > Email: training-events@cqms-ltd.com

* Courses detailed are free for CQMS clients.

Call 01476 566665 / 564242.

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