

Knowledgebase

mhl support ltd's client quarterly risk management publication

Volume 2, Issue 1; First Quarter Spring 2010

Employment Law • Health and Safety • Environmental • Risk Management

Sick Notes to Fit Notes

Change of emphasis to keep patients working

Our Employment Law Support Line tells us more.

These have replaced the current sick notes that doctors regularly issue.

Training for the future

with mhl support

mhl's H&S Team tell us more.

Make the experience relevant and enjoyable with our training specialists.

Financial Hangover

Brewery fined for packaging waste offences

Our Environmental Team tells us more.

Risks of flooding remain a significant threat to business continuity.

Getting Involved

Improvement through consultation

mhl discuss how effective consultation on matters of health & safety ensure best practice within your company



Power Up Your People Productivity

Oiling the wheels of HR and Health & Safety Management

Free Advisory Seminar

Safeguarding your Business

When it comes to business success, your employees are your most precious and costly resource. Productive, engaged employees lead to increased customer loyalty and profitability.

mhl support's experts can offer you an insight on how to reduce the risks and maximise the value from your precious people resource. Transform how you manage people to make your unreasonable employees reasonable, and handle even the most sensitive and complex of issues with confidence.

We cover five topics in this seminar:

- 1 Getting recruitment right first time – avoiding the costly learning curve of staff turnover
- 2 Managing and controlling absence – improving motivation and team performance
- 3 Dealing with unproductive time – your right not to be on Facebook
- 4 Handling dismissals – avoiding costly consequences
- 5 Getting beyond Health & Safety myths - and making sure everybody understands their responsibilities

To find out when and where our next seminar will be held simply call our seminar team 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 Team

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

**To receive additional copies
today, call: 08453 100 600
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Welcome from Michael Slade Spring 2010 Edition



Our teams have been doing some interesting work lately so I thought you would like to know a bit about the issues some of our other clients are facing and how we are helping them.

mhl is currently providing HR support services to SBE Limited, a French based European industrial group with over 2,000 employees in electronics and telecommunications. One of our Employment Law consultants, Michael Vernon, has been assigned to the role of personal HR coach for a 6 month period and has been working closely since the start of the year with SBE UK's recently appointed HR Manager, attending 3 days a week initially. Amongst the valuable services we are providing are coaching in disciplinary meetings and procedures, coaching on tribunal processes including attending actual tribunals and providing practical hands on training. We will shortly be producing a case study about this work, so by all means call us if you are interested to see or hear more about this aspect of our support service.

A key focus for mhl's Health and Safety team is on the introduction of the new fire safety regulations which came into force on 6 April. The big impact of this is to place much greater emphasis on the responsibilities of the employee with regard to fire safety. This, in turn, puts a responsibility on the employer to ensure that employees are competent and capable of the tasks they are given. We say more about the issues that arise from these changes in an article later on in this newsletter.

By the time we issue our next newsletter, we shall have passed through the General Election – and it would be brave to speculate on which party or, indeed, combination of parties will prevail in the popular vote. One thing we can say with certainty however is that all of them are looking to increase the country's focus on green and environmental issues, so I wanted to draw to your attention the interesting piece on Environmental Management Systems; and to the case examples highlighting some of the risks and opportunities in the green arena.

A recent policy paper from the Institute of Directors pointed out that directors spend some 13 hours a month on matters to do with regulation – and that a workforce typically spends around 73 hours a month. Perhaps for a large organisation that latter number, equivalent to nearly 50% of a full-time employee, is not critical. However, for a small firm, the cost of that person can be the difference between profit and loss. Needless to say, our services focus on helping you to deal with our specialist areas of regulation in the most cost-effective way!

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 michael.slade@mhlsupport.com.

Michael Slade, Managing Director

employment law & hr training solutions: restructuring and redundancy



restructuring and redundancy training course

Restructuring is one of the biggest challenges any organisation will face, not least because of the amount of legislation that surrounds it. Our course will provide you with an understanding of the ways you need to go about consultation and an understanding of why it is so important. We will also identify the practical steps involved in planning a restructure so that you stay the right side of the law. Visit our Employment Law training page on our website www.mhlsupport.com for more information.



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

Departments

06 Employment Law

Our Employment Law section provides coverage of recent updates to employment legislation, case law and employment practices. As part of this knowledgebase edition, we look at the replacement of sick notes with "fit notes", along with explaining the dilemma caused by recent case law developments on the topic of holidays for staff who are sick. Additionally, we take a look at the latest social networking craze, before considering recent case law developments and legislation changes.

16 Health and Safety

Learn more on changes to health & safety law and read about the current issues and challenges that could be facing your business today. We take a look at the arrival of the Control of Artificial Optical Radiation at Work Regulations 2010 and keep abreast of recent prosecutions Job Safety Analysis.

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Knowledgebase keeping you up-to-date on the latest environmental case law regarding how businesses could risk prosecution and fines for failing to comply with new environmental legislation. Plus the most current environmental news that is happening in the UK.

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A review of the present authorities, detailing what happens with regards to holidays for someone who is absent from work due to sickness.



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A review of the arrival of these latest changes.



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A London brewery has been fined after failing to comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

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mhl guides you through environmental liability and explains the importance of implementing these systems .

Cover Story **Getting Involved - Improvement through Consultation**

It has never been more important to ensure improvements in workforce involvement and consultation relating to health and safety matters. mhl gives an explanation on how to maintain best practice.

EL Sickness and Holiday Understanding the Dilemma

Need to know more...

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It is a challenging time for employers at present in understanding the dilemma of what to do with an employee's holiday entitlement when they are absent from work due to sickness. Do they still accrue holiday when they are absent? Can they take any holiday whilst they are sick? What if an employee falls sick during pre-booked annual leave?

As an overview of the situation the case of *Stringer and ors v HMRC* ECJ case C-350/06 (which began its life as *Ainsworth v Commissioners of Inland Revenue*) was decided last year which ruled that a person who is absent because of long term sickness is still eligible to accrue holiday throughout their period of sickness. The European Court of Justice (ECJ) reached this decision along with confirmation that if an employee is prevented from taking holiday because of sickness, they should be afforded the scope to carry forward any untaken holiday entitlement into the next holiday year.

However, the ECJ ruled that this provision for carry forward of holiday only applies where an employee is prevented from taking annual leave due to being off sick. There is presently nothing in UK legislation that prevents an employee from taking annual leave when off sick other than the employer turning down individual employee requests.

However, despite it being possible in the UK for employees to take holiday when off sick, employers should exercise caution in allowing this, particularly in view of the Spanish case of *Pereda v Madrid Movilidad SA* ECJ case C-277 08. In this case, the ECJ confirmed that the purpose of holiday is to allow the employee to have a period of rest and leisure whereas a period of sickness is for an employee to recover from illness. As such, it was viewed that an employee who is unwell cannot truly make proper use of the intended purpose behind holiday entitlement.

In terms of the specific issue that formed the basis for the case in *Pereda*, the ECJ assessed whether an employee who falls sick during pre-booked annual leave was entitled to take that annual leave at a later date. The ECJ ruled that an employee was so entitled.

These cases have been followed more recently by guidance issued by the Department for Business, Innovation and Skills (BIS). This guidance confirms that holiday continues to accrue throughout sickness, and confirms that where an employee falls sick during pre-booked annual leave, they have the choice whether to still take this period as holiday or to treat it as sickness and ask for the leave to be taken at a later date.

This BIS guidance has helped to clarify matters, but there is still some uncertainty and it is likely that this uncertainty will remain until the consultation into amending the Working Time Regulations 1998 is completed and the legislation is amended to provide greater clarity for employers.

In the meantime, if you have any individual circumstances that require advice in respect of the topic in this article, please call the Support Line.





EL Holiday – Use it or Lose it Policy *Lyons v Mitie Security Ltd*

The claimant was employed as a security officer under a zero hours contract. The holiday year for the Company ended on 31st March but at the beginning of March, the claimant still had 9 days of his holiday entitlement remaining. On 6th March, he had no further shifts scheduled before the end of the holiday year and so he sent a fax to the Company requesting payment for his outstanding holiday.

As he had not been paid this holiday by 1st April, he submitted a formal grievance to the Company who denied his grievance on the basis that he had not given the requisite 4 weeks' notice of the leave he wished to take. In response to this decision, the claimant resigned his position and submitted a claim for constructive unfair dismissal and outstanding holiday pay.

