

Knowledgebase

mhl support ltd's client quarterly risk management publication

Volume 2, Issue 2; Second Quarter Summer 2010

Employment Law • Health and Safety • Environmental • Risk Management

The Coalition Government A help or hindrance to businesses?

Our Employment Law Support Line tell us more.

We discuss the possibility of significant changes to be made to employment policies.

Asbestos Awareness with mhl support

mhl's H&S Team tell us more.

We provide information and guidance on the risks of working with or around asbestos.

Oil Spill in the Gulf of Mexico Storage Regulations

Our Environmental Team tell us more.

Looking at the current BP happenings we discuss the requirements of oil storage.

Equality Act 2010

What it means for you as an employer

The mhl Employment Law Team explain to us what this new legislation will mean for employers





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Welcome from Michael Slade Summer 2010 Edition



When we last went to press, the general election was about to take place, with considerable uncertainty as to the likely outcome. Who sits where in the House of Commons is now clear – at least for the time being. However, it has been replaced by a further level of uncertainty as to the impact of both the emergency budget and the forthcoming cuts in public spending. Inevitably, these will have knock-on effects across the economy. Encouragingly though, unemployment has dropped by nearly 2.5 million over the most recent reported period, so clearly a significant number of employers remain confident in future prospects. Good news.

In the commercial world, the BP oil spillage on the Gulf of Mexico has already had far reaching consequences in terms of reputation and cost, and the full effects both on those living and working in the area and on BP and its subcontractors will take some time to play out. And, as to the long-term effects on people and businesses, it is worth noting that cases following in the Buncefield disaster of 2005 are only now coming to trial. These are stark reminders of the need to take seriously the whole area of the assessment and management of risk – of which more follows later in this newsletter.

In the next few months ahead we see not only the introduction of the Equality Act 2010, details of which can be found in the Employment Law section of the newsletter, but it is also mhl support's 10th anniversary. We will be planning to mark this very special occasion with a celebratory event. More details will follow at a later date, so watch this space!

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

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social networking not working



Do your HR Policies address social networking? With one poll reporting the use of such sites costing UK businesses around £6.5 billion, you won't be alone in wanting to take action. This could be something as simple as preventing your staff using sites during work time, through to corrective measures dealing with employees who've made inappropriate public comments about your business or your management team.

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Departments

06 Employment Law

Our section provides coverage of upcoming legislation changes, focusing on the implementation of the Equality Act 2010 and the Additional Paternity Leave Regulations 2010. We also take a look at some of the latest case law developments, covering cases in the area of discrimination, harassment and disciplinary. We also examine the latest development in case law in the area of legal representation at disciplinary meetings. We finish with a look at the plans of the Coalition Government, which are set to see the Default Retirement Age finally retire itself.

16 Health and Safety

With our Health and Safety specialists we make sure our newsletter has the best information at hand to answer any problems you face within the workplace. In this edition of *knowledgebase* we review the current health and safety news and prosecutions including Lord Young being appointed as Health and Safety advisor to the Prime Minister.

28 Environmental

This section allows you to keep up-to-date with the most recent developments and news on the environment. We take a look at the lessons to be learnt from the BP oil spillage disaster and discuss the importance of waste management within your company.

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A review of new legislation which will take effect in April 2011, will enable eligible fathers to take additional paternity leave.

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In this edition you will find some recent cases which provide a valuable insight into the complexities of employment law, such as unfair dismissal and sexual harassment.



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We take a selection of recent discrimination cases to review and discuss the developments in this area.



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New Government plans to reward recycling rather than additional tax on waste.

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mhl discuss the importance of waste management even if a system is not in place in your company.

Cover Story **The Equality Act 2010**

The Equality Act 2010 will have wide-reaching effects for employers. Our employment law support line team are here to help you to understand the implications of the Act on your business or organisation.

EL Additional Paternity Leave Provisions Introduced from April 2011

Need to know more...

If you are unsure how this affects you please call our support line on 08453 100 999.

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New legislation that comes into effect in April 2011 enables eligible fathers to take additional paternity leave where the child's mother returns to work early from her maternity leave period.

The Additional Paternity Leave Regulations 2010, which received Royal Assent in April this year, will take effect for babies whose expected week of birth is on or after the 3rd April 2011. There are similar provisions in place for adoption leave.

These regulations will see eligible fathers able to take up to 6 months of the mother's maternity leave where she returns to work early before she has exhausted her full entitlement of up to one year's maternity leave. This additional leave can be taken as early as 20 weeks after the birth of the child, but must be taken within one year from the birth.

So, you might be asking yourself, is this paid time off? Potentially it is and, as a general rule, the employee will receive the statutory maternity pay that the mother would have received had she not returned from maternity leave.

There are a number of specifics that need to be grappled with regarding this new right. In particular, it is important to appreciate that in order to be eligible, the individual seeking to take additional paternity leave must have at least 41 weeks service by the child's expected week of birth, be employed at the commencement of the additional paternity leave period, be the child's father (or married to or the civil partner of the child's mother), and have, or expect to have, the main responsibility, other than the mother, for the child's upbringing.

There is a requirement to give notice of the intention to take additional paternity leave and a corresponding obligation to provide documentation in support of entitlement.

Included within this is an obligation to provide a declaration from the mother confirming that she has returned to work and a declaration from the employee to confirm that they satisfy the eligibility criteria.

You may think that this could be open to abuse by employees. Fortunately, you will be pleased to hear that as an employer you can request that the individual provides you with the mother's employer's contact details so that you can make contact with them to check the mother has returned to work.

This leave is in addition to an employee's existing right to take up to 2 weeks paternity leave.

This new right allows fathers to take a maximum of 6 months of the mother's maternity leave entitlement. It is important to point out that there is a minimum requirement to take 2 weeks of additional paternity leave and also that this can only be taken in complete weeks all in one go and not odd days.

Just as the mother has the right to return to work after maternity leave to the job they held before commencing maternity leave, you will see similar rights in place for fathers or civil partners returning from additional paternity leave.



