

Knowledgebase

mhl support ltd's client quarterly risk management publication

Volume 1, Issue 2; Third Quarter 2009



Disability Discrimination

Review of recent case law

Our Employment Law Support Line tells us more.

We take a look at recent case law which is widening the scope of the definition of disability.

Personal Protective Equipment

Are you covered?

mhl's H&S Team tell us more.

Assessments on PPE should be undertaken by all employers to protect their workforce.

Check your waste

Are you disposing of it the proper way?

Our Environmental Consultants tell us more.

We demonstrate how to identify what type of waste your company is producing.

The Equality Bill Due to come into force 2010

Our Employment Law Support Line tells us more

Staying compliant without splashing the cash?

A difficult balancing act for any business

mhl
SUPPORT

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You can be sure that keeping on the right side of **Employment Law**, **Health and Safety** and **Environmental** legislation are just some of them.

To find out how mhl support can help your business, just call us on **08453 100 600** or email **enquiries@mhlsupport.com**.

How to Contact us

Production t: 08453 100 600

Designer

Lisa Worsdale

Senior Designer

Jason Saunt

PR & Communications t: 08453 100 600

PR & Communications Manager

Katy Vaughan

With thanks to:

Employment Law Support Line

Health and Safety Consultants

SHEQ Operations Manager

Paul Cadman

Operations Manager (Legal Services)

Lilian Starkie

mhl support ltd

**Brunswick Court, Brunswick Street,
Newcastle-under-Lyme, Staffordshire
ST5 1HH**

t: 08453 100 600 f: 08453 100 650

e: enquiries@mhlsupport.com

w: www.mhlsupport.com

Support Line: 08453 100 999

Welcome from Cy Green Autumn 2009

Welcome to the second edition of mhl support's combined newsletter "Knowledgebase"



Whilst trading times remain difficult there are predictions that the UK economy is at last starting to emerge from recession following some encouraging signs of the global economy recovering. However, it is likely that any growth will be slow and fragile and it is anticipated that the next 18 months are going to be tough for businesses and householders with consumer spending remaining tight.

Despite the current economic climate mhl continues to expand and improve its product and service range with a number of key new offerings including the introduction of Paygo. Paygo provides an alternative to the usual contractual relationship and offers cost-effective, un-indemnified Employment Law advice on a pay as you go basis.

In addition, after several months of development, we are also pleased to announce that we have launched our new look mhl website. I would invite you to view our updated website and would be delighted to receive any feedback on the design and content.

Autumn has also seen the latest round of Health and Safety Breakfast Seminars across the UK. Our seminars are free of charge and focus on key issues that affect directors and senior managers and they are delivered by qualified experts – more details on page 16. In addition, mhl are also attending the Business North West Exhibition on 28th and 29th October at the Manchester Central (formerly G-Mex) and we would invite you to come along and see us there.

mhl is committed to refreshing and expanding its products to meet the requirements of its market – we are open to your feedback or suggestions!

I hope that you find our latest Knowledgebase newsletter an informative and enjoyable read. If you have any questions relating to any of the articles featured, please contact our Support Line on 08453 100 999, or if you would like to speak to me personally, please call me on 08453 100 600 or email cy.green@mhlsupport.com.

Cy Green, Executive Chairman

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One of the UK's leading providers of Risk Management Solutions

Founded in 2000 and part of the Bibby Line Group, mhl support has earned the reputation of being one of the UK's leading providers of Risk Management Solutions to over 3500 clients in the UK. mhl offer a range of cost-effective and proactive solutions from full on-site support to one-off consultancy projects.

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risk management**

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Our Employment Law update provides you with the latest news and information affecting your business. Inside this edition of Knowledgebase we discuss the pending introduction of the Equality Bill and the proposal to bring forward the review of the default retirement age.

16 Health and Safety

Learn more of the changes to Health and Safety law and read about the current issues and challenges facing your business today. In this issue we take a detailed look at method statements and what exactly should go into them and also tell you why the most common injuries being reported to the HSE result from manual handling operations and what this actually involves.

30 Environmental

In this Autumn 2009 issue mhl support's environmental specialists inform you of the latest news, which includes the replacement of all light bulbs with energy-efficient alternatives. We also review waste management and the correct way to dispose of it within your company.

Feature Articles

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We study the impact of recent case law and its effect on an employer's duty to make reasonable adjustments for employees with disabilities.

10 Case Updates

Keep abreast of recent case law with mhl's updates including a feature on payment of national minimum wage for sleep-ins.



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We discuss the risks of the financial need to reduce numbers, and how to consider the safety implications.



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What exactly should go into a good method statement or safe operating procedure. mhl help to shed some light on the matter.

32 Case Study - 99p Stores Ltd.

Read how mhl's guidance through HR and H&S compliance has helped their stores' growth in such difficult times.

35 Check your waste

Every company, regardless of scale or size, will have waste issues. When does something become waste?

Cover Story

The Equality Bill

This legislation is due to come into force in Autumn 2010. It is anticipated that this will streamline the existing discrimination laws with the purpose of providing clarity and consistency to what has proven to be a complex area of law.



Need to know more...

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EL Retirement Age Review Brought Forward Review due in 2010

The Government plan to bring forward the review of the default retirement age to 2010. The review was initially planned for 2011 but the Government decided that, as a result of the “changed economic landscape” and the current situation for both businesses and individuals, an earlier review is appropriate to ensure that retirement laws reflect modern social and economic circumstances.

Currently unless it is company policy for employees to retire beyond the age of 65, an employer is entitled to retire an employee at 65 years of age. Employees are afforded the right to request to work beyond their retirement age.

Many employees do choose to retire before 65 but 1.3 million workers opt to work beyond their retirement age and the Government believes that, if people had the choice, many would choose to work beyond their state pension age.

By bringing the review forward, the Government plans to provide employees with more flexible options by enabling them to automatically work beyond their retirement age. For employers, if the compulsory retirement age was increased, businesses would be able to further gain from the benefits that the current ageing population bring to the economy.

The Trades Union Congress (TUC) and Employers Forum on Age have both welcomed the decision to bring the review

forward and Brendan Barber, general secretary of the TUC, commented that, “It cannot be right that an employer can sack someone simply for being too old” and feels employees should be given the choice to either continue or give up work.

Following the recent High Court judgement in the Heyday case which confirmed that the UK Government could justify a default retirement age, it appears likely that the review will conclude that the default retirement age should be increased or even abolished.

In fact, the Court went so far as to state that had this review not been brought forward, it would have determined that to set a default retirement age at 65 would have not been proportionate to achieving the legitimate aim and therefore unlawful.

Despite the Government’s intentions that the potential outcome of the review would be a positive step for both employers and employees alike, such a likely decision may prove unpopular for some employers who may no longer be able to simply retire staff when they reach the current default retirement age.

If you have any questions about the compulsory retirement age or require more information on the process, then please contact the Support Line for further assistance.

EL Self-Employed Workers and the Construction Industry HMRC Consultation Document

In a new consultation document, Her Majesty's Revenue and Customs (HMRC) makes proposals to tackle so-called "false self-employment" within the construction industry. This can arise when a worker is labelled self-employed for tax and NI purposes, when there is clearly an employment relationship in place.

Self-employed status is beneficial to both employer and worker primarily in the tax arena. The employer benefits from not having to pay NI contributions and the worker pays lower NI contributions and enjoys tax-deductible benefits.

The focus on the construction industry has arisen from figures that estimate 34% of workers in this industry claim to be self-employed, compared to 11% in other sectors, and the HMRC asserts that there is no reason for the disparity.