The Employment Appeal Tribunal (EAT) accepted that an individual's right to paid annual leave is still conditional on the duty to provide sufficient notice of the request even if the end of the holiday year is fast approaching.

Furthermore, any holiday request also has to be approved by an employer in line with the operational demands on the business, and it is suggested that the right to take holiday is equally conditional upon this. However, employers should be careful that they do not operate these provisions in an unreasonable, oppressive or capricious way as it is likely in this circumstance that a constructive dismissal claim would potentially be successful.

On the factual ground in this case, the EAT have sent the case back to the Employment Tribunal for further consideration as it was deemed that the original Employment Tribunal failed to give consideration to a particular contractual clause that allowed for the submission of late holiday requests.

This case highlights that the statutory minimum entitlement to annual leave is not an absolute right and allows an employer to refuse a holiday request where relevant procedures have not been followed even if it results in the employee losing their leave entitlement.

case update...

TUPE – Who exactly are the affected staff?

Unison v Somerset County Council, Taunton Deane Borough Council and South West One Ltd

The Employment Appeal Tribunal (EAT) has handed down its decision in this case providing guidance on who are "affected staff" in a TUPE transfer for the purposes of consultation with appropriate representatives.

The EAT held in this case that the affected staff members are those;

- who will be or may be transferred;
- whose jobs are in jeopardy by reason of the proposed transfer; and
- who have internal job applications pending at the time of transfer.

EL & HR Training Solutions

For more information on our Employment Law Training Courses please call our team on 08453 100 600 or email enquiries@mhl.support.com.

From Sick Notes to Fit Notes

Change of Emphasis to Keep Patients Working

From 6th April 2010, a new format for sick notes has been introduced known as “fit notes”. These new fit notes, replace the previous sick notes that doctors issued to confirm that an employee is unable to perform their duties due to medical reasons.

By **Brendan Wincott**, Employment Law Compliance Officer

Need to know more...

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The new fit note continues to allow doctors to confirm that an employee is unable to attend work but in addition to this, it now enables doctors to suggest that an employee may be fit for some work and will also allow doctors to provide advice as to possible measures a patient's employer is able to take to assist the employee with a return to work. These suggestions can range in scope and could be anything from suggesting light duties, reduced hours, a phased return to work or even workplace adaptations.

This fit note replaces the Med 3 Form (issued when the doctor has seen the patient on the day or day before the certificate was issued) and the Med 5 Form (issued where the patient has been seen by a different doctor, or where the note is requested more than a day after the patient was seen). However, the existing Med 10 Form will continue to be used when a patient has spent time in hospital.

The main reason behind the changes is to afford employers greater ease in managing sickness absence in the workplace. Under the previous sick note scheme, the employee's doctor only had the option of confirming either that an employee should refrain from work or not. However, this disregards a large number of employees who may not be able to perform their full duties, but may be able to perform some tasks. As such, the new fit note scheme is designed to enhance the doctor's options and allow a doctor a third option to confirm that the employee

may be fit for some work and suggest adjustments that can be made by the employer to assist the employee with returning to work.

It is not yet known how often doctors will suggest someone as being fit for some work but employers should get themselves up to speed with the new changes and learn more about their possible obligations in respect of implementing any adjustments that might be suggested as part of the new fit notes.

Upon receipt of a fit note, with advice from a doctor that an employee may be fit for some work along with a suggestion of how this might be possible, the first question as an employer you should ask yourself is, do I have to implement what the doctor has suggested? The straightforward answer is no, as ultimately you have recruited the employee to undertake a particular task or job and if they are not able to do this, you do not have to provide them with an alternative role, however, please note the cautionary points below.

You should be mindful of the provisions of the Disability Discrimination Act 1995, as these do impose a positive obligation on an employer to make reasonable adjustments where an employee is placed at a disadvantage because of a disability. The rules governing what amounts to a “disability” for the purposes of the Disability Discrimination Act 1995 can be complex and we would recommend that you

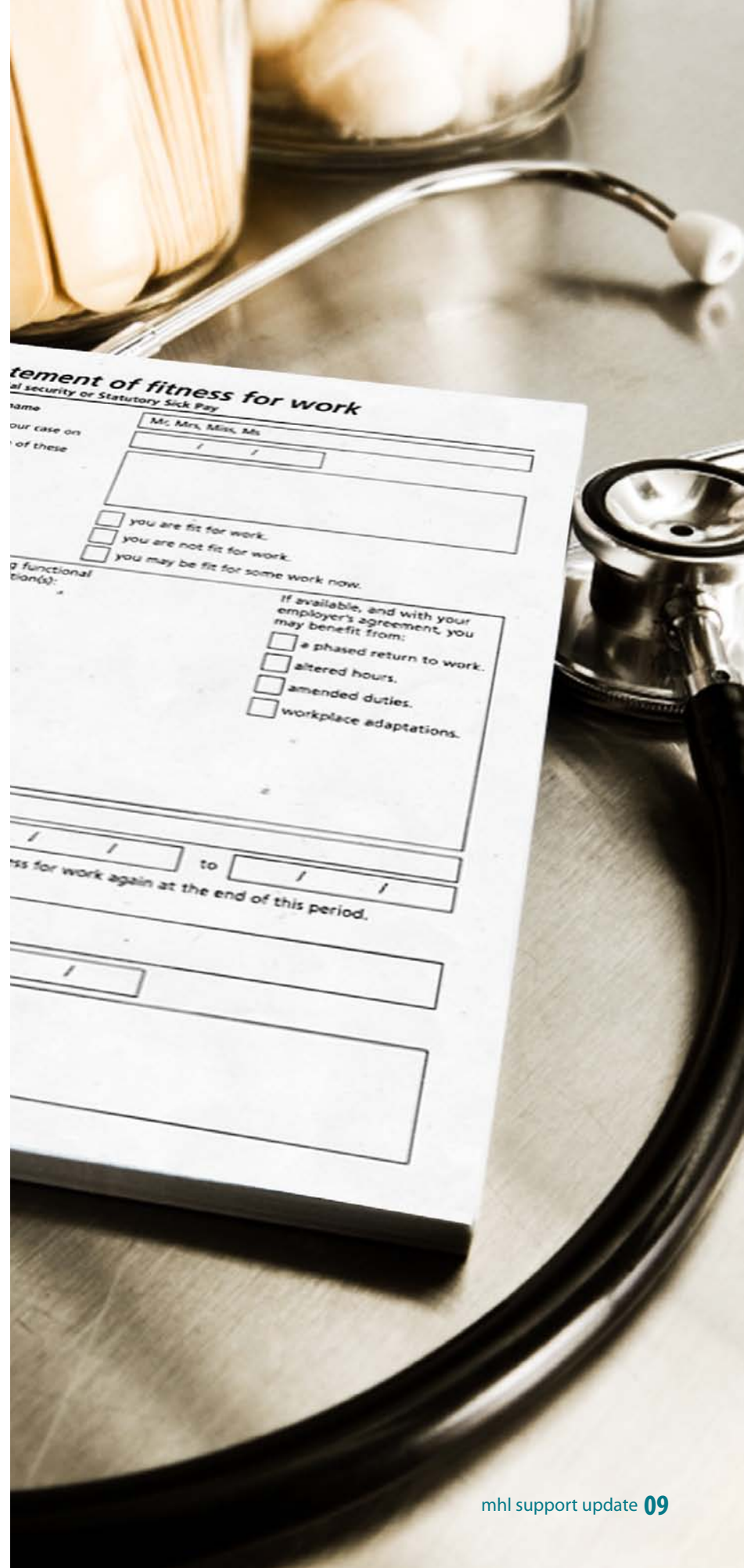
seek advice from the Support Line in each circumstance as to whether the reason behind an employee's absence is because of a disability in the eyes of employment legislation. More often than not, certain medical conditions are considered to be disabilities that a lay person might not naturally conclude to be a disability.

If the employee has a disability and the doctor has suggested an adjustment to their role to help them to return to work, as an employer, you will have an obligation to implement this adjustment if this is considered reasonable. Failure to do so can result in a claim by an employee to the Employment Tribunal for disability discrimination. As such, it is important for you to seek advice as to whether an adjustment is considered reasonable or not, as not all adjustments will be considered reasonable.