An Opinion was Not a Protected Disclosure

EL *Goode v Marks and Spencer Plc*

The Employment Appeal Tribunal (EAT) has held in this case that a worker is only protected from victimisation under whistleblowing legislation if a disclosure they have made is based upon a factual allegation. A worker will find themselves unprotected in situations where they disclose information that is merely an expression of opinion or discontent at an arrangement.

In this case, the claimant overheard a discussion between colleagues in which they referred to proposed changes to the Company's discretionary enhanced redundancy package. This information had already been communicated to the representative body of the staff members.

The claimant informed his line manager that he thought the changes were "disgusting" and also emailed a national newspaper with a story regarding the proposed slashing of redundancy packages for staff members. He was subsequently identified as the source of the email. The claimant was summarily dismissed following disciplinary proceedings on the basis that he sent the email and supporting documents to the newspaper.

The claimant submitted a claim for unfair dismissal and wrongful dismissal. He argued that he was dismissed for making protected disclosures to both his line manager and to the newspaper regarding a breach of a legal obligation in that the claimant's contractual terms regarding the existing redundancy policy were to be unlawfully changed and also that the respondent had breached the legal obligation to consult.

The Employment Tribunal held that the claimant had not made a qualifying disclosure and so both of his claims failed. This decision has recently been upheld by the EAT.

The EAT determined that the claimant's disclosures merely set out his opinions and as such, no reasonable belief could be formed that the claimant's employer had acted in breach of legislation. As the claimant's disclosure was based upon his opinion, this did not form a qualifying disclosure for the purpose of the legislation.

This decision goes some way to demonstrate the threshold a claimant must reach in order to make a successful claim under whistleblowing legislation.

news update

Agency Workers Regulations

Employers are reminded that the Agency Workers Regulations are on the horizon with an expected implementation date of October 2011.

Under the new regulations, agency workers will be afforded equal treatment to their permanent counterparts. The new regulations will introduce 2 main rights, namely day one rights and rights after a qualifying period of 12 weeks.

From day one, agency workers will have a right to be afforded the same access to collective facilities such as subsidised canteen facilities and to be made aware of job vacancies.

After a qualifying period of 12 weeks, the agency staff members will be entitled to comparable treatment to their permanent counterparts in respect of pay and hours of work.

Equality Act 2010

Equality legislation is set to follow in the footsteps of other areas of employment legislation in that this is soon to be consolidated into a single Act of Parliament. This consolidated legislation takes the form of the Equality Act 2010 which received Royal Assent back in April this year, although the provisions are not set to take effect until October 2010. The main purpose behind this new legislation is to consolidate around 40 years of equality law, although there will be some new additions.

This article is designed to provide an overview of some of the new provisions employers can expect under this legislation.

Discrimination by Association

The Equality Act 2010 will supplement recent case law to provide statutory backing for protection against discrimination based on an association to someone who has a protected characteristic. That is a person may still be eligible to bring a discrimination claim even though they themselves do not possess the protected characteristic. As such, cases like *Coleman v Attridge Law* will now be given a statutory backing in domestic law under the new legislation. This case concerned a claimant who was discriminated against not because she herself was disabled, but rather she was treated less favourably because her son was disabled.

Association will predominantly cover direct discrimination and harassment where the claimant need not have the protected characteristic themselves. However, for indirect discrimination, less favourable treatment for the claimant must still be shown, hence it is likely that the claimant must possess the protected characteristic themselves for an indirect discrimination claim to succeed.

Discrimination Based on Perception

The legislation will also allow for discrimination claims to be brought based on a perceived protected characteristic whereby the claimant does not have to demonstrate they possess a particular protected

characteristic. Provided they are perceived to possess the characteristic, they will still be afforded protection. For example, if an employer refuses to recruit a job applicant, thinking the candidate looks as if they may be gay, regardless of whether they are in fact homosexual or not, the candidate would still be afforded protection from discrimination based on their perceived sexuality.

Discrimination Based on Dual Protected Characteristics

The new equality legislation will also provide a greater statutory backing for discrimination based on two protected characteristics. At present, the equality legislation focuses on whether any less favourable treatment has occurred because of a singular protected characteristic or not. Currently, it does not recognise adequately that discrimination may occur because of a combination of protected characteristics. For example, a woman of Asian racial origin. It may be that the employer holds no prejudice against white women generally, or male Asian employees. They do, however, have a stereotypical attitude towards Asian women. The new equality provisions will now better recognise the combined effect of dual discrimination.

Positive Action

The new Equality Act 2010 will also see employers able to engage in what is known as "positive action." That is they will be able to treat a person more favourably because of a protected characteristic. Most notably, the new equality legislation allows



By Brendan Wincott,
Employment Law
Compliance Officer

employers to choose an applicant at the recruitment stages over and above an equally qualified applicant where the applicant is from an under represented group possessing specific protected characteristics.

Health Questionnaires

Pre-employment health questionnaires are going to be a thing of the past. An employer will be prevented from asking questions about an applicant's health before the completion of the recruitment process unless an exception applies.

The exceptions are limited and are largely for establishing if the applicant has a disability requiring either reasonable adjustments, positive action, or where having a disability is a particular requirement for the job.

Employers are advised to review their recruitment practices where these involve questions about the applicant's health in view of the new provisions.

Equal Pay

The general principles of equal pay remain unchanged, that is that men and women are entitled to receive equal pay for equal work, work rated as equivalent or work amounting to equal value.

However, there are a few additions in this area, in particular, employees cannot be prevented from discussing their pay with their colleagues, with any requirement which purports to prevent such discussions becoming void and unenforceable.

In addition, employers with 250 or more employees may see a duty imposed requiring them to publish information relating to pay. However, this particular requirement is not yet law, but is provided for as an option within the legislation. We will have to wait to see further developments in this area as to whether the option is included or not on implementation.

We are approaching an important milestone for employment equality in the coming months. Employers are advised to begin planning for the new laws on equality now. If you require any assistance in planning for the October introduction of the Equality Act 2010 or have any other questions, please call the Support Line on 08453 100 999. ■



Legal Representation at Disciplinary Meetings

R (on the application of Kirk) v Middlesbrough Council

In May this year, we saw a setback to the emerging case law in support of legal representation at disciplinary hearings. There were two previous cases in this area, namely *Kulkarni v Milton Keynes Hospital NHS Trust and Secretary of State for Health* and *R (on the application of G) v Governors of X School and Y City Council* where it was held that the claimants in these two cases had the right to be accompanied at internal disciplinary meetings by a person who was legally qualified.