It is proposed that legislation will be introduced which deems workers to be employed, for the purposes of tax and NI, unless they meet at least one of three specific criteria:

1. Provision of their own plant and equipment (not including tools of the trade)
2. Provision of all materials
3. Provision of other workers at their own cost

So, employers who think that by hiring self-employed workers they are avoiding an employment relationship and all the employee rights that accompany it, need to think very carefully about the test criteria and whether or not they are in fact entering into an employer-employee relationship.

the news in brief...

Redundancy Pay

The maximum weekly rate for statutory redundancy pay, which usually changes in February, will rise from the 1st October 2009 from £350 to £380.

It is worth noting that when calculating which statutory cap is applicable to a week's pay for redundancy purposes, that it must be calculated from the relevant date of termination.

If you are unsure which rate you should be applying then please do not hesitate to contact the Support Line on 08453 100 999.

National Minimum Wage

The 1st October 2009 also saw an increase to the National Minimum Wage rates. The UK hourly wage rate for 22 year olds and over has increased to £5.80 per hour. The rate has increased to £3.57 per hour for 16-17 year olds and up to £4.83 for 18-21 year olds.

Apprentices who are under the age of 19 or who are over the age of 19 but in their first 12 months of their apprenticeship do not qualify for the national minimum wage.

EL Legal Representation at Disciplinary Hearings Recent Case Law

Up to now, when faced with a request from an employee that they have a solicitor present at a disciplinary hearing, an employer has been able to confidently refuse as the right to be accompanied at a disciplinary hearing clearly refers only to a colleague or a trade union representative.

However, a recent ruling by the Court of Appeal may challenge this. In the case of *Kulkarni v Milton Keynes Hospital NHS Trust* it was ruled that doctors and dentists should be allowed legal representation at disciplinary hearings if the allegations, if proven, could result in the individual losing their right to practice on misconduct or capability grounds.

The impact of this ruling on other roles such as those in the care sector or in private practice, is still unclear. Whilst the Court of Appeal has drawn a distinction between ordinary disciplinary proceedings, where job loss is a possible consequence and those that will deprive an individual of their right to practice, some employers may have to consider carefully any request for legal representation if an employee is facing allegations which mean that, if proven, they would be barred from alternative employment in their chosen field.

It is hoped that the Court of Appeal will provide further guidance on this matter when it gives its judgement on a similar case later in the year.

Disability Discrimination

The effect of recent case law is widening the scope of what is defined as a disability and thereby increasing circumstances in which an employer is under a duty to make reasonable adjustments within the workplace.

Need to know more...

If you are unsure how this affects you please call our support line on 08453 100 999 or more information can be found on the mhl website.

✓ Please visit our website at www.mhlsupport.com



Reasonable Adjustments

Under the Disability Discrimination Act 1995, an employer is required to make “reasonable adjustments” within the workplace to accommodate and assist employees with a disability in order to enable them to effectively carry out their role at work. For example, a reasonable adjustment could consist of making physical changes to the workplace such as widening a doorway, or moving furniture for a wheelchair user.

However, there are certain disability related conditions that employees may have that are concealed from public view if controlled with medication and perhaps not so obvious, for instance, diabetes or epilepsy. The important considerations for an employer are what constitutes a disability and also what reasonable adjustments can be made in order to accommodate a disabled employee within the workplace.

Legislation, along with case law, has gone a long way in an attempt to define a disability and the scope appears to be widening.

Under the Disability Discrimination Act 1995 a person is classed as having a disability if they have a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

SCA Packaging Limited v Boyle

This case demonstrates that a person does not have to be suffering the effects of a disability all of the time and that they can be classed as disabled if their symptoms are likely to recur.

In this case, an employee suffered from nodes on her vocal chords for which she had undergone treatment along with speech therapy. Her employers took down a partition at her workplace which made her working environment noisier and caused her to strain her voice thereby worsening her condition.

The claimant successfully argued that her condition was a disability and that her employer had failed to make the necessary reasonable adjustments.

Fareham College v Walters

Once a disability is established, the employer then has a duty to make reasonable adjustments. In this case a lecturer suffered from a condition called plantar fasciitis which meant that she had restricted mobility with her feet resulting in high levels of absence from work.

Although the employee suggested that she make a phased return to work i.e. working on a part-time basis until she felt fit enough to return to her usual working pattern, the College refused this request and instead dismissed her.

The College argued that a non-disabled person would have been treated in the same way. However, the tribunal held that to make this comparison would defeat the purpose of the disability discrimination legislation.

Additionally, in December 2005, legislation was further widened to make persons who have been diagnosed with HIV, multiple sclerosis or cancer to be deemed as disabled from the point of diagnosis.

Consequently, anyone suffering with these conditions no longer has to prove that they suffer any substantial or adverse effects from these impairments in order to be regarded as disabled.

Employers are therefore advised to be mindful that disabilities can take many forms. Our advice is to always take the recommendations of a medical practitioner in terms of an employee's medical condition.

Consideration also needs to be given to whether this condition is classed as a disability and if so, what reasonable adjustments can be made, if necessary, in a bid to avoid claims of discrimination under the copious and tangled legislation. ■

www

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More on the Web

For more Employment Law advice, visit our website: www.mhlsupport.com



Cases Updates...

McAvoy v South Tyneside Borough Council

The Employment Appeal Tribunal held that a male colleague who carries out like work, work of equal value or work rated as equivalent to a female colleague who is already presenting a similar claim against another male comparator can “piggyback” the equal pay claim.

Eagles v Rugged Systems

This judgement confirmed that in some circumstances, the time limit to make a tribunal claim following dismissal can be extended, leaving employers at risk for a longer period of time.

The Employment Appeal Tribunal held that settlement negotiations constituted a procedure and therefore the right to make a claim was extended by a further 3 months.

Employment Law Training Courses

- View our training courses online at www.mhlsupport.com



Payment for Sleep-Ins *Smith v Oxfordshire Learning Disability NHS Trust*

In this case it was held that a sleep-in payment was not an “allowance” within the meaning of the regulations and accordingly ought to be taken into account when calculating national minimum wage compliance.

The claimant worked at a care home until, after a long running argument over whether he was being paid the national minimum wage, he resigned. As well as his normal hours of work he was required to work “sleep-ins” on occasions.

The employer acknowledged that such “sleep-ins” constituted “time work” within the National Minimum Wage Regulations 1999 and so argued that it should be taken into account when deciding whether the national minimum wage had been paid. The “sleep-in” agreement had its own remuneration terms; a payment of £25.

The Employment Appeal Tribunal concluded that the claimant’s remuneration in any month had two elements - his salary and any payment for sleep-ins.

The key to determine if the national minimum wage was being paid would be calculated over the period of a month, and would take into account an average hourly rate to be determined by dividing all sums received (subject to certain exceptions) by all hours worked.

In this particular case, the daytime wages and the sleep-in payment together were still just above the national minimum wage. However, in the absence of any daytime payments, staff engaged just to sleep in overnight, must be paid at least the national minimum wage for the full period, even if they sleep through the night without being disturbed.



Investigation for Disciplinary Purposes *Compass Group UK and Ireland Ltd t/a Euresst v Okoro*

The claimant in this case was dismissed for theft of an iPod which had been sent to her employers as a gift by a supplier. She had admitted to taking the item home when initially spoken to by her manager and had explained that she had taken it as a joke and returned it unopened and unused.

The Employment Appeal Tribunal (EAT) upheld the tribunal’s decision that the dismissal was unfair because the employer had not investigated the employee’s explanation properly to consider whether it should be treated as a mitigating factor.

The finding of unfair dismissal was held to stand, but on the basis that the dismissal was substantively unfair rather than automatically unfair.