Aside from legal obligations to implement any recommendations from the employee's doctor, it may also be practically beneficial to implement the doctor's recommendation and allow the employee to remain working and integrated into the workforce as this will hopefully help to prevent the employee's absence developing into a long term absence.

There are a number of provisions that will remain unchanged despite the new format of the fit note. In particular, the form still needs to be obtained from an employee after their seventh day of sickness if they continue to be unfit to attend work, and employees can continue to self-certify their absence for up to seven days. Additionally, rules will not be changing in any way with regards to Statutory Sick Pay and this will continue to be payable from the fourth day of a period of absence, unless it is a linked period of incapacity for work.

Overall, the new changes will help an employer to manage absence in the workplace and help to prevent long term absence. If you have any queries regarding the new fit notes system, please call the Support Line. ■



news update...

Protected Disclosure Consultation Complete

In our previous edition, we detailed the Government's proposals to provide authority for the Tribunals Service to send details of protected disclosures to the relevant regulatory bodies in protected disclosure cases. Consultation has now reached a conclusion and the new rules were introduced 6th April 2010. These are contained within the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010.

Under the new procedure, the claimant will be given the option to tick a box on the Employment Tribunal Application Form (ET1) to confirm that they are happy for the information on which a protected disclosure is made to be disclosed to the regulator. It will then be at the discretion of the Tribunal's Secretary as to whether this should be forwarded to the regulator.

As an example, if an employee is dismissed as a result of blowing the whistle on a health and safety malpractice in the workplace, when claiming unfair dismissal, if they tick the relevant box, the specific details of the health and safety malpractice could be disclosed to the Health and Safety Executive.



Agency Workers – Can they be Employees? *Muschett v HM Prison Service*

This Court of Appeal decision is likely to be positively welcomed by most employers as it provides them with greater protection from discrimination claims by agency workers.

The claimant in this case was an agency worker contracted through an employment agency to work in a Young Offenders Unit managed by HM Prison Service. A few months into the assignment, HM Prison Service terminated the assignment. The claimant brought claims against both the agency through which he was sourced and HM Prison Service for unfair dismissal, wrongful dismissal, and sex, race and religious discrimination.

The Employment Tribunal had to decide as a preliminary issue if the claimant was eligible to bring such claims. In essence, the Employment Tribunal had to assess if the claimant was; an employee, a worker, a contract worker or none of these. It was held, which was endorsed by the Court of Appeal,

that the claimant was not employed by HM Prison Service as an employee or worker as there was no mutuality of obligation or a requirement to imply an employment relationship. In addition, the claimant was not employed by the agency and hence the claimant could not rely on the provision affording protection to contract workers. In essence the claimant was unable to claim against either the agency or HM Prison Service. It has been suggested that this decision provides a loophole in the discrimination legislation.

Whilst this is promising news for employers, caution should be taken as key to the decision was that the claimant was not employed by the agency in this case. Had he been so employed, which in some instances will occur, the claimant would have been afforded protection from unlawful discrimination through being a contract worker.

The Social Networking Craze

A Help or Hindrance to Businesses?

The growth in popularity of social networking sites over the past few years has had a great impact upon employers in both positive and negative ways.

In this article, we look at some of the good points and bad points behind this latest phenomenon.

It is common-place for employers to suffer the adverse consequences of employees who abuse their right to browse the internet for work purposes during working hours by scouring social networking sites and chatting online. Recent research undertaken by morse.com has found that the use of social networking sites during working time costs UK businesses £1.38 billion per year. As most employers have computer and internet policies and monitor internet use, this is relatively easy to address in terms of disciplinary action provided there is a robust internet policy in place and a fair process is followed. Of course, there is also the potential, with the right IT software, to block such sites so as to lessen any detrimental impact upon the business.

The adverse impact of social networking can become more severe where employees post negative or derogatory comments about their employer, the company or colleagues. Many employers are unsure as to how they can address such instances as they often occur outside of work time. Inappropriate comments represent improper conduct and these issues can relate to behaviour outside the workplace as much as it can to behaviour whilst at work. On this basis, an

employer is well within their rights to take action if an employee posts derogatory comments which bring their business into disrepute.

The key to addressing the situation is through a fair process, acting consistently and making your expectations clear from the outset with a policy which addresses behaviour outside of work.

Although the growth of social networking can have a negative impact upon employers, it can also help employers who are able to use this to their advantage. In a recent survey by careerbuilder.co.uk, it has been identified that 53% of employers use social networking sites to vet employees prior to recruitment and 43% confirm that what they have seen on social networking sites had affected their recruitment decision. This can be essential to ensure that you find the right person for the job and can save lots of time and money in considering whether a particular employee is a suitable candidate or not.

There are many benefits to employers in addressing the advantages and disadvantages caused by the growth of social networking. Utilising the advantages of social networking websites whilst minimising some of the negative effects will help employers to make the most out of this latest craze and using tools like Facebook and Twitter can help make businesses more efficient and have an positive impact.

If you have any concerns regarding employees abusing internet policy or wish to discuss using social networking as a recruitment aid, please call the Support Line.

Employment Law 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.

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news update...

Maternity Pay Proposal

Possible increase to 20 Weeks Full Pay

The potential imposition of increased maternity rights across Europe has raised concerns about the impact this may have on small businesses.

In February 2010, draft legislation was passed by a committee of the European Parliament that would have the effect of extending Statutory Maternity Pay to 20 weeks full pay.

At this stage, this remains a proposal and it is unlikely that any definite decision will be made for another 12-18 months as the legislation will still need to go before the full European Parliament and then the Council of Ministers before it is passed.

We will keep you updated with any further developments.



Legal Representation at Disciplinary Meetings
R (on the application of G) v Governors of X School and Y City Council

The Court of Appeal has recently handed down its decision in this case, holding that an employee can, in some instances, have a right to be accompanied at an internal disciplinary meeting by a solicitor, under Article 6 of the European Convention on Human Rights (ECHR) which provides for the right to a fair trial.

Key to the decision in this case was that the subject matter forming the basis of the disciplinary proceedings was of such a sufficiently serious gravity that the findings of the disciplinary procedure could substantially impact on the employee's ability to practice in their chosen profession, in this case as a teacher.

In addition, the employee's details could also be placed on the "barred list" for people unsuitable to work with children thus preventing them from working within the teaching profession or more generally working with children.

This case follows a previous decision reached by the Court of Appeal in *Kulkarni v Milton Keynes Hospital NHS Foundation Trust* where a similar ruling was reached. However, leave to appeal to the House of Lords has been granted in this case and so the saga may not yet be at its final stages.

It is envisaged that this case will have application to a number of circumstances where employees who work in a highly regulated activity face serious allegations that could prevent them from continuing in their career.

The employees in the 2 cases mentioned were both public sector employees, the importance of which is that such employees have a direct ability to pursue European rights derived from the ECHR. The application against private employers is less, although there is still scope for this to be advanced.

If you require further advice on the right to be accompanied, please call the Support Line.

EL Increases in Statutory Payments
Effective from 6th April 2010

From 6 April 2010, rates and limits have been revised with the National Insurance Lower Earnings Limit, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay all increasing but Statutory Sick Pay remaining the same. The table below identifies the new rates applicable from this date:

Payment	Rate
Statutory Maternity Pay/Maternity Allowance	£124.88
Statutory Paternity Pay	£124.88
Statutory Adoption Pay	£124.88
Statutory Sick Pay	£79.15
National Insurance Lower Earnings Limit	£97.00



Religious Discrimination – Enforcing Dress Codes

EL *Eweida v British Airways Plc*

The long awaited decision in this case has now been released with the Court of Appeal upholding the previous Employment Appeal Tribunal decision that the employee in this case had not been discriminated against when she was told that a religious cross that she was wearing needed to be concealed. The employee in this case works as a member of check in staff for British Airways (BA). She has been described as being a devout Christian and on the occasion in question she attended work wearing a silver cross around her neck.

BA operated a strict uniform policy only allowing employees to wear religious items that were a 'mandatory scriptural requirement' and could not be concealed. When the employee was asked by BA to conceal the cross she refused and was later sent home.

The employee submitted claims of harassment and both direct and indirect discrimination on the basis that she considered the BA uniform policy to discriminate against her on the grounds of her religious beliefs, namely her Christian faith. The harassment and direct discrimination claims were unsuccessful at the Employment Tribunal and were not appealed, but the claim of indirect

discrimination was made the subject of appeal before the Court of Appeal. The Court of Appeal held that there was no indirect discrimination as there was no identifiable section of the workforce who suffered a particular disadvantage as a result of the application of this practice.