This was made so under the provisions of Article 6 of the European Convention on Human Rights which provided for a right to a fair trial because a civil liberty was to be decided, namely the right to practice a particular career.

However, this latest case development has seen matters decided in a different direction, namely that the claimant was not entitled to be accompanied by a legal representative at her disciplinary meeting.

The claimant in this latest case worked for a charitable organisation involved in the promotion of child welfare. A child protection investigation was commenced into her actions away from the workplace where she was alleged to have placed her own child at risk. The claimant failed to notify her employer of this investigation, upon learning of this, the employer sought to take disciplinary action against the claimant.

The claimant argued that because child protection allegations were raised which may or may not lead to her being placed on the “barred lists” of persons unsuitable to work with children, which in turn may prevent her from practicing her chosen career, Article 6 was engaged and she must thereby be afforded the right to have a solicitor with her at the disciplinary meeting.

The High Court disagreed, holding that the only matter to be determined in this case by the employer was whether the claimant failed to notify them of the pending investigation into her actions away from the workplace or not and this in itself, is not something which would lead to a placement onto the barred list.

The employer’s disciplinary procedure was not concerned with the truth in the child protection allegations, rather it was

limited to considering only if there was a failure to disclose that this investigation was ongoing.

In addition, the charity in this case was held not to be a public body or a body exercising a public function, therefore, this provided no direct reliance for the claimant on public law rights, namely Article 6, which provides for a right to a fair trial.

The case raises some very important restrictions to the continual development in this area of case law, but we are still far from reaching more calm and settled waters.



EL The Coalition Government – Main Changes A Help or Hindrance to Businesses?

It has become apparent that the election of the new Coalition Government could signal some significant changes in employment policy. The Government has outlined a number of wide ranging proposals aimed at promoting freedom, fairness and responsibility.

This article outlines the main proposals that may impact upon employers going forward.

Default Retirement Age

A significant change has been proposed regarding the current default retirement age which has been subject to much discussion since the introduction of the Employment Equality (Age) Regulations 2006 and its provision allowing for a default retirement age of 65. This was challenged in the *Heyday* case, however, the High Court deemed that the Government could justify a default retirement age but relied heavily upon Government assurances that they would bring forward a planned review on the matter. The Court went so far as to suggest that had the 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 social aims it pursued and was, therefore, unlawful.

In light of this judgement, it is not surprising that the Government have confirmed that the default retirement age will be phased out and the state pension age will start to rise to 66.

Immigration

The Government has also put plans in place to limit the number of non-EU migrant workers allowed into the UK. The cap will come into effect in April 2011 but a temporary cap has been implemented from 19 July 2010 in order to

prevent an early rush of applications. This temporary cap will allow 24,100 migrant workers into the UK between now and April 2011. In order to achieve this aim, the number of tier 1 highly skilled workers will be capped at current levels and non-EU workers will now require 100 points to work in a highly skilled job as opposed to the current 95 points.

In conjunction with this, Companies who employ non-EU migrant workers may find that they will have to pay for private health cover for such workers as opposed to them receiving non-emergency services from the NHS. This proposal is intended to free up jobs for EU workers in the UK.

Discrimination

The Government has also pledged that they will strive to break down barriers to prevent inequality in the workplace through action in promoting equal pay and focusing on ending discrimination in the workplace.

Family Rights

Of particular significance to all businesses is the proposal to extend the right to request flexible working to all employees. It is likely that this will place a greater burden upon employers and in acknowledgement of this; the Government has pledged to fully consult prior to implementing this proposal.

The Government's focus on family friendly rights has resulted in unveiled plans to encourage shared parenting which will result in both parents having the right to share what is currently maternity leave.

It remains to be seen how much of an impact the proposals of the new Coalition will have upon employers but we will ensure that we keep you updated as things develop.

news in brief...

Vetting and Barring Scheme Halted

The Coalition Government has confirmed that they have halted the implementation of the remaining provisions of the new vetting and barring scheme which was introduced under the previous Labour Government.

Most notably, from 26 July this year, registration with the Independent Safeguarding Authority (ISA) was set to become optional for those entering or moving within a "Regulated Activity."

It was in November this year when such registration would have first become compulsory. However, this has now been stalled to allow the Government to reassess the scheme and "scale it back to common-sense levels."

This latest announcement does not appear to affect those parts of the scheme already introduced from October 2009 and those provisions will remain in force.

EL Tolerated Sexual Harassment is Still Harassment

Munchkins Restaurant v Karmazyn

A prolonged tolerance of unwanted behaviour geared around sexual content does not preclude actions amounting to sexual harassment nor does the fact that the complainants themselves spoke in sexual terms.

The Employment Appeal Tribunal (EAT) has provided a strong reminder to employers of the perils of engaging in conduct of a sexual nature towards staff members, even where there are signs which might suggest the actions are not unwanted. This latest sexual harassment case involved four claimants who worked as waitresses at the employer's restaurant. Throughout their employment, they were subjected to a number of acts

which they perceived as unwanted sexual conduct. This was alleged to include their employer insisting they wear short skirts, engaging in inappropriate conversations of a sexual nature, enquiring about their sex lives and referring to sexually explicit photographs.

The employer argued that their actions were not unwanted as they had been allowed to go on for so long unchallenged by the 4 staff members and further that the staff themselves had in some cases initiated conversation of a sexual nature. However, the EAT did not accept this, attributing the fact that the employees themselves sometimes spoke in sexual terms as a coping and deflection strategy.

Furthermore, the EAT also held that their tolerance of the actions was understandable, particularly as the staff members were migrant workers who were subject to financial pressure. There was also emphasis placed on the timing of the resignation which followed shortly after the assistant manager's departure from the business who acted as a go between to the manager and the 4 staff members.