The EAT commented that there is no universal rule that if an employee admits misconduct an investigation is unnecessary; it is part of the overall issue of whether it is reasonable to dismiss in the particular case. This case reinforces the importance of conducting a thorough investigation into any allegations of misconduct.



TUPE and Constructive Dismissal

EL *Tapere v South London and Maundsley NHS Trust*

The claimant in this case worked for Lewisham Primary Care Trust before being transferred to South London and Maundsley NHS Trust under TUPE. She was due to transfer to a new location at Bethlem Hospital, some two and a half miles away, but because of lack of space, the move was delayed.

The claimant complained that the move would add time to her journey and would interfere with her childcare arrangements and attended a meeting with her employer on 11th April 2007 to discuss the issues. While the claimant was on holiday, she was sent notice to transfer to her new place of work, but did not receive the letter and so attended her existing office, to find no one there. She subsequently was signed off sick and later resigned.

The tribunal found that, although she had not received her letter, she had known that the move was imminent for some time and that the proposed move would not make her journey time materially longer, viewing objectively that there was “no material change to the claimant’s detriment”

The Employment Appeal Tribunal ruled that the tribunal had erred in considering that the words “within the Trust” added nothing. They instead ruled that these words defined the geographical ambit of the mobility clause and this referred to those in place at the time of the original contract and not to the new geographical boundaries. The transfer cannot alter the meaning of the term in the contract.

Cases Updates...

Cheltenham Borough Council v Laird

This case reiterates that pre employment medical questionnaires must be thorough if action is to be taken for misleading answers.

A claim on the basis of the employee’s omission that she had previously suffered from depression failed as it was held that she had not misled her employer, but rather the questions drafted were merely not thorough enough.

Employment Law Training:

Making sure your managers are well versed in the correct processes to deal with Employment Law is a constant challenge. With legislation changing every six months, the only way to do this is to ensure that they receive regular training.

mhl’s suite of Employment Law courses focus on developing the skills of those in your business who are responsible for managing staff.

For more information please contact our Training Department on **08453 100 600** or email **enquiries@mhlsupport.com**.

the news in brief...

Fit Notes

Government consultation on the proposal to replace sick notes with a new "fit note" scheme has now come to an end.

It has been decided that the new scheme, which will hopefully help to re-introduce employees back into the workplace following a period of sickness absence, will come into effect in April 2010.

Further information will be provided as this develops.

Foreign Workers

It has been announced that employers will be under an obligation to advertise vacancies at the Job Centre for a minimum of one month before being able to offer the job to non-EU nationals.

Proposal by CBI

The Confederation of British Industry has proposed an "alternative to redundancy" scheme that enables employers to keep skilled workers by implementing a six month lay off period involving payment of an allowance worth twice the current Job Seeker's Allowance rate.

Half of this allowance would be paid by the Government and half by the employer, thus reducing salary overheads and avoiding potential redundancy payments.



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Data Protection Act 1998 Change to Notification Fees

At present, certain persons who are responsible for controlling data are obliged to register with the Information Commissioner's Office (ICO) under the Data Protection Act 1998.

This registration is designed to promote openness and transparency about the purposes for which organisations process personal data in order for the ICO to publish a public register of such information for access by anyone who wishes to review this.

As such, when registering, data controllers are asked to outline the purposes for which they process personal data and to also pay an appropriate registration fee.

This registration fee is presently £35 for the initial registration, which is repayable annually when registration is renewed. However, under amendments which came

into force on 1st October 2009, this fee has been revised and replaced with a 2-tiered fee system. The £35 fee will remain for any data controller who is within tier 1, but for anyone falling within tier 2, the fee will now be £500 per year.

In order to fall within tier 2, a data controller must have 250 or more staff and have an annual turnover of £25.9 million or more in the previous financial year. There are separate rules for public authorities.

Certain organisations will always fall into tier 1 including Charities, Small Occupational Pension Schemes and organisations that have been in existence for less than a month.

Any data controller registering for the first time or renewing their registration after 1st October 2009 will be required to pay the new fees.



HR Training: Reducing Absence

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mhl can help to ensure that your business continues to operate whatever the absence challenges you face.



Equality Bill Due to come

The Equality Bill, which is due to come into force in Autumn 2010, is aimed at simplifying the laws relating to discrimination.

It is hoped that the new Bill will de-clutter discrimination law by replacing the major Acts and other delegated legislation with one single piece of legislation, allowing organisations and individuals to discover their rights and obligations more quickly in a way that can be easily understood.

An important part of the Bill is the authorisation to use positive action to end cycles of inequality and to address the disadvantages suffered by under-represented groups. This will allow companies to favour recruitment of under-represented groups into their business provided that the candidates are of equal suitability. However, it is believed that job applicants could now, therefore, make claims to an employment tribunal where they believe the employer has not used its discretion regarding positive action.

Furthermore, the Bill also outlines measures to bring equality to pay which includes banning clauses in employment contracts which prevent employees discussing their salaries. It is hoped that this will result in more women being able to challenge unfair pay and is another step towards gaining equal pay for women.

Additional obligations and permissions will not just be placed on organisations, but employment tribunals will also be allowed to make recommendations to companies regarding improvements on working practices.

Although some people have been sceptical about the introduction of the Equality Bill, it is seen by others as helping to

provide clarity and consistency to what has become a complicated area of law. It is believed that although the Bill does contain some new proposals, the majority of it is designed to make it more user friendly and accessible.

Principles of the Equality Bill:

- Lengthening the scope of positive action so that employers can take into account, when selecting between two equally qualified candidates for recruitment or promotion, under-representation of disadvantaged groups.
- Lengthening the protection from harassment by third parties, which currently applies to sexual harassment, to the other protected groups.
- Introducing a requirement for private sector employers with more than 250 staff to report on the pay gap between male and female employees. The Government has made a commitment not to use these before 2013 and only then if insufficient progress has been made on voluntary reporting in the meantime.
- The banning of secrecy clauses which prevent employees from discussing their pay with their colleagues.

In conclusion, although businesses are naturally wary of changes to employment law, especially during the current period of recession, an organisation that treats individuals on merit rather than stereotypical beliefs will be in a better position to comply with their obligations under the Bill. ■

into force in 2010



When and Where

Dates for your diary

- **Faversham**
Thursday, 12th November
 Shepherd Neame
 17 Court St,
 Faversham,
 Kent, ME13 7AX
- **Southampton**
Thursday, 19th November
 The Rose Bowl
 Botley Road,
 West End,
 Southampton,
 Hampshire, SO30 3XH
- **Glasgow**
Thursday, 26th November
 Marriot Hotel
 500 Argyle Street,
 Glasgow, G3 8RR

For more information

To reserve your place or to receive further details about our seminars please contact our team on **08453 100 600** or via email at enquiries@mhl-support.com.

- ❑ Keep track of further Seminars added to our calendar visit: www.mhlsupport.com



Health & Safety Compliance

A penny for our thoughts

Whilst many business leaders see compliance with Health & Safety legislation as something which has to be achieved, the most recent report commissioned by the HSE actually shows Health & Safety in a more positive light with 82% of respondents seeing it as a means of protecting their organisation's reputation.

Our presentation will provide you with an overview of the hidden benefits of compliance including how it can help you to win new business, enhance your reputation, and in many cases, reduce your insurance costs.

Keen to dispel the myths of Health & Safety, mhl support's Head of Business Defence, Alan Millband, a leading authority on Health & Safety Law, is offering his expertise in this complex and ever changing field. His presentation will provide you with an overview of the hidden benefits of compliance including how it can help you to win new business, enhance your reputation and, in many cases, reduce your insurance costs.