In essence, any claimant in an indirect discrimination case must show that an alleged discriminatory practice puts the individual themselves at a disadvantage, and also that it puts the claimants "group" at that same disadvantage. In this case, whilst the application of BA's dress code put the employee at a disadvantage, it did not put all Christians at a disadvantage as the symbolisation of religious beliefs by the wearing of a visible cross is optional for Christians, and it is not a compulsory religious requirement. Therefore in this case, the employee's claim failed.

This case is key to employers as it offers some protection against the perils of discrimination within the workplace. However, it is important to note that each case will be judged on its own specific facts and so it is always best to be mindful of potential discriminatory practice when implementing dress codes.

case update...

Stigma Damages Possible

Chagger v Abbey National

The Court of Appeal reached its decision in this high profile case at the end of 2009 which confirms that awards for successful discrimination claims can include an element to reflect the "stigma" that the claimant will be made to suffer as a result of being branded as a claimant and the impact this has on their ability to secure subsequent employment.

The compensation in this case was substantial, and prior to the case being remitted back to the Employment Tribunal following a successful appeal, compensation was originally £2,794,962 plus interest.

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Constructive Dismissal

Recent Case Developments

In this edition of knowledgebase, our Support Line Advisor, Lydia Broadbent, navigates us around the latest developments in constructive dismissal case law and the likely implications for employers.



Can you have a Constructive Dismissal if you are Already in Breach of Contract? *Aberdeen City Council v McNeil*

The judgement handed down by the Employment Appeal Tribunal in the case of *Aberdeen City Council v McNeil* acts as useful guidance to employers that an employee will be unable to successfully claim constructive unfair or wrongful dismissal if they themselves have already acted in a manner that has already fundamentally breached the contract of employment.

In this case, the employee was under investigation for allegations potentially gross misconduct in nature including sexual harassment, intoxication at work and being untruthful to his employer.

The employee resigned during the course of the investigation claiming that the employer had breached the implied duty of trust and confidence on the basis

that the investigatory process had been oppressive and hence he argued his resignation was sufficient to amount to a constructive dismissal.

The Employment Tribunal initially upheld the employee's claim, concluding that the conduct of his employer had acted to destroy any relationship of trust and confidence between the two parties and hence there had been a constructive dismissal.

However, the Employment Appeal Tribunal took a different approach and held that if they were to look at all instances of the employee's previous conduct, then it became apparent that the employee, through his own actions, was already in breach of the implied duty of trust and confidence at the time of his

resignation and so upheld the appeal, ruling that the employee had not been constructively dismissed.

The Employment Appeal Tribunal went on to confirm that as the employee himself had already breached the duty of trust and confidence he could not subsequently seek to rely on a breach of such a term on the employer's part to entitle him to resign and treat himself as dismissed.

As cautionary warning though, it is thought that this approach will only be successful for an employer where an employee's breach closely precedes any breach by the employer. An employer would likely not be able to rely on an employee's historic fundamental breach if they had already chosen to waive that breach by taking no action at the time.

Resigning after Witnessing the Treatment of Another *Hunter v Timber Components*

The case of *Hunter v Timber Components* highlights the necessity for employers to ensure that they address any allegations of bullying or inappropriate management actions immediately as there is potential for witnesses of such treatment to make a claim as well as the victim themselves.

In this case, the employee resigned from his position, citing that he could no longer tolerate witnessing the derogatory and offensive way a director spoke to other members of staff, although the employee himself was never the subject to the treatment complained of.

The Employment Tribunal accepted that an employee can claim for constructive dismissal as a result of the treatment of another staff member but the employee in this case was not successful in his claim. Whilst the Employment Appeal Tribunal held that the employee could no longer cope with the director's behaviour, the employee was unable to show that the employer's actions, when viewed objectively, were calculated to undermine the trust and confidence in the employment relationship between the employer and employee and hence there was no constructive dismissal.

No Cure in Constructive Dismissal Cases *Buckland v Bournemouth University*

This is an interesting case concerning constructive dismissal where it has been held that when an employer commits a repudiatory breach of contract which entitles the employee to resign and claim constructive dismissal, the employer cannot later "cure" that breach by corrective action after the event. The facts in this Court of Appeal case are that the employee, a professor at the respondent University, resigned from his position following an unauthorised remark on exam papers that he had initially marked following the University's concerns with the low level of pass rates.

When the employee raised his concerns regarding the University's actions, the employer set up an inquiry into the employee's marking of the exam papers where he was exonerated of any construed fault on his part. However, this did not stop the

employee resigning following this enquiry and pursuing a complaint for constructive dismissal.

The Court of Appeal made clear that they were satisfied that the employer's actions had amounted to a constructive dismissal. However, the University sought to argue that their later actions in instigating the inquiry and exonerating the employee had cured this fundamental breach of contract (namely the breach of trust and confidence).

The Court of Appeal would not accept this contention, holding that a breach by the employer cannot be cured by an employer's later actions.

This case emphasises the importance for employers not to overstep the boundaries with staff in the first place.

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Getting Involved Improvement

Over recent years the subject of occupational health & safety has become increasingly significant to employees throughout all industries. Workers are constantly being introduced to new working procedures which many view as restrictive and unnecessary. Newspapers delight in producing negative stories, often entitled “Health & Safety gone mad”. To effectively combat these misplaced opinions it has never been more important to ensure improvements in workforce involvement and consultation.

By **Andy Tibbetts**, Health & Safety Consultant

THINGS TO CONSIDER

- ▼ Improving general attitudes towards health and safety through greater workforce involvement.
- ▼ The need for greater consultation and involvement is firmly entrenched in legislation and accepted best practice.
- ▼ Some simple concepts that, if applied, can lead to improved involvement, effective consultation and improved safety performance.

Effective consultation with employees on matters relating to health and safety is not only “best practice”, it is also clearly enshrined in health and safety legislation.

Legal considerations

The two major pieces of specific legislation relating to consultation are the Safety Representatives and Safety Committees Regulations 1977 (as amended) and The Health and Safety (Consultation with Employees) Regulations 1996 (as amended). These two regulations aim to provide a framework for effective consultation with the workforce in the following situations:

- Employees who are not trade union members
- Employees that are in trade unions that are not recognised by employers
- Employees that are in recognised trade unions

In the modern workplace, particularly in small to medium sized enterprises, the reduction in trade union membership would lead most organisations to achieve their consultation in accordance with the Health and Safety (Consultation with Employees) Regulations.

In these instances compliance with these regulations should be considered as a bare minimum.

The Health and Safety (Consultation with Employees) Regulations 1996 (as amended)

Where employees are not represented under the Safety Representatives and Safety Committees Regulations 1977, the Health and Safety (Consultation with Employees) Regulations 1996 will apply. The employer can choose to consult employees directly as individuals, or through elected health and safety



through consultation



representatives or a combination of the two. In either case all qualifying organisations should develop policies and procedures that ensure compliance with these requirements.

Situations for consultation

The guidance to the legislation suggests that employers consult with their employees, or their representatives in the following circumstances:

- The introduction of any measure which may substantially affect their health and safety at work, for example the introduction of new equipment or new systems of work (such as the speed of a process line and shift-work arrangements);
- Arrangements for getting competent people to help them comply with health and safety laws (a competent person is someone who has sufficient training and experience or knowledge and other qualities that allow them to help an employer meet the requirements of health and safety law);
- The information they must give their employees on the risks and dangers arising from their work, measures to reduce or get rid of these risks and what employees should do if they are exposed to a risk;
- The planning and organisation of health and safety training; and
- The health and safety consequences of introducing new technology.

Consultation during risk assessment

In addition to the two previously mentioned pieces of legislation, the long accepted keystone of health and safety law “the management of health and safety at work regulations 1999”, contains the requirement for carrying out a risk assessment. The

guidance notes to these regulations also support the concept of employee involvement through the following statement: “Consulting employees or their representatives about matters to do with their health and safety is good management practice, as well as being a requirement under health and safety law. Employees are a valuable source of information and can provide feedback about the effectiveness of health and safety management arrangements and control measures”.

What does consultation actually involve?