This case acts as a strong reminder that it is always safest to completely eliminate sexual connotations in the workplace, even where they are perceived as being accepted or reciprocated.

EL Harassment on Grounds of Sexual Orientation

HM Land Registry v Grant

This appeal case charts the failure of the Employment Tribunal to consider a number of key facts in the employer's defence when initially finding in favour of the claimant for a number of complaints of discrimination and harassments on grounds of the claimant's sexual orientation.

These complaints included, amongst other things, a complaint about an incident where the claimant's manager made it known to another manager at a different location that the claimant was homosexual and warned her not to flutter her eyelashes towards him. Subsequent comments were also made about the claimant's sexual orientation, continually recognising him as being homosexual and having a male partner. The claimant argued that it should be up to him to determine who was told of his sexuality, not for the employer. It was argued that this was particularly the case in view of historic and ongoing perceived persecution in general towards individuals who are homosexual.

A large part of the employer's defence and grounds for appeal was that the Employment Tribunal did not take into account the central issue, namely that the claimant had already made his sexual orientation freely known in his current workplace and had "come out" to his colleagues.

The Employment Appeal Tribunal upheld the employer's appeal, holding that the case needs to be remitted to a fresh tribunal to consider the matter, now placing weight on the fact that the claimant had already freely made known his sexuality to many of his colleagues and to re-assess if the acts complained of were sufficient to amount to discrimination or harassment on grounds of sexual orientation.



case update...

Holiday

Zentralbetriebsrat der Landeskrankenhäuser Tirols v Land Tirol

An interesting decision in this Austrian case has been passed down by the European Court of Justice (ECJ).

The ECJ has ruled that where a worker reduces their hours from full-time to part-time, the worker should not lose the holiday entitlement already accrued whilst they were working full-time.

As such, when staff members reduce their hours, whether as a consequence of flexible working or otherwise, it is important to calculate the holiday accrued up to the point the worker changes their hours and then add onto this the holiday that will be accrued based on the new reduced hours.

For further assistance on recalculating pro-rata holiday entitlement for staff members, please contact the Support Line.

Conflicting Stories - Who Do You Believe?

EL

Salford NHS Trust v Roldan

The Court of Appeal has handed down useful guidance for employers in this case on conduct disciplinarys. The main facts in this case were as follows; the employee worked as a nurse for the employer for 4 years with an unblemished record.

However, she was later on the receiving end of allegations made by her colleague of 4 months service, largely suggesting inappropriate behaviour towards a patient. The employee was dismissed as a consequence of this complaint, with the employer believing the word of the employee's colleague over the employee herself.

Established case law in this area confirms that a proper investigation needs to be undertaken before forming an opinion as to the true sequence of events and this is particularly so where the gravity of the charges is high and so are the effects on the employee should

matters be proven. Here, if proven, the employee would suffer serious harm to her career and potential deportation.

The crucial failing on the employer's side in this case was the lack of sufficient investigation. It was one person's word against another's, yet the employer did not challenge the reliability of the witness, particularly when inconsistencies were apparent that should have been challenged.

As such, the employee succeeded in this case for her claim of unfair dismissal.

There is a temptation for employers in cases where there is one person's word against another's to have to believe one of those versions of events. However, the Court of Appeal made clear that this is not always the case and rather, the investigations can be simply inconclusive and therefore no action is taken.

Discrimination Update

Recent Case Developments

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



Age Discrimination - Too Old for a Degree?

Homer v Chief Constable of West Yorkshire Police

The Court of Appeal has held that a requirement to possess a degree was not age discriminatory for a claimant who was prevented from satisfying this requirement due to his imminent retirement from the workplace.

In this case the claimant worked as a legal adviser within the legal department for the police service. Following an application for a higher paid post, where possession of a law degree or equivalent was an essential criterion for the job, the claimant found himself unable to secure this higher paid role as he did not hold a law degree.

Despite being given the opportunity to undertake a law degree which the employers offered to fund, the claimant refused to embark upon this on the understanding that he would have

retired before he completed the degree hence he felt there was little point in him starting this. The claimant sought to argue this was indirectly discriminatory criteria based on his age.

The Employment Tribunal initially upheld his claim, but the Court of Appeal reached a different decision, holding that the claimant had not been discriminated against because of his age. Whilst the claimant was held to have been placed at a disadvantage, the reason for this was not age, but rather because of his imminent departure from the Company which just so happened to be through retirement which is age related.

However, whilst this appears to be promising news for employers, caution should still be taken when requiring that a post-holder possesses a degree in order

for employment or promotion, as the argument still remains that older workers are less likely to hold a degree than younger workers and hence any criteria requiring a degree should still be objectively justified and proportionate.



case update

Discrimination and Injury to Feelings*Taylor v XLN Telecom Ltd*

The Employment Appeal Tribunal (EAT) made clear in this case that awards for injury to feelings can still be made in discrimination cases, even where the claimant was not aware that he was being discriminated against.

In this case, the claimant was held to have been dismissed partly because of performance and partly because he had taken action to complain of racial discrimination.

The claimant suffered injured feelings but he did not know that he was being discriminated against. However, the EAT still made clear that the claimant can recover an award for injured feelings in these circumstances, even though he was not aware that he was being discriminated against.

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EL

Age Discrimination - Too Old to Rule Offside?

Martin and others v Professional Game Match Officials Ltd

A Sheffield Employment Tribunal has held that assistant referees were unlawfully discriminated against on grounds of age when they were made to retire aged 48. In this interesting case, the Employment Tribunal heard complaints from 4 assistant referees who were made to retire at 48 despite their request to continue working beyond this date. The employer had to objectively justify 48 as a default retirement age which it failed to do. Whilst the Employment Tribunal accepted that a default retirement age could be justified, there was no clear reasoning why 48 was chosen.

This case follows a number of recent cases challenging default retirement ages related to this relatively new area of legislation.

If you are considering imposing a default retirement age other than 65, please speak with Support Line to ensure that you are able to objectively justify any such default retirement age .



EL

Reasonable Adjustments - Are they still Reasonable?

