

Legal Update

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Information

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Commercial Services

Corporate Manslaughter

The Corporate Manslaughter & Corporate Homicide Bill has finally been passed and will become law in April 2008.

This Act is in addition to current health and safety law and does not repeal any existing legislation. The Act will not just apply to companies but to any “organisation” - and this is very widely defined. It will include statutory bodies or those created by Royal Charter (such as universities or NHS trusts) as well as any type of trading business, a charity or government department.

Once it becomes law it will be much easier to prosecute medium and large companies following a fatal accident. Up until now it has been necessary to show that fatality was caused by the negligence of the “controlling mind” of a company - which is much easier to show in small companies. It can often be argued that large national or international companies with many management layers do not have a “controlling mind”.

Now all that will need to be shown is that the way in which any of an organisation's activities are managed or organised by senior managers caused the death (or deaths). What constitutes a “senior manager” will vary from organisation to organisation, but it must be someone who plays a significant role in either making decisions about how activities are managed or organised, or actually managing or organising a substantial part of the companies activities.

A jury will look at the conduct of the senior manager (or managers) and decide whether their conduct fell below what would reasonably be expected in all the circumstances. They will also look at whether there has been a failure to comply

with any relevant safety, health and environmental legislation or guidance. Other relevant matters, such as previous warnings, enforcement notices or convictions will also be taken into account.

Senior managers will not find themselves in the dock or facing prison in a personal capacity under this new legislation - it will be the organisation that is prosecuted and, if found guilty, fined.

However senior managers or indeed any individual within an organisation, should be aware that the law relating to gross negligence manslaughter has not changed, nor has any of the personal liability sections under any health and safety legislation. Any employee can still be fined or in extreme cases sent to prison if they are found to be personally negligent for that fatality.

Corporate manslaughter cases will only be heard in the Crown Court - which automatically means more adverse publicity and greater costs. The Court will have the power to impose whatever fine it feels appropriate, bearing in mind the size and resources of the company. Remedial orders can be imposed if necessary and the reputational damage of being involved in such a case should never be underestimated.

A company with a strong health and safety culture throughout its structure, clear lines of responsibility up to board level, clear policies and procedures in place, and provides regular training will already have gone a long way to ensure it will not be caught by this legislation. Further action is required and employers, businesses and directors need to be aware of the implications of the new legislation and the increased responsibilities it will place upon their senior managers. Now is a good time

to review your health and safety policies and procedures and ensure everyone is aware of their individual responsibilities.



If you require any further information regarding this legislation and how you can protect your organisation, please contact Nicola Howell on 0117 917 7737.