The non technical answer to this question is “talk to them”. It is a common occurrence in health and safety auditing to find risk assessments and method statements that have had no involvement from employees and have never been communicated to the workforce.

The guidance to the legislation suggests simply that “Consultation involves employers not only giving information to employees but also listening to and taking account of what they say before making any health and safety decisions”.

The benefits of effective consultation

Effective consultation and greater employee involvement can lead to:

- Improved safety systems due to employee involvement;

- Improved decision making based on input from all stakeholders;
- Improved employee co-operation and trust resulting in greater commitment to the mutual objective of a safe and healthy workplace.

Accepted best practice

In addition to the legal requirements for consultation with employees, the benefits of achieving greater workforce involvement has long been recognised. The HSE best practice guidance, “Successful health and safety management”, makes the following observation “Participation by employees supports risk control by encouraging their ‘ownership’ of health and safety policies. It establishes an understanding that the organisation as a whole, and people working in it, benefit from good health and safety performance. Pooling knowledge and experience through participation, commitment and involvement means that health and safety really becomes “everybody’s business”.

Safe and sound at work

The previous sections have outlined the clear legal duty for employers to consult with employees. The HSE have recently



promoted the need for improved consultation through a campaign called “Safe and sound at work – do your bit campaign”. The catchy slogan for this campaign is “Tell employees about health and safety and they’ll know about it. Involve them and they’ll understand”.

The campaign website places great importance on the mutual benefits of worker involvement and consultation and states the belief that “workplaces where employees play an active part in health and safety have lower accident rates”. The HSE campaign promotes a six stage process that, if applied correctly, will improve workplace communication and benefit safety performance. The HSE have recognised that organisations work in different ways and have provided guidance for “Stable Businesses” such as factories or workshops and “Dynamic Businesses” such as construction or delivering goods to other sites.

The six stage action process

The six action stages for improvement in consultation and involvement are as follows:

1. INFORMING

This requires the employer to provide information to all of his/her employees on the risk areas within the business and the necessary measures needed to control those risks.

This can be achieved through the communication of risk assessments, specific requirements for temporary or vulnerable workers and planned or actual changes to workplace conditions or practices. The HSE suggest that this step can be best achieved through improved inductions, refresher training and workplace briefings. They have

also recognised the potentially diverse nature of the modern workplace and have suggested the greater use of translators and visual aids.

2. INSTRUCTION AND TRAINING

This action step requires the employer to review his/her training regime and to make improvements such as the appointment of competent trainers, improvements in training materials and environments. It also requires special focus on young inexperienced workers, contractors, self employed and any other groups with particular needs. The campaign also reiterates the importance of retaining detailed training records.

3. ARRANGING REPRESENTATIVES

The HSE have recognised that worker representatives for health and safety can play a key role in getting people on board with new initiatives. Step 3 promotes the idea of allowing the workers to elect a representative to act as a point of contact or in larger organisations form a committee. Those appointed to such roles should be granted the resources outlined in the Safety Representatives and Safety Committees Regulations 1977 (as amended).

4. TEAMWORK

The fourth step requires the employer to make a commitment to consulting with employees of their representatives. This can be achieved by consulting regularly and arranging specific meetings in order to discuss potential workplace changes. The HSE also suggests that adding an element of health and safety into other existing consultation processes such as production meetings.

5. CONSULTING

This step is the stage in the process where the actual consultation takes place. The HSE suggests that this can be achieved simply by “Talking and Listening” and typically through the following mediums:

- regular scheduled meetings;
- toolbox talks;
- face-to-face discussions;
- walkabouts;
- set up workgroups to deal with specific issues;
- staff surveys;
- suggestion schemes;
- notice boards.

6. JOINT PROBLEM SOLVING

This process promotes the shared objectives of improving health and safety standards, increasing productivity and efficiency whilst motivating the workforce. The sharing of problems and working on their solutions can boost co-operation and trust between workers and managers.

Accepted best practice

This recent HSE initiative builds on established legal and best practice concepts. The introduction of some, or all, of these action steps should provide any employer with a noticeable improvement in their consultation processes which, as we have ascertained, should show great rewards in improved safety and, therefore, business performance.



More on the Web

For more information and resources please visit our website at www.mhlsupport.com

news in brief...

Telehandler fatality

A recent fatality in Scotland has resulted in the HSE issuing a warning to all telehandler users of the importance of replacing broken windows on these machines.

The side window on telehandler cabs is designed to stop the operator accessing the boom side. If the window is broken or missing the operator may lean out of the window and can inadvertently lower the boom onto themselves.

Telehandlers with damaged or missing side windows should be removed from service until the defect is rectified. Operators should also be reminded of the dangers of operating with damaged or broken windows on telehandlers.

The importance of daily recorded pre-use checks on vehicles and reporting of defects should also be enforced.

HS HSE Inspector in contempt of court Health & Safety worker fined after harassing court witnesses

An HSE Inspector has herself ended up in the dock owing to her behaviour during a recent court case. The incidents occurred during the trial of a company involved in the fatality of an employee at a theme park in Scotland. A ride operator at the theme park had just given evidence for the defence and was approached by the HSE Inspector outside the courtroom. She asked him what subject his degree was in and on being told it was accountancy she told him it could have been drama after his "performance".

Her behaviour in court was also observed by the Sheriff who noticed her pulling faces and shaking her head in the public gallery. After the defendant's representatives had made a motion to have the HSE Inspector excluded from proceedings following the incident with the operator the Sheriff agreed and informed the Inspector that she was considering whether her actions were in contempt.

The case was concluded with the defendant being found not guilty. The HSE Inspector was recalled to court to answer a charge of contempt of court. In addition to her sentence for contempt the HSE has taken further disciplinary action but the Inspector has not been dismissed. The HSE also confirmed that it intends to write to its field staff to "remind them about court etiquette".

HS First corporate manslaughter prosecution postponed Are you doing enough to protect your employees?

The country's first corporate manslaughter case has been postponed for at least 4 months due to the ill health of the defendant Peter Eaton.

Mr Eaton and his company Cotswold Geotechnical Holdings Ltd are being jointly charged under the Corporate Manslaughter and Corporate Homicide Act 2007. The case results from the death of one of the company's junior geologists in Stroud, Gloucestershire on 5th September 2008, who was killed when the sides of a trial pit he was in collapsed as he was taking soil samples.

This is the first charge under the Corporate Manslaughter and Corporate Homicide Act 2007 and is brought against the company and Mr Eaton himself "because of the way in which the organisation's activities were managed or organised, caused the death of a person by gross negligence, which amounted to a gross

breach of the relevant duty of care owed to the deceased".

The Act is designed to make it easier to prosecute companies where the death of an employee can be attributed to serious managerial failings.

The company is charged under the 2007 Act and Mr Eaton with manslaughter by gross negligence. If convicted Mr Eaton could be jailed for life, while his company could be subject to an unlimited fine.

The trial was due to start on the 23rd February 2010 but owing that Mr Eaton "must undergo urgent medical treatment of a character that would render it unfair and oppressive for him to have to participate in the trial at the same time" has been postponed. The trial is listed to resume in October 2010.

Competent to carry out Fire Risk Assessment? Fire Safety Regulations 2010

The Fire Safety (Employees' capabilities) (England) Regulations 2010 came into force on 6th April 2010. These regulations build on the requirements of The Regulatory Reform (Fire Safety) Order 2005.

(Please note that these Regulations apply to England only and do not apply in Scotland where the equivalent legislation to the Regulatory Reform (Fire Safety) Order 2005 is the Fire (Scotland) Act 2005.)

The new regulations clarify responsibilities to consider the capabilities of workers to carry out any fire safety-related tasks or assignments. Employers will have to consider what a worker is able and unable to do when giving them tasks and how these capabilities may affect their ability to deal with fire-related risks. The Regulations further strengthen the case for ensuring the competence of individuals tasked with carrying out fire risk assessments.

Under The Regulatory Reform (Fire Safety) Order 2005 there is a legally designated "Responsible person" who must arrange for a "suitable and sufficient" Fire risk assessment to be undertaken. The "responsible person" is someone who has control, or a degree of control, over premises or fire-prevention systems within premises. Those who employ five or more employees should keep a formal record of any Significant Findings of the assessment and remedial measures that have or may need to be taken.