Chief Constable of South Yorkshire Police v Jelic

Have the requirements for an employer to make reasonable adjustments for disabled employees just become too unreasonable? This latest case decided by the Employment Appeal Tribunal (EAT) may be criticised for taking an employer's duty a step too far.

The claimant in this case was suffering from chronic anxiety syndrome and struggled with public contact and confrontational roles. The claimant was allowed to temporarily perform another role, but when this temporary role ceased, the claimant was medically retired. The claimant complained that there had been a failure to make reasonable adjustments, particularly as he could have been redeployed into the role occupied by another officer. However, as this role was not vacant, this was not offered to the claimant.

The Disability Discrimination Act 1995 contains express examples of the adjustments that can be made by an employer for a disabled employee, and one of these is "... transferring him to fill an existing vacancy." However, the EAT made clear that this was not an exhaustive list and there is no reason in principle why a reasonable adjustment could not include redeployment to a role which was not strictly vacant.

Asbestos Awareness

Why is asbestos training

The Health and Safety at Work etc Act 1974 (HSWA) (Section 2) requires an employer to conduct their work in such a way that their employees will not be exposed to health and safety risks, and to provide information to other people about their workplace which might affect their health and safety. Section 3 of HSWA contains general duties on employers and the self-employed in respect of people other than their own employees. Section 4 contains general duties for anyone who has control, to any extent, over a workplace.

By **Milan Hilton**, Health & Safety Training Manager



The Employer has a legal duty of care to the employee. Health and Safety at Work etc Act 1974 Section 2.1 Regulation 10 of CAR 2006 (Control of Asbestos Regulations) requires employers to ensure that adequate information, instruction and training are given to their employees who are liable to be exposed to asbestos or who supervise such employees. The aim of this regulation is to ensure that employees are equipped with the relevant skills and knowledge to enable them to identify and recognise asbestos materials and product. This training will help to minimise their exposure to asbestos.

Information, Instruction and Training

10. —(1) Every employer shall ensure that adequate information, instruction and training is given to those of his employees:

- (a) who are or who are liable to be exposed to asbestos, or who supervise such employees, so that they are aware of:
 - (i) the properties of asbestos and its effects on health, including its interaction with smoking;
 - (ii) the types of products or materials likely to contain asbestos;
 - (iii) the operations which could result in asbestos exposure and the importance of preventative controls to minimise exposure;
 - (iv) safe work practices, control measures, and protective equipment.

Financial

I have been involved with a number of incidences where employees without any training or awareness of the asbestos materials, have been exposed to asbestos fibres when they, or someone close by, has damaged a product made from a material which contains asbestos.



required?



One incident involved a school where windows were taken out by a contractor only to reveal asbestos was present in the cavity of the brickwork. This is a very common location for asbestos materials to be found and if the contractor had been more diligent then training would have been conducted for the employees. The school was closed and the news made the headlines the next day.

The fibres are so small they become airborne and are dispersed around a large area of the site and will then settle on flat surfaces and on any materials in the area e.g. curtains, carpets, chairs, clothing etc. Any people present when the exposure took place could have inhaled some or many fibres.

The exposure must be reported and an investigation would need to be conducted, possibly by the Health & Safety Executive and local authority. This particular incident in total cost several million pounds, people were prosecuted and some lost their jobs and some were worried about their future health. All of this could have been avoided with some basic asbestos awareness training which, after all, is mandatory under current legislation.

What is asbestos?

Asbestos is a naturally occurring fibrous silicate which was mined as a rock, then crushed to be used in products for fire protective qualities, noise reduction, insulation etc.

There are three main types of asbestos which have been commonly used:

- Crocidolite (Blue)
- Amosite (Brown)
- Chrysotile (White)

All types of asbestos are dangerous but crocidolite and amosite asbestos are known to be more hazardous than chrysotile. The asbestos types are often referred to by their colour but, it is very difficult to identify them by colour. Colour and appearance can be affected in many ways, including by heat and chemicals, mixing with other substances and through painting or coating.

The fibres, when disturbed, become airborne and are easily inhaled in unknown quantities by any person present (Friability). Asbestos can be categorised into 4 groups, linked to the ability to be easily damaged, or disturbed. The groups are:

1. Spray coatings
 2. AIB Asbestos Insulation Board
 3. Cement based materials
 4. Encapsulated materials
- The spray coatings will be found in roofing and steel structure insulation for fire protection, heat loss and noise reduction.
 - Asbestos insulation board is often found in internal locations due to low density and vulnerability to weather conditions.
 - Cement products are the most common and are seen across the UK industrial landscape as corrugated roofing and other formed products.
 - Encapsulated products such as toilet cisterns, tiles and bitumen based products are found in many locations but are of little risk.

Breathing in asbestos fibres can lead to asbestos-related diseases, which kill more people than any other single work-related illness. The diseases can take many years to develop - so you and your employees

will not be immediately aware of a change in someone's health after breathing in asbestos.

What is Asbestosis?

Asbestosis is a scarring of the lung tissue which restricts breathing, leading to decreased lung volume and increased resistance in the airways. It is a slowly progressive disease with a latency period dependent on the magnitude of exposure.

What is Mesothelioma?

Mesothelioma is a cancer of the cells that make up the lining around the outside of the lungs and inside of the ribs (pleura), or around the abdominal organs (peritoneum). By the time it is diagnosed, it is almost always fatal. Similar to other asbestos-related diseases, mesothelioma usually has a long latency period averaging 30-40 years.



However, there are cases where the latency period has been much shorter (around 15 years). There is no known safe threshold of exposure, therefore as the frequency, duration and level of exposure increases, so does the risk of developing mesothelioma.

What is Lung Cancer?

Lung cancer is a malignant tumour of the lungs' air passages. The tumour grows through surrounding tissue, invading and often obstructing air passages. The time between exposure to asbestos and the occurrence of lung cancer is, on average, 20-30 years. There is a synergistic effect between smoking and asbestos exposure. If you smoke and are exposed to asbestos, your risk of developing lung cancer is greatly increased.

How can this exposure be avoided?

A survey of the premises can be conducted which, in effect, is a risk assessment of the fabric of the building. This assessment/survey will identify if asbestos materials are present or not normally post 1945 and pre 2001. Asbestos was finally banned in 1999. Buildings that are listed or are of a considerable age could have asbestos present due to renovation and alterations that have been carried out over the years.