With 30 years experience in Business Defence, Alan is a widely recognised public speaker and lecturer in the field of Health, Safety and Environmental Compliance. Delivering his topic in a stimulating format, Alan's seminars are not to be missed by Directors and Senior Managers who want to protect their organisation and its reputation.

The hidden benefits...

Seminar Outline

Our presentation will cover five key areas:

- How to benchmark your business; are you compliant, where are the gaps and where are you exposed?
- What benefits can you gain from a sound Health & Safety system – in costs, in reputation and in revenue growth?
- What are the downside risks of poor systems or bad implementation?
- Are your employees aware of their duties and correct working practices and are they properly skilled and equipped?
- How to develop an effective approach for **YOUR** organisation.

a penny for
our thoughts



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Compliance with health and safety - The hidden benefits

mhl support are hosting free advisory seminars to provide local businesses with a much needed insight into changes to Health & Safety legislation.

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and safety specialists**

To reserve your free place simply call our seminar team on **08453 100 600** or email **enquiries@mhl-support.com**

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HS Lone Working Are You Controlling the Risks?

As businesses respond to the economic climate more individuals may become "Lone Workers". There is a risk that, due to the financial need to reduce numbers, employers might not fully consider the safety implications of reducing staff numbers.

Lone Workers are considered, by the HSE, to be "those who work by themselves without close or direct supervision" either during the majority of the working day or over short periods of time.

Lone Workers are found in a wide variety of professions and circumstances:

- Small fixed premises, eg. shops and garages.
- Home workers.
- Working in isolated parts of a building.
- Working outside of normal hours, eg. night security, cleaners.
- Mobile workers, eg. decorators, agricultural workers, social workers, salesmen etc.

Key risks associated with lone working include lack of immediate assistance if injured or taken ill, violence

against the person, inadequate rest, hygiene and welfare facilities, psychosocial issues and/or stress resulting from feeling isolated.

Lone Workers must not be at greater risk than other employees. Additional control measures, over and above the norm may be needed. Regular monitoring and contact with the worker(s) will determine the effectiveness of control measures. If necessary, create and issue a policy, clearly define what is considered lone working and show management commitment to identifying, assessing and controlling lone working situations.

Establish regular contact and meetings with affected employees, encourage discussion about the job and, most importantly, encourage employees to leave the task if they feel at risk in any way and to seek assistance and advice. Ensure individuals have clear guidance and instruction on when to request assistance, what to do in emergency situations and written details for contact during out of hours.

HS COSHH v Material Safety Data Sheets New rules have been introduced

Many people confuse the Material Safety Data Sheet with a COSHH Assessment. The Material Safety Data Sheet is issued by the manufacturer or supplier. Even if you are purchasing cleaning substances from your local supermarket they have a legal obligation to supply the data sheet on request. This document consists of sixteen sections, much of which is technical and beyond most people's experience and training. However, this document is essential when carrying out a COSHH assessment as it gives certain pieces of information which are necessary to be aware of.

In contrast, the COSHH assessment can vary for the same product. It is based on the premise that an assessment is made of how the substance is used by your staff under the operating conditions. For example, very few people would make an assessment of washing up liquid as it is mainly used perhaps once or twice a day to wash up a few tea or coffee cups. But, if a restaurant employed a pot washer for an eight hour period and they had their hands in washing up water and washing up liquid, they would almost certainly contract dermatitis. In this case you would carry out a COSHH assessment. The difference would be identifying the risks and issuing rubber gloves.

Remember: COSHH is all about those substance which your staff come into contact with. Any substances which are sold but not used do not need a COSHH assessment, but you should be aware of any issues, such as spillage, fire etc, which could become a problem. This information is found in the material safety data sheet.

Health and Safety Services

For more information on our Health and Safety Services please call our team on 08453 100 600 or email enquiries@mhl.support.com.

Visit our website at: www.mhlsupport.com

HS Worker suffers stab wound Food Company fined

Cranberry Foods of Scropton, Derbyshire pleaded guilty to breaching Section 3(1) of the Health and Safety at Work Act, for failing to take all reasonable steps to ensure the safety of Robert Bogdan, one of their employees, after he suffered a 10cm-deep stab wound to his abdomen in the fourth incident of its type at the company. Southern Derbyshire magistrates fined the firm £10,000 plus £2,726 costs.

Bogdan, a Hungarian worker, had not been provided with a chain mail apron, and required surgery after his accident with a knife in August 2008. HSE inspector Melvin Sandell said it was sad that the company had not heeded previous warnings, adding that Bogdan was lucky he had not suffered more serious injuries.

HS Caretaker compensated for hernia Negligence to workplace safety

Alan Thomas, a school caretaker, has received compensation from Wakefield Council in an out-of-court settlement after he suffered a hernia while lifting a heavy room divider.

He was moving the divider so he could polish a classroom floor when he was injured. Wakefield Council admitted negligence and settled the claim out of court. Thomas, who is now back at work, received £3471.

Keely Goldup of Thompsons Solicitors commented "It is the responsibility of any employer - in this case Wakefield Council - to make sure there are systems in place so that jobs are performed safely and in this case they failed to do so".

It is all in the method...

Anybody working in the construction industry and related trades will be familiar with the requirement to produce a method statement or safe operating procedure for a particular contract. However, what exactly should go into a good method statement and what is the difference between a method statement, a safe operating procedure, a safe system of work or a safe work method. At mhl we aim to present health and safety in simple, sensible terms - hopefully this article will shed light on this often confusing area.

Standard Operating procedure (SOP)

A SOP results from an examination of a working process identifying hazards and specific work methods to eliminate hazards/risks.

The background to this is the requirement within the Health and Safety at Work Act, that:

- It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees;
- To provide and maintain plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health.

Further regulations make specific requirements in respect of safe systems of work, eg those relevant to manual handling, use of hazardous substances etc. Safe systems of work are frequently addressed in the 'Arrangements' section of an organisation's health and safety policy and within the risk assessment process.

Safe systems of work are developed by a 'Competent Person' ie, 'a person with sufficient training, experience and other qualities' to assist with safety management and compliance.

Staff actively involved in carrying out the work also have a valuable role to play in the development of the system to ensure it is of practical benefit and will be applied diligently. They must also clearly understand the system of work and ensure it is effectively communicated.

Safe systems must be documented to provide a reference point for all concerned including the employer, particularly if there is an inspection by enforcement agencies or in the event of an accident.

The safe system of work should comprise of:

- Technical: Engineering controls.
- Behavioural: How individuals/groups act in relation to the hazard.
- Procedural: Specification of the task, including checks and key safety actions.

The system is developed by analysing the risks and the requisite controls. Sources of information include reference to legislation, guidance notes, manufacturer's information, company policy etc. Where extreme risks are involved, the safe system of work may be a 'permit-to-work' including permissions and signatures.

Training is vital to ensure a clear understanding of the task, the system and associated requirements.

Finally, all safe systems of work need to be monitored regularly to ensure they are fully observed and effective with appropriate supervision.

Safe Systems of Work (SSoW)

This is generally more detailed than a procedure and prescriptive in its structure resulting from a systematic examination of a working process. Again this is a legal requirement within the Health and Safety at Work Act.

Safe Work Method (SWM)

This is predominately used to describe a document giving instructions on how to safely perform work-related tasks or operate plant or equipment. Health and Safety law requires employers to have Work Method Statements in place advising employees and contractors on how to work safely.

It is generally used as a Safety Induction and then referred to throughout a workplace.