Competent Person

Only a suitably "competent person" should attempt to complete a fire risk assessment. The competent person who carries out the fire risk assessment should:

- Understand the relevant fire safety legislation;
- Have appropriate education, training, knowledge and experience in the principles of fire safety;
- Have an understanding of fire development and the behaviour of people in fire;

- Understand the fire hazards, fire risks and relevant factors associated with occupants at special risk within the buildings of the type in question;
- Have appropriate training and/or experience in carrying out fire risk assessments.

Most employers are unlikely to have employees within their organisations with the knowledge and training required to carry out a suitable and sufficient fire risk assessment. Although a fire risk assessment may have been completed internally, future examination and scrutiny by the Fire Authority (Or Courts for that matter) may deem that the assessment fails to meet the "Suitable and Sufficient" requirements of the Fire Safety Order and, therefore, falls short of what the law requires.

Over recent years the Fire Authority has been taking an increasingly aggressive stance with regard to the enforcement of the Fire Safety Order. Between (2006–2008) there were 42 prosecutions against companies failing to comply with the Fire Safety Order. Additionally, fire services issued 3,800 enforcement notices during the same period, many as a result of inadequate fire risk assessments.

mhl have a team of consultants with the qualifications and experience to carry out fire risk assessments that meet the requirements of the Regulatory Reform (Fire Safety) Order. The Fire Safety Team is headed up by Paul Cadman, Health & Safety Operations Manager. Paul is an ex Fire Safety Officer with a wealth of experience in the field of fire safety and fire risk assessment.

Although there is an add on cost in order for mhl to carry out the assessment it represents a sound investment in ensuring that you protect your business and your people.

Free H&S Guides...


For an insight into the important areas of Health and Safety, such as Fire Risk Assessments, download our free guides online to help give you an understanding on matters that will affect your business.

Visit our website for more information:
www.mhlsupport.com



More on the Web...

Visit the mhl website to read more about the current issues and challenges facing your business today.

See how our range of extended Health and Safety Services, including training, can enrich your business in the current climate. 

www.mhlsupport.com



HS Fall from height Construction Contractor fined for failing to ensure work safety

A fall from height resulted in a property company and a construction contractor being fined a total of £13,000 plus costs. The property company employed the contractor to refurbish industrial units in north London. The project required the premises to be partitioned into 30 units. Sub-contractors were employed to assist in the project and one of the employees of the sub-contractor fell through the roof when inspecting it.

The roof was constructed of asbestos-cement sheeting and when the sub-contractor's employee stepped onto it to begin his inspection it gave way and he fell 6.5 metres onto the concrete floor. He suffered two fractured vertebrae and serious hand injuries.

The property company had failed to appoint a CDM co-ordinator or a principal contractor and had not ensured that it had appointed a competent contractor and that suitable management controls were in place. It was fined £7,000 plus £4,486 costs. The construction contractor was found guilty of failing to ensure the work was properly planned and supervised and was fined £6,000 plus £4,430 costs.

HS Training for the future With mhl support

The Health and Safety at Work act 1974 section 2 (c) requires all employers to provide training for their employees; this training is a legal requirement.

At mhl support we offer a wide range of health and safety training courses to organisations who want a competitive edge and to enable them to fulfil their legal obligations. The website link is www.mhlsupport.com (click on this link and it takes you to our website, click on the training section it takes you to a phone number where full details of our training courses can be found).

All areas of training for industry and commerce can be met within our organisation.

Our view of training courses and the delivery methods and content are regularly reviewed. Training needs to be informative and accurate but also it needs to be a memory that is retained and used for future well being.

Training also needs to be relevant, fun and an enjoyable experience. At mhl support we are looking to use more interactive training techniques where possible to involve the delegates and allow them to learn and develop skills by participation.

These techniques may involve dialogue and sharing of personal experiences. The use of films and role play can also be used in the training but with a serious focus on accident causation.

The development of e: learning training for suitable topics is also another area to be explored.

Your training can be made bespoke to your requirements and can be conducted at our training facilities or your own premises.

Core training courses in the month commencing in May are:

- **IOSH Managing Safely**
- **Manual Handling**
- **Health & Safety awareness**
- **Fire awareness**
- **Risk assessment**
- **Asbestos awareness**

For further details or quotations please call **Milan Hilton** on 07795 378 657 extension 255.



**fire risk
assessments**
assess your risks and protect

fire risk assessments

40% of businesses never recover from the effects of a major fire with the loss of key staff due to temporary closure. The Regulatory Reform Fire Safety Order (2005) now requires you to manage the risk of fire in your organisation, but do you really know what is expected of you? A concise and easy to follow fire risk assessment provided by mhl will set you on the right path to conforming with the Fire Safety Order.



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

HS Job Safety Analysis A tool for detailed risk assessment

Job Safety Analysis, or JSA, is essentially the assessment of work activities and the workplace to establish whether adequate precautions are in place. This system enhances the risk assessment process through the systematic identification of potential hazards in the workplace as a step to controlling the possible risks involved.

The fundamental principle behind Occupational Health and Safety Management is the recognition, evaluation and control of hazards or as it is often expressed, the identification and assessment of hazards. Virtually every safety initiative has hazards control as its ultimate aim.

The JSA process has evolved from work study and work measurement techniques developed by engineers in the early part of the twentieth century.

Its purpose was to analyse work tasks to improve production output by eliminating unnecessary job steps, mainly in the manufacturing industry.

Better known as “time and motion” the original work measurement study approach made use of the SREDIM principle.

Select: The work to be studied.

Record: How the work is done.

Examine: The total job.

Develop: The best method for doing the work.

Install: The preferred method into company way of thinking.

Maintain: The agreed method via training and supervision.

JSA uses the SREDIM principle but assesses the risk content of the task or process.

Also referred to as Job Hazard analysis, JSA is a safety tool helping to logically examine a particular job or task so that all the hazards associated with that job can be identified and assessed and, where necessary, suitable control measures can be implemented.

The aim of a JSA is simply to document how a particular job should be done safely. It is not a quick or trivial job. It requires expertise and ideally a trusted framework to work with.

How JSA is performed

A JSA can be developed in a number of ways. Generally the best and by far the most common way is by observation. Having two or more people actually observing the job being performed is the ideal way. The observation method has the advantage of not relying on memory and the process also prompts the recognition of hazards. The variation of this method is to video tape the job task.

The tape can then be replayed and dissected by those responsible for developing the JSA.

Some situations such as infrequently performed tasks and new jobs result in the observation method not being practicable or possible. In these situations, it is often best to have an experienced group of people to complete the analysis through discussion.

The basic job steps

The first step in performing the JSA is to break the job down into basic job steps.

This step is obviously crucial as too many job steps make the analysis overly complicated, and too few can lead to hazards not being identified.

The key to developing this part of the JSA properly is to concentrate your deliberations on what is being done and not to get confused with how it is being done.

Hazard identification

Once the job steps have been decided, the second stage is to look at each step in turn and identify any and all of the hazards that are present for each job step.

The success of the JSA pretty much relies on this second stage and the ability to identify all the hazards that are present.

Again it is important that the hazards associated with each step are considered in turn.

Assess hazards, list control measures

It must be decided with each hazard whether or not the risk it presents for an accident or injury needs to be controlled

or whether it can be regarded as an acceptable risk and does not require any specific control measures.

With all the hazards that require control, the best approach is to apply the principles behind what is commonly referred to as the hierarchy of control measures:

- Elimination;
- Substitution;
- Engineering controls;
- Administrative controls;
- Use of personal protective equipment (PPE).



It is also important to remember that many hazards require more than one control measure to reduce the risk to an acceptable level.

Communication

When the JSA has been completed the findings should be effectively communicated to those employees involved with or affected by the job.

This can be achieved simply by producing a Safe Work Instruction, Do's and Don'ts list or any other written method of communication which effectively provides the appropriate information to those affected.

The next step

If you wish to receive further information or training on JSA please contact the mhl Support Line for further information.

More on the Web...

Visit the mhl website to read more about the current issues and challenges facing your business today.

www

H&S

news update...**Conventional Tower Cranes Regulations 2010**

Since 2000 there have been a number of high profile incidents and deaths involving tower cranes. These have led to public concern over tower crane safety and in 2008 the Work and Pensions Select Committee called on HSE to bring forward proposals for a national register.

As a result of this, the Notification of Conventional Tower Cranes Regulations 2010 came into force on 6 April 2010.