A survey is conducted under the MDHS100 guidelines, normally type 2, possibly type 3, where it is more intrusive, prior to refurbishment, which removes the fabric of the building e.g. walls. This will also be done prior to demolition.

The findings of the survey will identify asbestos which may be present and a sample of the material is sent off for testing to a UKAS laboratory (United Kingdom Accreditation Service).

1. A Management Survey is designed to ensure that nobody is harmed by the presence of ACM (Asbestos Containing Material) or by machinery or plant which contains ACM's.
2. The ACM remains in good condition
3. Nobody can disturb it accidentally

The survey information will be used to create a site register which contains all of the details gathered for the safe management of the building. If any ACM's were found they will be photographed positioned on a site plan and analysed at the UKAS laboratory to show what type of asbestos it is. The analysis is done under P401 (PLM) Polarised Light Microscopy. This area of fibre identification requires very strict procedures and intense training because it has to be done accurately and to a high standard.

Training

Training Policy: Identify responsibilities, identify training needs.

1. Training needs analysis

(TNA) involves a description of the difference between the existing behaviour and a desired behaviour.

2. Training provider

Identify competency of provider and relevance of content.

3. Theory or Practical Training

Delegates with different roles should not participate in the same course. Training will be based on the role of the employee.

In addition, training will depend on the experience of the employee. It is divided into two categories:

- Initial Training
- Refresher Training

It is very important to motivate delegates to participate in the training. It is particularly important to remember that the majority of the delegates will not be used to being in an educational environment and are more used to learning by doing.

Ask the training provider which of the following techniques they use to motivate delegates:

A variation of delivery methods, e.g. videos, lecture style, exercise, practical, making the training objectives relevant to delegates' work and role; encouraging group discussion; providing feedback on progress by the means of assessment.

Training at mhl support

Training can be made bespoke to our client's needs for asbestos awareness training depending on their industry sectors. This is also the intention of any other training we deliver using the wide range of expertise we have at our disposal.

Our website www.mhlsupport.com provides full details of our training courses. All areas of training for industry and commerce can be met within our organisation. ■



More on the Web

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

HS

Raleigh forks out £122,000 Bicycle makers fined for fork truck collision

A forklift truck driver was recently killed after driving into a low door frame at the Raleigh Warehouse based in Nottingham.

This took place on 27th September 2007 - the injured person was travelling at speed when he struck the door frame, which in turn dislodged the frame lintel, which then fell onto the IP as he was thrown from his truck.

After investigation it remains unclear why the IP did not lower the forks and bring the mast of his truck down to safely pass under the door frame.

This person had fully passed his fork lift test quite recently and, therefore, should

have known to lower the forks when collecting goods or travelling within the warehouse. Also Raleigh was aware of the potential to hit the door frame as this had happened with another fork lift truck colliding into a door frame in 2003. Raleigh pleaded guilty at Nottingham Crown Court on 18th May 2010 for contravening Section 2(1) of the Health and Safety at Work Act.

mhl support would have suggested various other steps should have been taken place or at least been considered such as - if the practise of driving fork lift trucks with the forks raised was seen previously by IP or any other driver, this

should have been brought to attention straight away and the poor driving procedure immediately stopped.

If a similar collision had happened previously, the door frames could have perhaps been raised to accommodate the traffic flow of fork lift trucks going underneath (this would have been backed up by a risk assessment & safe system of work) and if that was not possible, an alarm on the truck when lifting the mast to remind the driver of a potential problem or impact hazard, along with additional signage on or around the impact area-door frame, again to act as a reminder to all fork lift truck drivers.

HS

Bakery fined for safety breaches Health and Safety Inspector finds exposed wires on machinery

A bakery that risked the lives of its employees by leaving electrical wires in a dangerous state and exposing them to flour dust has been fined over health and safety. The directors of the bakery were fined a total of £5,500 after a Health and Safety Executive inspector visited the location and found exposed live wires on the bread conveyor belt. Directors of the bakery appeared at Bedford and Mid-Bedfordshire Magistrates' Court facing health and safety charges following the unannounced inspection on 13th January 2009.

The HSE issued immediate prohibition notices ordering the directors to shut down the conveyor belt until the machinery had been made safe. In court, the two directors admitted breaching Regulation 4(2) of the Electricity at Work Regulations 1989 in relation to the exposed wires and Section 33(1)(g) of the Health and Safety at Work etc Act 1974 in relation to the risk assessment.

This shows complete disregard for employee's safety and potentially the safety of the bakery and business (i.e a fire might have started due to the poor and inadequate wiring). We would suggest regular daily inspections are recommended on all dangerous machinery, with a proper action plan- i.e. stating what machine is faulty- machine ID number can be quoted, what the problem is and when is it to be fixed.

In the meantime, if a major fault is identified, the risk assessment should have made it clear NOT to use the machinery until remedial repairs have been carried out and the machine is then tested to ensure all is okay. Additionally, all moveable (or Portable Appliances) should have received their electrical testing – PAT Testing (annually in most cases) whereby this fault could also have been identified.

HS

New Government pledge to address Health & Safety Regulation

Formerly announced on 14th June 2010

Concerns have been expressed by health and safety professionals following the appointment of Lord Young (78) as advisor to the Prime Minister on Health and Safety Law and Practice.

Lord Young was invited to speak at IOSH (The Institute of Occupational Safety and Health) in Glasgow earlier this year, citing the UK's "over the top health and safety culture".

Lord Young spoke about concerns regarding the huge growth of the "compensation culture" and what the Prime Minister refers to as a "heavy burden of red tape on businesses."

Lord Young also referred to the apparent lack of training required before being allowed to work or operate in the health and safety field – perhaps as a consultant or setting up your own health and safety business.

Furthermore, there was mention of consultants being on a register to be Chartered Practitioners.



Lord Young of Graffham

All of mhl supports consultants are either chartered or affiliated to IOSH, thereby demonstrating a good standard and level of competence. Some will have worked towards that level by completing diploma exams or, in some cases, taking and achieving a degree.