Safety Method Statements

This is a method of control used following a risk assessment. It helps to control the operation and ensure that all concerned are aware of the hazards associated with the work and the necessary safety precautions. Additionally, construction method statements are used on site detailing boundaries, materials, plant requirements and temporary work designs.

Method statements are usually written by engineers carrying out the work (competent person) and involve collating information from drawings and specifications to produce large-scale sketches detailing dimensions, positions of service, stressing ducts and reinforcement.

They also contain information on the order and method of construction. Sometimes they are a contractual requirement to be submitted to the resident engineer.

Continued →



Frequently contractors are asked by clients to produce method statements as part of their Health and Safety documentation or for larger projects under the CDM Regulations. Method Statements detail how tasks or activities will be carried out and the possible risks and methods of control to be established.

Method Statements are agreed between a client and principal contractor or a principal contractor and contractor. They are produced for work with a high hazard content.

They specify activities to be undertaken and precautions to protect site operators, employees and members of the public who could be affected by site activities. Occasionally they may be produced and agreed between a client and principal contractor for high risk activities prior to commencement.

What can go into a Method Statement?

Whilst there is no standard format, the following aspects may need consideration:

- working systems;
- arrangements for access;
- methods for safeguarding existing structures;
- structural stability precautions,
- arrangements for protecting the safety of members of the public;
- plant and equipment;
- health protection arrangements,
- procedures to prevent pollution;
- segregation of specific areas;

- procedures to ensure compliance with legal requirements under:
 - i. Control of Noise at Work Regulations;
 - ii. Work at Height Regulations;
 - iii. Control of Lead at Work Regulations;
 - iv. Construction (Design and Management) Regulations.

They may also incorporate information and specific requirements by clients, enforcement officers, the police, local fire authority, manufacturers etc. It can also identify training needs and the use of competent persons or specially-trained operators for certain activities.

What are Method Statements and how do I write them?

A method statement is used after a risk assessment has been carried out. It is 'Site Specific' and controls the operation to ensure that everyone is aware of any hazards associated with the work and safety precautions to be taken.

Additionally, construction method statements are used on site. They detail boundaries, materials, plant requirements and temporary work designs and must be written by a competent person familiar with the work processes, containing information on the order and method of construction.

There are several types of document all doing the same thing, the difference being dependant on the industry requirement. However, it may be the originator's decision, based on the

understanding of the user, because it is a communication document. Having carried out the risk assessment the SOP, SSoW, SWM or Method statement is then produced.

Good Health and Safety management addresses key areas such as :

- Risk assessments
- Policy
- SOP/SSoW etc
- Training
- Inspections

mhl support are well placed as advisors and providers of documents and systems. A recent addition to mhl's services is eRams, a dynamic web solution that produces risk assessments and method statements.

The benefits of this are ease of access, standardisation of multi-site documentation, simplified production as the method statements are partially populated as a result of the risk assessment.

For further information on eRams contact mhl support on telephone **08453 100 600** or email www.mhlsupport.com/erams.html. ■



More on the Web

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Risk Assessments and Method Statements: Are you drowning in paperwork?

Maintaining your Risk Assessments:

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HS

Personal Protective Equipment Are you covered?

PPE or Personal Protective Equipment are generally items worn on the body as the 'last line of defence' against a particular or general hazard. Hard hats, safety boots, bump caps, face masks, gloves, overalls, barrier creams and ear defenders are all examples of PPE worn as a physical barrier to protect the body against exposure to a particular hazard. Hi viz clothing is an example of PPE that is worn to warn the hazard (in this case, generally, moving vehicles) of the presence of an individual.

The Personal Protective Equipment Regulations 1992 is the specific legislation that governs PPE use and regulation 4 states:

"Every employer shall ensure that suitable personal protective equipment is provided to his employees who may be exposed to a risk to their health and safety while at work except where and to the extent that such a risk has been adequately controlled by other means which are equally or more effective".

Under Health & Safety legislation PPE is defined as a "last resort". There are a number of reasons for this but mainly PPE only protects the person wearing it, whereas measures controlling the risk (at source) can protect everyone within the workplace. Also, generally, maximum levels of protection are seldom achieved with PPE in practice.

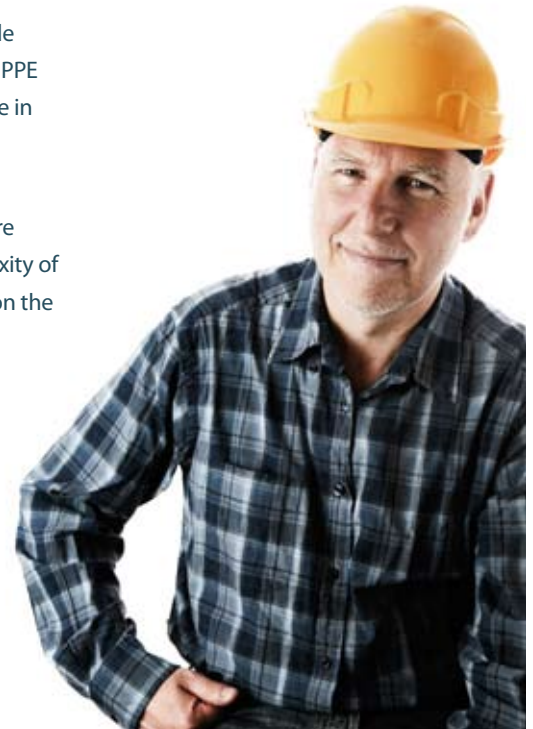
Some areas for employers to consider are as follows:

- Where there is potentially more than one hazard then more than one item of PPE may be required and therefore the compatibility aspect needs to be considered, ie. can the ear defenders be worn with a hard hat for example
- Generally, an assessment is required to identify if the PPE will be effective in protecting and therefore reducing the risk to his/her employees.
- Suitable selection of PPE is required. A check on CE or EN marking gives a certain benchmark with regard to a good standard, plus the choice of PPE should be suitable for all types of hazards that it is intended to protect against.
- Other considerations could include maintenance and replacement of PPE and suitable procedures should be in place to monitor this process.
- Training in the use of PPE should be carried out with all staff who are required to wear PPE. The complexity of the training will vary dependant on the PPE itself.

For example, to use full breathing apparatus a 2 day course is generally required, whereas the use of general protection gloves can be explained very easily. However it is carried out, all training or instruction should be recorded and there should be a signed acknowledgement of understanding by staff.

- Recording of issue of PPE is important and records should be maintained to show the company/organisation have issued the appropriate PPE.

Therefore, it shows that research and assessments to find the most suitable and appropriate form of PPE should be undertaken by all employers in trying to fully protect their workforce.





Manual Handling Can you Handle the Truth?

When health and safety is discussed in the workplace more often than not incidents such as fire, electricity, falls from height and Display Screen Equipment spring to mind. However, if you were shown the statistics you may be a little surprised.

In fact the most common injuries reported to the HSE over the last 2 years were musculoskeletal disorders, the most common being back related injuries followed by neck and upper limb injuries. When considered, this makes sense given the significant number of industries involved in some degree of handling. When challenged it is difficult to name an industry in which a job can be carried out without using at least one of the body parts mentioned above. Even something as light as a box of paper can lead to a back strain or slipped disc.

A common misconception is that manual handling only involves lifting or carrying things, which in part is true. But in actual fact, manual handling also includes pushing, pulling, putting down, moving and supporting of a load by hands or bodily force. Although manual handling in the workplace is captured under the Health and Safety at Work Act and the

Management Regulations, there is also specific legislation in place which is most relevant to overseeing Manual Handling in the workplace, the Manual Handling Operations (MHO) Regulations 1992.