The regulations will require certain information about conventional tower cranes (i.e. those which are assembled on site from components) to be notified to the Health and Safety Executive (HSE) following their installation or re-installation on site.

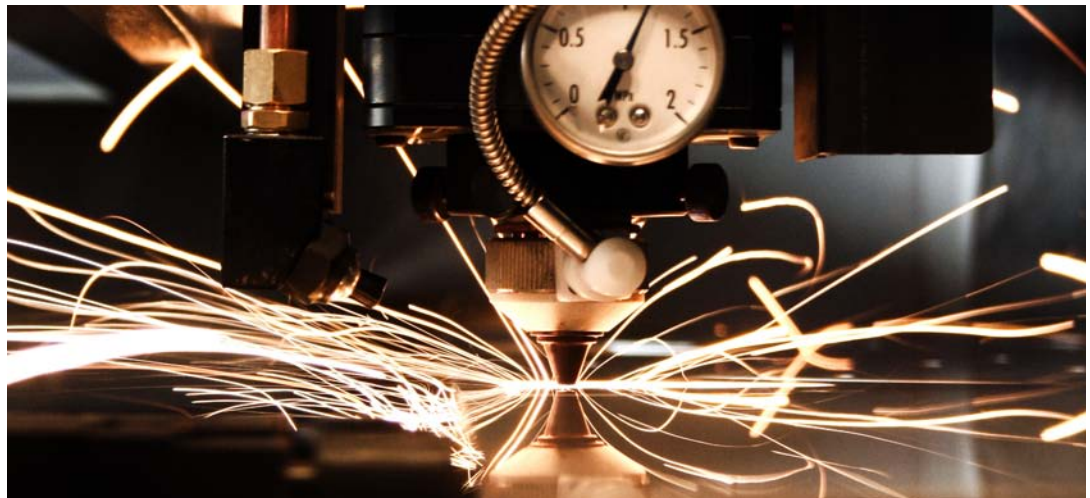
A free publication is available to download from the HSE. This leaflet sets out: (a) the types of tower crane that need to be notified to HSE; (b) who needs to ensure notification is made; (c) when the notification needs to be made; (d) what information needs to be notified; and (e) how the information should be notified.

Use the link below to download a free HSE leaflet: <http://www.hse.gov.uk/pubns/indg437.pdf>

Need to know more...

If you are unsure on how this affects you please call us on 08453 100 999 or email enquiries@mhlsupport.com

☑ Please visit our website at www.mhlsupport.com



HS Control of Artificial Optical Radiation at Work Regulations 2010 To come into force April 2010

April sees the arrival of the Control of Artificial Optical Radiation at Work Regulations 2010 which implement one of the EU Physical Agent Directives, number 2006/25/EC.

Their purpose is to protect workers against exposure to harmful artificial light such as laser displays and includes sources of ultraviolet, infrared and visible light. Too much exposure to certain light sources can be harmful to the eyes and the skin. The Regulations are designed to ensure that employers using hazardous sources of light review their approach to take proper account of the risks.

The Health and Safety Executive recognise that the majority of employers already manage these risks and have developed the Regulations to ensure that only those businesses that are not already doing this need to do more. Employers are not expected to undertake unnecessary risk assessments especially if they are already managing the risks and if their business has only safe sources.

Examples of hazardous sources of very intense light that pose a 'reasonably foreseeable' risk of

harming the eyes and skin of workers and where control measures are needed include:

- Metal working – welding (both arc and oxy-fuel) and plasma cutting – mainly eye damage;
- Pharmaceutical and research - UV fluorescence and sterilisation systems – mainly skin burn;
- Hot industries – furnaces – eye and skin damage
- Printing – UV curing of inks – mainly skin burn;
- Motor vehicle repairs – UV curing of paints – mainly skin burn;
- Medical and cosmetic treatments – laser surgery, blue light and UV therapies – eye and skin damage;
- Research and education - all use of Class 3B and Class 4 lasers – potentially permanent eye and skin damage;
- Entertainment – high intensity lighting and lasers.

Organisations already have duties under existing health and safety law to protect workers against these hazards and the new regulations restate the requirement for risk assessment, taking steps to eliminate or reduce risks, providing necessary training and, where appropriate, health surveillance.

HS

Worker injured in unguarded drill

Manufacturer overlooked drill entanglement risks

A construction products manufacturer has been fined £40,000 after an agency worker's arm was broken after being pulled into an unguarded drill.

The worker was operating the machine, part of a production line making splice plates, when his right hand glove became entangled in the rotating drill bit and his arm pulled into the drill. He managed to use his left hand to hit the emergency stop button but by that time he had suffered two broken bones in his forearm and serious muscle damage.

The incident resulted in a prohibition notice being issued requiring guarding to be installed and also an improvement notice to revise the risk assessment for using the machine.

The company pleaded guilty to breaching s3(1) of the Health and Safety At Work etc Act 1974 and regulation 11(1) of the Provision and Use of work Equipment Regulations 1998, for failing to prevent access to the dangerous parts of the machine. Costs of £7,401 were also imposed.

HS

Lifting operation incident

Scaffolder hits 66,000 volt power line

A multi-national oil giant and two other companies have been fined £326,000 including costs following a lifting operations incident.

A cage containing over 500kg of rubble fell during an unplanned lifting operation resulting in a worker being paralysed from the waist down.

A contractor had been engaged by the oil refinery to refurbish a "cracker" unit. They in turn employed a sub-contractor to erect some scaffolding in the work area, including around a cage hoist that was being used to carry debris from the refurbishment work.

The cord attached to the cage became snagged on the scaffold boards around the hoist for the cage. This left the cage suspended 9 metres above a walkway directly below. As the worker was walking underneath the suspended load, the snagged cord became dislodged and sent the cage full of debris crashing down onto him. Contact with another worker was narrowly avoided.

Following the incident the worker was hospitalised for several months and is now paralysed from the waist down.

Neither the oil company or their contractor addressed lifting activities in their pre-work risk assessments and failed to revisit the issue despite concerns being raised by other on-site workers.

The oil company and their contractor admitted to breaching reg 8(1)(c) of the Lifting Operations and Lifting Equipment Regulations 1998, for failing to carry out the lifting operation safely. The sub-contractors also pleaded guilty to failing to protect the safety of a non-employee.

The oil company was fined £116,666 with £16,204 costs, the contractor was fined £83,333 with £11,115 costs and the sub-contractor £83,333 with £16,204 costs.

This incident is a reminder to all companies who undertake lifting operations to carry out suitable and sufficient pre-work risk assessments and to modify their risk assessments in light of changing or unexpected site conditions.

Health and Safety Training

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

Visit our website www.mhlsupport.com



the news in brief...

Earth Hour

Earth Hour is a global event organised by WWF asking households and businesses to turn off their non-essential lights and other electrical appliances for one hour to raise awareness towards the need to take action on climate change.

On Saturday 27 March 2010 at 8.30pm, billions of people around the world switched off their lights for one hour.

UK highlights were:

- Many bars and pubs in downtown Dublin took part.
- The Irish Minister of the Environment gave a nationally televised speech to 300,000 viewers at 8.30pm from a major hotel where the lights went off.
- Stormont Parliament buildings in Belfast switched off for Earth Hour, ensuring the citizens of Northern Ireland stood with the rest of world in the fight against climate change.
- Big Ben, Buckingham Palace and Number 10 Downing St went dark, and people watched Piccadilly Circus darkening for only the fifth time since World War II.

EN Waste hoarder given suspended prison sentence Guilty of spoiling natural landscape

A skip hire contractor who consistently flouted waste regulations has been given a suspended prison sentence after being found in contempt of court.

His actions spoiled an area of outstanding natural beauty in the Chiltern Hills and he was given the sentence after consistently ignoring court orders.

Oxford County Court found Geoffrey David Parker, of Hundridge Farm, Ipsden Heath, Oxfordshire, in contempt of court for continuing to keep controlled waste on his farm and in nearby Cox's Lane without an environmental permit.

The court gave Mr Parker a 28-day suspended prison sentence and ordered him to pay the Environment Agency's costs of £18,000.

The warrant is suspended until 15 May 2010 and all the waste must be removed by that date.

Oxford County Court heard that Mr Parker, 70, has been working in the skip hire business for approximately 40 years. Mr Parker's farm is located in an area of outstanding natural beauty, with waste visible at the entrance to the farm along a popular bridleway known as Cox's Lane. Local walkers, riders and cyclists have described the site as "shocking" and a "blot on the landscape" which has spoilt their enjoyment of the countryside.