We will have to wait and see Lord Young's findings (expected just after the summer 2010) but one theory is; all practising health and safety consultants may well have to attain Chartered Status – prior to officially advising companies (certainly in the higher-risk industries) and being allowed to act as an organisation's competent health and safety advisor.

Lord Young's review is intended to offer a common sense type approach - focusing regulation where it is most needed – a system that is proportionate and not unnecessarily bureaucratic.

Not all bodies share this view. The TUC feel "this is an attempt to undermine the already limited protection that workers have by merely focusing on the needs of business. They go on to quote, "We have a working culture that injures a quarter of a million workers every year and makes a further half a million employees ill."

mhl has a team of specialist and experienced advisers who are able to advise you more about these issues, provide suitable forms, bespoke "day book systems" that we believe comply with the new way of common sense reporting and thinking, as well as electronic safe systems of work.

If you are an existing client and require further guidance, please call one of the support line team today on 08453 100 999. If you are not an existing client but are interested in learning more about the Government pledge or the services we provide please call us on 08453 100 600 or email: enquiries@mhlsupport.com.

Free H&S Guides...

For an insight into the important areas of Health and Safety, 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



HS

HSE spot-checks to target unsafe loads

Campaign to target loading of vehicles

The HSE is to carry out hundreds of spot checks on vehicles in the coming weeks as part of a new load safety campaign. The HSE state that unsafe loads on vehicles injure more than 1,200 people a year and cost UK businesses millions of pounds in damaged goods.

Statistics show that loading and unloading accounts for one in five workplace transport incidents and many of these result from loads not being properly restrained. It is planning spot checks with officers from HSE and the Vehicle Operator Services Agency (VOSA) inspecting the loads of vehicles that have been pulled over at random. Similar spot checks last April found that almost 80% of loads were not sufficiently restrained.

According to the HSE's Peter Brown, a shifted load can make a vehicle unstable and increase the risk of over turning and also puts workers unloading the van or lorry at risk. Materials actually falling from vehicles pose a danger to other road users and causes traffic disruption.

"There is absolutely no excuse for unsafe loads. We hear from drivers that they were only 'going down the road' or 'they were running late' but these just won't wash, not when people's health or lives are at risk," Brown said.

Planning your load

Planning how you secure the load is an important step to keeping workers safe. Loading plans can help to flag up issues before they become problems. Things to be considered will vary but could include:

- Whether the driver will witness loading.
- Who will apply the load restraints and what they should be.
- How the load will be placed on the trailer bed.
- Who will unload the vehicle and what equipment will be required.
- Who the driver should report to on arrival.
- What the driver should do if the load shifts during the journey.

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

Telehandler Warning

Fatal accident prompts concerns

Following a recent fatal accident in Scotland, the HSE is warning all users of telescopic variable reach trucks, commonly known as telehandlers, of the danger of not replacing broken windows on these machines. Operators are being warned not to use telehandlers if the right-hand side window is missing or broken.

It is suspected that the 36-year-old man, who was killed whilst operating a telehandler, was leaning through the broken right side window aperture when he was crushed and fatally injured by the descending boom. This is the third similar accident in the last 7 years.

The side window on variable reach trucks is designed as a guard to prevent operator access to the boom. If the glass screen is broken or missing, operators may lean out of the

window aperture and can inadvertently lower the boom onto themselves. They may not realise the danger they face, and if the boom does lower onto them, that they may not be able to stop it.

If this side glass screen is broken or missing the machine should be removed from use until it has been replaced. Machine owners, users and operators should be warned of the dangers of operating their machines with the side screen broken or missing and the importance of reporting such damage as soon as it occurs.

The HSE has issued a safety notice recommending that machines in this condition should be removed from use until the window has been replaced, and reminding users of their duty to carry out daily checks of the truck which should include the condition of the cab windows.



workplace safety the importance of being aware

all workplace accidents are preventable

All employees in your business need to be aware of issues that affect their health and safety at work. By taking some simple precautions at work, all accidents can be eliminated. Our team of experts at mhl have many years of experience working in the safety business. We outline your legal responsibility and offer advice on topics such as fire safety, electricity, using chemicals, manual handling and working with equipment. We understand the importance of being aware and responsible in the workplace. Visit our website to take a look at our extended health and safety services at www.mhlsupport.com or contact our health and safety team on 08453 100 600.

Care Quality Commission - CQC

New standards of quality and safety

In December 2009 the Care Quality Commission (CQC) published new guidance for all health and adult social care providers on meeting new essential standards of quality and safety.

CQC will continuously monitor compliance with standards as part of a more dynamic system of regulation accompanied by new enforcement powers. These standards will become law in 2010, so it is imperative that Health & Safety policies and procedures are brought in line. These policies and consequentially management systems must reflect the main pointers and direction which the CQC has published.

- a. Driving improvement across health and adult social care.
- b. Putting people first and championing their rights.
- c. Acting swiftly to remedy bad practice.
- d. Gathering and using knowledge and expertise, and working with others.

These four pointers encompass the main thrust of the commission and they will be driving change and acting swiftly to implement those changes.

The practical implication of those changes means that current health and adult social care providers must ensure that a thorough gap analysis of all their current systems are carried out, not forgetting their own employee's health and safety – which many do. Then implementing corrective action which is effective and addresses the expectation of the CQC, bearing in mind

that the standard is qualitative and it has a strong focus on 'outcomes', documented evidence needs to be robust and able to demonstrate to the authority that the necessary management activity is being carried out.

There are many well-established standards covering areas like manual handling of clients and mobility and access issues, other areas of increasing interest are:

- a. The client's personal standards such as bedroom and personal hygiene facilities.
- b. The handling of an individual's finances.
- c. Physical and mental fitness of the carer.
- d. Financial stability of the home.
- e. Inspections carried out by the owners of the care facility.
- f. Maintenance and servicing of buildings and equipment - with many of these being prescriptive.

The client's family, carers and other personal associations and relationships are an important consideration and consultation with these must be undertaken along with the service user before deciding the best route and care for that client, this giving a more holistic approach to a clients care.