The fundamental idea behind the MHO Regulations is that employers have an obligation to:

- Identify manual handling operations;
- Avoid manual handling operations;
- Assess remaining manual handling operations;
- Reduce manual handling techniques;
- Train and inform employees.

It is important to remember that whenever carrying out assessments or training, the workforce and the site specific characteristics of the activities should be considered. Appraising the workforce of the risks associated with manual handling could potentially reduce the likelihood of an injury occurring. As a result of this staff, for example, may learn that Lordosis is, in fact, curvature of the spine and not a character from a Tolkien novel!

Case Update...

First Prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007

As reported in volume 1, issue 1 of Knowledgebase, Cotswold Geotechnical Holdings is the first company to be charged under the Corporate Manslaughter and Corporate Homicide Act 2007 with the unlawful killing of a young geologist by gross negligence.

Director Peter Eaton is being personally charged with gross negligence manslaughter under common law.

Mr Eaton was due to enter his plea at Bristol Crown Court on the 19 August, but the case was adjourned after an application for more time by his legal counsel. A plea hearing is now expected to take place in October. The trial has been scheduled to commence on 23 February 2010.

Further updates on this case will be reported in the next **Knowledgebase** newsletter.

HS Tower scaffold death costs EDF Energy £180k Due to error in Risk Assessment

A maintenance contractor died whilst dismantling a tower scaffold. The 63-year-old, James Gordon, had removed the top working platform and was on an intermediate platform, unclipping the diagonal structural braces, when he lost his footing and fell from the platform to the floor below, a distance of 5 metres. He sustained fatal head injuries.

Mr Gordon was working for major power provider EDF Energy, which has been fined £160,000. EDF Energy had been contracted by West Sussex Council to maintain the heating and lighting in the sports hall of Worthing High School. The scaffold had been erected incorrectly, without handrails to

provide edge protection on the intermediate platform, as stipulated in the Work at Height Regulations.

The mobile tower scaffold had been erected to access the lighting and heating appliances in the hall ceiling and James Gordon was tasked with dismantling it.

Although the company had an adequate risk assessment in place, it had only considered the top of the tower scaffold as a work platform and had not taken into account the need for handrails all the way up the structure.

HS Operating machinery and drills Companies warned to follow correct safety procedures

The Health and Safety Executive (HSE) is warning employers and their staff to be mindful of following the correct safety procedures when operating machinery and drills, following the prosecution of a West Bromwich firm.

An employee was working with a pedestal drill, when his hand slipped from the block. His glove was caught in the rotating drill, amputating part of his index finger during an incident on 15 October 2008. In court the company was fined £4,000 and ordered to pay £2,423 costs on 15 June 2009.

A risk assessment had identified drill guarding and the provision of jigs as necessary safety controls, but neither safety measure had been used. A telescopic guard was installed within a couple of days at a cost of just £60. In general terms, the Provision and Use of Work Equipment Regulations 1998 (PUWER) requires that equipment provided for use at work is:

- suitable for the intended use;
- safe for use, maintained in a safe condition and, in certain circumstances, inspected to ensure this remains the case;
- used only by people who have received adequate information, instruction and training; and
- accompanied by suitable safety measures, eg protective devices, markings, warnings.

HS Ladder Exchange Initiative 2009

Promoting the HSE's Shattered Lives Campaign

Building upon the great success of the Ladder Exchange Initiative in 2007 and 2008, and to promote their Shattered Lives Campaign, the HSE is reintroducing the Ladder Exchange Initiative which will run from 1 September until 31 December 2009. The Ladder Exchange Initiative is simple. If you have a ladder which is bent, broken or battered you can part exchange it for a new one. It is also the aim of Ladder Exchange to increase general awareness of the risks involved in ladder use and promote sensible health and safety.

As required by The Work at Height Regulations 2005, a ladder should only be used where a risk assessment demonstrates that the task is low risk and of short duration, or where there are existing features on site that cannot be altered and the use of other equipment is not practical.

In 2007/08, a total of 58 workers died and over 3600 employees suffered major injury as a result of a fall from height in the workplace. Many of these incidents could be avoided by using the right equipment and taking simple precautions. Over 5,500 ladders have already been exchanged under this initiative since it first launched in 2007.

The message from the HSE remains simple - *"Don't let a dodgy ladder shatter your life"*.

HS Second scissor lift prosecution for Tesco

Store to pay penalty for not maintaining risk assessments

Tesco has been ordered to pay a £12,600 penalty after a reverse scissor lift collapsed while in use at one of its superstores. This is the second time the supermarket chain has been prosecuted over a defective scissor lift and its sixth safety prosecution in less than a year and-a-half.

Staff were using the lift at the supermarket in Ysrad Mynach near Caerphilly in South Wales on 17 March 2008 when it buckled.

An environmental health officer and senior commercial safety officer from Caerphilly County Borough Council conducted an investigation and found Tesco had broken several safety rules.

Though the supermarket chain had a risk assessment form for using scissor lifts, the company had not implemented it at the store. Tesco had also failed to maintain the lift and to have it thoroughly examined at six-monthly

intervals as stipulated by the Lifting Operations and Lifting Equipment Regulations (LOLER). In fact the lift had not been checked for over four and-a-half years.

At Abertillery Magistrates' Court, Tesco admitted breaching Regulation 5(1) of the Management of Health and Safety at Work Regulations, by failing to implement its risk assessment.

The company also pleaded guilty under Regulation 9(3)(a)(i) of LOLER and Regulation 5(1) of the Provision and Use of Work Equipment Regulations, for failing to conduct six-monthly lift examinations and not maintaining the lift in good working order. The court fined Tesco a total of £9600 with £3000 in costs.

Tesco was fined £20,000 last year after a defective scissor lift knocked a worker unconscious in August 2006.

Need to know more...

Anyone with a broken, damaged or bent ladder can part exchange it for a new one with discounts of up to 50% at any of the partner retail outlets.

Details of discounts being offered by partners can be found on their website which can be accessed via: www.hse.gov.uk/falls/get-involved.htm



HS Young persons and work experience students What happens when you employ them in the workplace...

Are you aware of your legal responsibilities when employing young persons or when you have work experience students in your workplace?

Every year there are reports of young persons and work experience students being injured and some killed through workplace accidents or incidents. Below are some accident statistics which highlight how vulnerable this group can be in the workplace.

HSE figures show that in 2000 six under-19 year olds lost their lives carrying out work activities, 1,551 sustained major injuries and a further 5,310 young persons were absent from work for over 3 days as a result of a work-related illness or injury. In particular, young workers are more at risk than any other age group of developing Repetitive Strain Injury (RSI).

Health and Safety law defines people by age:

Who is a young person:

A young person is anyone under 18 years of age (young people);

Who is a work experience person:

They will typically be classed as a child and this is defined as anyone who is not over compulsory school age. He or she has not yet reached the official age at which they may leave school, also referred to as the minimum school leaving age (MSLA).

The law recognises young workers may be at particular risk at work because of their possible physical and psychological immaturity and lack of awareness of work risks and training.

Before employing a young person you must conduct a health and safety risk assessment which must take these specific factors into account

The risk assessment

- The fitting-out and layout of the workplace and the particular site where they will work;
- The nature of any physical, biological and chemical agents they will be exposed to, for how long and to what extent;
- What types of work equipment will be used and how this will be handled;
- How the work and processes involved are organised;
- The need to assess and provide health and safety training; and
- Risks from the particular agents, processes and work.

There are also risks to young people associated with specific industries or processes. Further help and guidance on the following can be obtained from your Health and Safety consultant, mhl Support Line or the HSE.