Legitimate businesses have to have sites with planning approval that also comply with conditions imposed by the Environment Agency such as impermeable hard standing to protect the water table and noise and dust suppression features.

EN Battery landfill to be reduced Responsibilities for large retailers

Over 600 million batteries are used in Britain every year and a staggering 97% of these end up in landfill where the toxic metals can leak out into the ground and the water courses.

Now any retailer who sells more than 32Kg a year has to provide re-cycling bins or facilities. This new approach will bring Britain in line with many mainland EU countries where recycling boxes in shops are common place.

Among shops now offering this free facility are, Tesco, Asda, Morrisons, Sainsbury's and PC World. In addition to this Sainsbury's are also offering, at 200 of the larger stores, facilities for collecting low energy light bulbs.



Financial Hangover

EN Brewery fined for packaging waste offences

A London brewery has been ordered to pay £30,751 after failing to comply with the Producer Responsibility Obligations (Packaging Waste) Regulations 2007.

Young & Co Brewery Plc pleaded guilty to failing to register with the Environment Agency, failing to meet its requirements to recover and recycle packaging waste and failing to furnish a certificate of compliance in 2007 and 2008.

Young's are a long established business, running more than 200 pubs in the south of England as licensors.

It was estimated that the company had avoided costs of £20,811.923 by not registering and purchasing the correct amount of Packaging

Recovery notes

The company was fined £27,000 (6 offences), ordered to pay the Agency compensation of £1,552 in respect of unpaid registration fees and £2,199 in costs to the Agency.

Under the Producer Responsibility Obligations (Packaging Waste) Regulations, companies who have an annual turnover in excess of £2 million and handle more than 50 tonnes of packaging per annum must register with the Environment Agency or a compliance scheme.

Each year, the company must also provide evidence of payment for recovery and recycling of a specified proportion of their packaging. The types of packaging covered by this legislation are wood, aluminium, steel, cardboard and plastic.

The regulations are designed to make companies assess the amount of packaging they handle and, where possible, limit its use. The money raised from this legislation is directly invested in the recycling industry. Many organisations remain unaware of their responsibilities.

news update...

Heating Homes Using Underground Energy

A third of the UK's renewable heat could be heat generated below the ground by 2020.

Ground source heat pumps work by using energy in the ground.

Like a refrigerator or air conditioner, these systems use a heat pump to force the transfer of heat. Heat pumps can transfer heat from a cool space to a warm space, against the natural direction of flow, or they can enhance the natural flow of heat from a warm area to a cool one. A ground source heat pump extracts ground heat in the winter (for heating) and transfers heat back into the ground in the summer (for cooling).

There are currently around 8,000 heat pumps in the UK but an incentive due to be introduced in 2012, known as the Renewable Heat Incentive, which will pay homeowners and businesses a guaranteed price for generating renewable heat, could be the most important factor in determining how much the industry grows.

the news in brief...

Sainsbury's reduce energy usage at Durham Store

Sainsbury's Durham store is home to a number of green build technologies with renewable power generation what the chain is describing as "ground-breaking refrigeration technology".

Refrigeration technology, which was announced last November, is the beginning of a phase out of F gas refrigeration in favour of the more environmentally friendly CO2.

The move, which was hailed by Greenpeace at the time as an industry-leading step forward, will reduce the company's carbon footprint by around a third.

Store bosses say the site will be the first of the retailers to use a biomass boiler for power by burning wood pellets.

Sainsbury's is the first retailer to use this kind of boiler, which reduces the amount of energy needed from the grid and uses waste wood that would otherwise have been sent to landfill sites.

EN

Unprepared for New Environmental Regulations

Businesses face increased costs and liability if they fail to comply

Businesses risk prosecution and fines for failing to comply with new environmental legislation. Many small and medium sized businesses (SMEs) operating in England and Wales may need to make changes to bring themselves in line with regulations on waste controls and environmental damage.

However, research shows that many are not aware of the rules, putting themselves at risk of non-compliance. In a survey, a worrying 89% of SMEs in the hotel and restaurant sector could not identify any piece of environmental legislation unprompted.

The Environment Agency is stepping up its enforcement and businesses are at growing risk of being fined for non-compliance. SMEs cannot afford to let these regulations go unheeded.

In 2007, SMEs were hit by fines of around £2.4 million for pollution and environmental damage and this was largely caused by poor awareness of the laws. There is a vital need for all organisations to check up on what they need to comply with the legislation.

EN

Penalty of £6,000 for scrap dealer

Fined for offences involving pollution from motor vehicles

The operator of a scrap metal yard in Moreton has been fined £6,000 for operating outside of environmental regulations with the potential to cause harm to the local environment and ordered to pay almost £3,000 in costs.

Shane Dooley pleaded guilty at Wirral Magistrates to a charge relating to the storage of waste cars and parts in a way likely to cause environmental damage.

Environment Agency officers first visited the site following complaints from members of the public. They found over 150 vehicles stored on the site on unmade ground. This left the potential for oil and fluids to leak from the vehicles and contaminate local land. Hazardous wastes including vehicle batteries were also being stored on site.

The site was advised that they need a permit to carry out the activities and must put in place appropriate measure to ensure they did not cause damage to the environment through pollution.

Initially, no improvements were made and an environmental permit application remained outstanding. This resulted in the Environment Agency issuing an enforcement notice to get the waste removed from the site.

On the expiry date of this notice (20 April 2009), Environment Agency officers visited the site and found that it had been cleaned up. An application for an exemption has since been approved for the site to comply with relevant environmental legislation. Mr Dooley is now operating a fully legal end of life vehicle site in Birkenhead.

EN Environmental Management Systems Improving your eco friendly reputation

Over recent years, companies large and small have come under increasing pressure from customers to demonstrate their management of environmental liability by implementing an environmental management system (EMS) in some form. This may range from simply having a written environmental policy right up to achieving certification to the ISO Environmental Management Standard – ISO14001:2004. No business needs reminding though that the rules have changed.

We are emerging from the worst recession in 50 years and it would perhaps be reasonable to assume that the maintenance of a non-statutory certification such as ISO14001:2004 would come under close scrutiny and for the number of companies listed as being certified to ISO14001:2004 to have fallen during the recession. This is, however, not the case.

During 2009 there was actually a slight increase in the number of companies achieving certification to the standard compared to 2008. At mhl, we believe that this upward trend in terms of numbers of certified companies reflects the value intrinsic in the certification itself and the increased demands being placed upon supply chains to demonstrate effective management of environmental liability.

In our experience, those businesses that have already been sufficiently driven to achieve certification, particularly from a third party rather than in-house (auditors), are forward thinking enough to recognise the value that certification delivers in terms of cost savings, lower reputational risk and enhanced brand perception within their existing and, importantly, potential customer base.

From this perspective, the cost of certification in itself is not at issue. By recognising the positive impact that certification has on potential sales opportunities, forward thinking companies have maintained or

actually taken on the standard to achieve a competitive edge over their competitors at a time when it really counts.

mhl has recognised the difficult decisions that our clients have had to take with regard to service and the added value that our clients are looking for from us – just as they are being asked the same from their customers - and has responded by more than doubling the time our consultants spend actually on site. We know from experience just how much our clients value the close working relationship that exists between our consultants and their clients, enabling us to go that step further in offering support and advice over and above the basic compliance advice and the provision of solutions that exceed our clients' expectations.

At mhl, our approach is to encourage clients to properly implement the ISO management model, ensuring that the EMS is an intrinsic part of the business. However, we are also pragmatic and are keen to stress that successful implementation of the standard requires commitment of time and effort, as well as the willingness to change long standing business processes if necessary. It is a journey upon which a business embarks, starting on the day that the system is delivered by our consultant, continuing through implementation and maintenance, before certification to the standard can be achieved.

mhl is a keen advocate of the ISO14001:2004 standard and promotes it to our valued client base as a major benefit in establishing a company's commitment to, and management of, its environmental aspects as well as enhancing reputation and sales opportunities. Our EMS system has been written internally by Bill Collins, our environmental manager, who heads a team of experienced environmental consultants, ready to guide our clients through to eventual certification.

Environmental Management Services

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

Visit our website at: www.mhlsupport.com





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environmental audits

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