- Agriculture;
- Carriage of dangerous explosives and goods;
- Shipbuilding and ship-repairing Regulations;
- Provision and Use of Work Equipment (PUWER);
- Power presses;
- Woodworking machines;
- Mechanical lifting operations (including lift trucks).

Outcome of the risk assessment

In carrying out the risk assessment you should identify the measures you need to take to control or eliminate health and safety risks. In many cases, you will find that the risks to young people are adequately controlled if you are complying with other specific health and safety law, eg the Manual Handling Operations Regulations or the Control of Substances Hazardous to Health Regulations (COSHH).

If a significant risk remains in spite of your best efforts to do what is reasonably practicable to control it, you must not employ the young person to do this work. The extent of the risks you identify in the risk assessment will determine whether you should restrict the work of the young people you employ.

With the exception of, in special circumstances, you should not employ young people to do work which:



Need to know more...

If you are not sure how this affects you please call our support line on 08453 100 600 or email enquiries@mhlsupport.com

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- Is beyond their physical or psychological capacity;
- Exposes them to substances chronically harmful to human health, eg toxic or carcinogenic substances, or effects likely to be passed on genetically or likely to harm the unborn child;
- Exposes them to radiation;
- Involves a risk of accidents which they are unlikely to recognise due to lack of experience, training or attention to safety etc;
- Involves a risk to their health from extreme heat, noise or vibration.

These restrictions will not apply in circumstances where young people over the MSLA are performing work in conjunction with their training, under proper supervision by a competent person, and providing the risks are reduced to the lowest level, so far as is reasonably practicable. Under no circumstances can children of compulsory

school age perform work involving these risks, whether they are employed or under training such as work experience.

Training includes Government-funded training schemes for school leavers, modern apprenticeships, in-house training arrangements and work qualifying for assessment for National/Scottish Vocational Qualifications, eg craft skills.

Work experience

Students and trainees, including children, on work experience are regarded in health and safety law as employees. Students on work experience placements must be provided with the same health, safety and welfare protection given to other employees. Restrictions (see above) may apply to the types of work which young people, including children below the MSLA on work experience, are allowed to do. ■

HS

Daughter fights asbestos cancer Company fined by Magistrates

A woman who is fighting for her life fears that childhood hugs from her dad may have given her a deadly asbestos cancer. Judith Tomlinson loved nothing more than giving her dad Roland Adcock a hug when he came home from work. Now Judith, a former office worker, has mesothelioma which could be linked to the dusty overalls her dad wore while working as a construction foreman.

The 58-year-old, who has launched a compensation claim, said: "My father would turn in his grave if he knew he may be responsible for giving me this cancer." She added "its terrible that he may be to blame for this cancer, but its his company's fault, not his. Dad was always dusty from work and would come in and sit and have a rest and a cup of tea before having a bath. I was always close to my father. I was daddy's girl as I was just like him, so when he got in from work, I wanted to be around him."

Judith believes she may also have been exposed to asbestos dust while helping to wash her dad's work clothes and while riding in her father's work van. She believes her father was exposed to asbestos while

working for a construction firm. The family solicitor is quoted as saying "The disease traditionally affects people who have directly been exposed to asbestos during the course of their work".

"But sadly we have seen an increase in the number of cases involving family members who have been exposed to asbestos whilst laundering contaminated work clothes and coming into contact indirectly with the asbestos".

To prevent this type of incident occurring in your business you should ensure you follow the requirements of the Control of Asbestos at Work Regulations 2006 and identify the location of all asbestos in your premises or work location that your staff or others are in and then "manage" the asbestos accordingly either by leaving in situ and identifying it and controlling exposure or by removing it.

mhl support have a team of dedicated professionals who can assist you to comply with these regulations and therefore reduce the likelihood of any incident of this nature affecting you or your business.

Need to know more...

For more information and resources on this subject contact the mhl support on 08453 100 600 or email enquiries@mhl.support.com

Visit our website
www.mhlsupport.com

HS

HSE to double inspections of asbestos removal contractors Set to take place over the next two years

It is understood that the HSE plan to double inspections of licensed asbestos removal contractors over the course of the next two years. Currently, the frequency of asbestos inspections of around 800 in 2008-09 will increase to 1600 by the end of 2010-11.

The decision in May of this year, by the HSE's field operations directorate, determined that asbestos inspections are part of the new strategy and its asbestos Hidden Killer campaign. The executive is appointing more fixed-term inspectors and is training more new inspectors in asbestos removal checks in order to support the increase in the number of inspections.

The HSE was notified of 30,758 asbestos removal works in 2008-09 and inspected one in 38, which was a considerable increase on the preceding year when only one in 63 asbestos removal works were checked.

However, the HSE said the purpose of the inspections is to check contractors are maintaining safe standards of work and removing asbestos in line with the requirements of the Control of Asbestos at Work Regulations.

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Case Study: mhl helps 99p Stores Ltd stay focused and keep on growing and growing...

Against the theme of the meltdown in the High Street, the development of 99p Stores Ltd provides a spectacular counterpoint. The no-frills retailer is growing at the rate of 2 stores per week, and (at the time of writing) has over 2,000 employees in 85 stores located across England and Wales.

In such a fast-growing environment the stakes are high, and 99p Stores' MD Nigel Peckham cannot afford to take his eye off the ball for a minute. With that in mind, he decided to delegate the tasks of Employment Law and Health and Safety compliance to mhl support, one of UK's leading regulatory service companies.

"It's very difficult, not to mention expensive, to keep up with changes in legislation on your own", said Nigel, speaking in the company's Daventry Head office. "With mhl we have a full-time resource and reference point that provides us with quality, indemnified advice when we need it. The cost of the service is very

reasonable and because payment is spread over the lifetime of the contract we can budget our out-costs accurately, virtually eliminating the risk of potentially expensive tribunals."

In the past year, mhl has advised 99p Stores in a number of ways, as Nigel explained: "All of our HR documentation, including our standard contract of employment, was revised to make sure we were compliant and mhl has helped us with a number of HR disputes, as you'd expect. However, I particularly appreciate the 'expert ear' they provide when I'm considering something new."

Nigel regularly contacts Brendan Wincott, in particular, and finds his advice to always be beneficial, understandable and is always confident that it complies with current employment legislation. Nigel will frequently run an idea past Brendan, and he will often say, 'that's a great idea, Nigel, but have you thought of this?'

Brendan, who has completed a law degree, the Legal Practice Course and who is currently studying for his Masters in Employment Law, is one of mhl's team of highly qualified Support Line Advisors. He feels very much a part of his client's team. "It's a process of continuous development", he said. "I make it my business to learn as much as I can about a client's business and understanding its key principals. That way, you can offer advice that not only ensures legal compliance, but also helps keep the company on-target to achieve its commercial goals."

"The beauty of having mhl support on our side is that we can be confident that both our procedures and our paperwork are up to scratch, allowing us to deal with 70-80% of HR and H&S issues internally", Nigel said. Asked for a single sentence that might encourage others to enlist mhl's support, Nigel offered: "it's just as easy to get advice from mhl as it would be if there was an HR Director in the next office." ■

Staff who are sick on holiday can 'reallocate' annual leave New Ruling from the European Court of Justice (ECJ).

Recent developments in Europe strongly suggest that employees who have booked holiday and become sick, either before or during that holiday, have the right to take the time off again. It would also seem that employees have the right to carry that holiday over into subsequent holiday years.

The ruling relating to Francesco Pereda, a council worker from Madrid, was made by the European Court of Justice. Pereda was injured before he was due to go on holiday, and asked his employer if he could take his holiday some other time. His employer refused. The ECJ said his employer was wrong.

Unfortunately, the wording of the ruling does not help us understand exactly what employers should expect from employees. At what time does an illness impact on holiday entitlement? What reporting procedure does the employee need to follow? What proof of illness does an employee need to give their employer? As a result, there is a huge gap in our understanding and significant potential for abuse by unprincipled employees.

For example, if an employee catches a tummy bug whilst sunning in some tropical isle, is this illness sufficient to entitle them to take their holiday again some other time? The tummy bug is not incapacitating. It does not stop the employee from enjoying the tranquillity of their holiday location - but it is still an illness. It may be that this employee is the perfect employee who is diligent, committed and rarely takes time off sick. In which case, you might be inclined to

sympathise with the employee and grant their request. Would you be so accommodating if the employee was habitually 'ill' when the sun shone or when their favourite team was playing an away match mid week? Tread carefully, as inconsistency might be seen as the basis for a huge discrimination claim.

The recent Pereda ruling is not directly relevant to every employer in the UK as it was made in the European Courts. However, it will only take one Tribunal to decide that the Working Time Regulations should be interpreted in the light of the ruling before we are all bound by it.

We cannot, therefore, give you assurances that you do not need to extend additional leave to employees whose holiday is interrupted by sickness.

Do, however, insist that all employees follow the same reporting procedure for sickness, regardless of whether they are scheduled to be at work or on holiday. This might include telephoning in every day during the first 7 days of illness. We would argue that this is still a reasonable and relevant requirement, whether the employee is in Crete or Stoke.

Also, ensure your employees know that holiday pay relates to periods of holiday and sick pay relates to periods of sickness. This may mean an employee who claims to have been sick whilst on holiday repaying their holiday pay in order to 'receive' their Statutory Sick Pay entitlement (the first three 'waiting days' of SSP are unpaid).

If you have an enhanced sick pay scheme, check the rules. A modification reducing entitlement to SSP if employees are sick on prearranged holiday might dissuade abuse of the scheme. Talk this over with an Employment Law Consultant.

And finally, check your holiday rules. Ensure it says that employees need 'specific permission' to take additional leave if they fall sick whilst on pre-booked holiday. Then, when an employee advises you that they were sick on holiday and asks to take their holiday some other time, call the Support Line. There is an argument that the European ruling relates only to the first 4 weeks of holiday each year, and not the entire UK entitlement of 5.6 weeks. We would be happy to explore the relevance of this to the specific employee circumstances for you.



More on the Web

For more advice, visit our website:
www.mhlsupport.com

the news in brief...

Lights out

From the beginning of this month, 100 watt and frosted incandescent (or old-style) light bulbs are being phased out and replaced with energy-efficient alternatives such as compact fluorescent lamps (CFLs).

Environmental Minister Dan Norris said: "This is great news for people who pay less in electricity and even better news for the planet, as this will amount to one million tonnes of saved carbon dioxide per year by 2020".

"We can no longer rely on light bulbs which waste 95 % of their energy as heat".

Waste fuelled power station

A new 95MW power plant capable of turning 600,000 tonnes of waste each year into electricity and heat, to be built at Ince in Cheshire, has been approved by the Government.

The waste, which would have otherwise gone to landfill, will instead be used to generate electricity to power a new Resource Recovery Park. Excess electricity will also be exported to the National Grid.

EN

Annual cost of climate change will be £190bn UN under-estimate true costs of dealing with environmental impacts

A team of British experts has discovered that the UN Framework Convention on Climate Change (UNFCCC) has seriously under-estimated the expected annual cost of dealing with climate impacts.

It suggested that the true cost could be at least two or three-fold greater, and possibly more if other hidden factors are taken into account.

Estimates of how much the world will have to spend annually on adapting to some of the worst impacts of climate change have varied widely, but the UNFCCC has suggested that typically it could be about £70bn or £100bn by 2030, the cost of about three Beijing Olympics. But other scientists have now suggested that the true annual cost could easily reach £300bn or more.

Adaptations to climate change include the additional spending needed to improve measures such as building new flood defences and transporting water for agriculture, treating an increase in the range and severity of diseases and replacing buildings and other infrastructure affected by rising temperatures or water levels.

EN

Air conditioning systems efficiency Have you had your energy assessment yet?

It's probably not new news to you that the use of air conditioning systems is on the increase. The use of this luxury does have its downside though caused by the significant increase in energy consumption which is damaging to the environment as well as your company finances.

Energy costs are often hidden and one of the least controlled aspects of smaller businesses. Did you know that poorly maintained air conditioning can use up to 60 per cent more energy?

As required by the Energy Performance of Buildings Directive, any air-conditioning system with an effective output of more than 12 kilowatts (kW) must be regularly inspected by an Energy Assessor to ensure that they are operating in an efficient manner and to minimise electricity consumption, operating costs and carbon emissions.

After each inspection, you should receive a report containing information on the energy efficiency of your air conditioning system. This will include information about the adequacy of your maintenance programme, as well as advice on how to improve it.

Local Trading Standards Officers are responsible for enforcing the requirements relating to air-conditioning inspection reports. Failure to arrange, keep or provide evidence of air-conditioning inspection reports when required to do so, could lead to a penalty notice being issued.

In looking at the wider picture for your whole company energy usage, mhl has joined forces with Encraft to provide energy audits for our customers. A small investment in expert advice can have a huge impact on your business. On average we identify 10% energy cost savings immediately and often up to 25%.



Check your waste

EN Are you disposing of it in the proper way?

Every company, regardless of scale or size, will have waste issues. When does something become waste?

The big question is aimed at the producer - "Have you finished with it?", or "Is it your intention to discard it?"... if the answer is yes, its waste.

All waste that leaves a site should leave via an authorised waste carrier. Even if someone else plans to use or recycle the material it is still deemed to be waste.

What the EC calls "Directive waste" in the UK we call "Controlled waste".

Directive Waste includes items such as paper, cardboard or wood. In other words, this is general waste which is not particularly hazardous.

Hazardous waste was called special waste but whatever you may refer to it as, it is waste that poses extra hazards. If it contains oils, heavy metals, hexavalent-chrome 6, and electronic circuit boards then it is classified as hazardous. Electronic items can be included because of the lead based solvents and printed circuit boards.

As would be expected, the cost of dealing with hazardous waste is significantly higher than dealing with controlled waste, especially in respect of the transport aspect.

It is in your best interests to identify the waste produced by your operation, determine how it can be reduced, consider if it can be recycled and ensure the authorised waste carrier is disposing of your waste in a proper and legal manner.

the news in brief...

Case studies to show benefits of EMSs

The Northern Ireland Environment Agency (NIEA) has commissioned RPS Group to undertake a study which aims to demonstrate the benefits of good environmental compliance and performance for a wide range of companies.

The study will be carried out by using relevant examples from businesses of various sectors throughout Northern Ireland.

Any business in Northern Ireland operating with an informal EMS or a formalised accredited system, such as ISO 14001:2004, BS 8555 and EMAS, who would like to participate in the study or would like further information can contact RPS.

Need to know more...

For free consultation or to find out more about our Environmental services please call us on 08453 100 999 or email enquiries@mhlsupport.com

☑ Please visit our website at www.mhlsupport.com



Environmental Management Services: Less worry, more business



Sustainability through mhl support

mhl's environmental management system is made up of easy to follow steps that guide you through the assessments and audits required to actively manage your environmental risk. By allocating a dedicated consultant to assist you throughout the process, you will have the expertise and guidance to manage all environmental risks so you can operate more efficiently, both reducing your operational costs and the impact on the environment.

mhl support ltd
environmental

Call: 08453 100 600 for your free no obligation appointment with one of our consultants