The CQC have given vision and values to good standards of care - this is quoted from their website.

CQC vision

CQC vision is of high quality health and social care which:

- Supports people to live healthy and independent lives;
- Helps people and their carers make informed choices about care; and
- Responds to individual needs.

By high quality care, they mean care that:

- Is safe;
- Has the right outcomes, including clinical outcomes (for example do people get the right treatment and are they well cared for?);
- Is a good experience for the people who use it, their carers and their families;
- Helps to prevent illness and promotes healthy, independent living;
- Is available to those who need it when they need it; and
- Provides good value for money.

CQC values

CQC values are to:

- Put the people who use services first, be informed by what they tell us and stand up for their rights and dignity;
- Be independent;
- Be expert and authoritative, basing our actions on high quality evidence;
- Be a champion for joined up care across services;
- Work with service providers and the professionals to agree definitions of quality;
- Be visible, open, transparent and accountable.

Clearly this is a change in emphasis and providers, when establishing or amending current processes, must also ensure that the desired outcome is achieved. It is recommended that the standards are read. It becomes obvious that each section has the 'outcome' established first then the standard follows. It is still very important that there is a well documented system with objective evidence that all management controls are in place – mhl support are well placed to assist and provide support in these areas.

The client's dignity, lifestyle choice and management of their own risk has significant implications for the care provider, enhancing more freedom for the service user whilst maintaining a risk assessed

approach to ensure that neither service user or employee's health and safety is compromised.

The CQC has published policy where they will be regulating and enforcing these standards. Below is a quote from the CQC enforcement policy:-

"When a registered provider or manager fails to comply with legislation or its terms of registration, or a person operates without being registered, we can take action against them. This is called enforcement. The purpose of enforcement is to make sure that action is taken to ensure that the provider or manager complies with regulations and requirements. Ultimately, this is to bring about improvements for people who use these services. We intend to take a firm but fair approach in carrying out enforcement.

More on the Web...

Visit the [mhl website](#) to read more about the current issues and challenges facing your business today.



Drawing on developments and best practice in better regulation, we intend to follow these general principles:

- Our overall concern is to protect the safety of service users and improve the quality of care they receive.
- We will take a proportionate approach, based on our assessment of the risk of harm, the quality of care and evidence of non-compliance with the law.
- Our processes will be transparent and accountable.
- We will encourage improvement wherever possible, but if a service fails to fulfil its legal obligations, we may take enforcement action.
- We will place particular emphasis on equality, diversity and human rights, particularly where services are provided to those who are less able to speak for themselves.
- Our work will be led by appropriately trained, skilled staff.
- We will be consistent in the application of these principles across all sectors of care, whilst tailoring our approach to different types of provider.
- We will follow up on all enforcement activity in a timely fashion.
- We will coordinate our work with other regulators.
- We will monitor the operation of the enforcement policy and take seriously any comments from providers."

As can be seen, good practice is a robust health and safety management system and mhl and their consultants are trained to support care homes in achieving this goal. ■



did you know...

Lord Alfred Robens

Robens became a full-time official of the Union of Shop, Distributive and Allied Workers (USDAW) in 1935. He then went on to become a member of Manchester City Council from 1941 to 1945, and later became Labour MP for Wansbeck (Northumberland). That constituency disappeared in 1950 and Robens became MP for neighbouring Blyth, where he remained until becoming chairman of the National Coal Board (NCB) at the end of 1960.

During his time as NCB Chairman, the Aberfan disaster occurred (October 21, 1966) killing 116 children and 28 adults after colliery waste slid down a mountain to engulf Pantglas school. His resignation was called for at the time, but did not come until 1970 after being offered a third five-year term as chairman.

Shortly after his resignation from the NCB, the now Lord Robens was tasked by the then Labour government, to chair the Committee of Inquiry into Health and Safety at Work in Britain. The committee reported back to the government in 1972, his report resulted in the formulation of the Health And Safety At Work Act 1974.

Lord Alfred Robens, politician and industrialist, died June 27, 1999 aged 88.

HS The Health & Safety At Work Act 1974

A brief history

The first legislation in Britain to deal with safety in places of work came into existence early in the 19th century. The Health And Morals Of Apprentices Act 1802 sought to improve the health and safety of children at work in Britain and gave Britain a lead in matters of safety.

The Mines Act 1842 prevented the employment in mines of children less than 10 years old and the employment of women and girls underground. This is no surprise considering that at the time the industrial revolution was more advanced in Britain than in any other economy.

The Factories Act 1833 was the first act to allow for enforcement with the appointment of four Factories Inspectors to challenge the working practices of the day.

The regulations covering safety at work in Britain expanded in an ad-hoc basis over the next 120 years culminating in the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. Over the years other laws had been passed relating to agriculture, mining and quarrying and nuclear power.

This legislation was mainly concerned with placing responsibility with the employer to provide a safe place of work. Regulations concerning the requirements for machine guards, certificates for operation of cranes and hoists, procedures for dangerous working areas, and hours of work for young people and women were covered by these acts.

By 1970 many organisations, especially the trade unions, were questioning whether the existing legislation was either sufficient or effective in

providing proper protection for people at work. The effect that workers' organisations could have on workshop safety was limited and large sections of the working population were not covered.

A Private Member's Bill aimed at providing for compulsory involvement of workers in accident prevention was withdrawn when in 1970 a Royal Commission was set up by the Secretary of State for Employment and Productivity, Barbara Castle. Lord Robens was the Chairman of the Commission.

The purpose of the Commission was to examine the provisions made in statutes for the health and safety of people at work and to consider whether changes were needed in legislation. The Labour Government of the day had in mind consolidating existing legislation and expanding its impact to forms of employment not covered by existing legislation.

As well as looking at statutory provisions, the Commission was also to consider the nature and extent of voluntary action needed by employers and employees in respect of health & safety.

The Committee took two years to investigate and produce their report. The report set out what became known as the "Robens Philosophy", which was a new approach to health & safety based on a broad legislative framework of general duties, placing greater responsibility on those in the workplace to devise safe systems of work.

And so the Health & Safety At Work Act was born.



HS

Risk Assessments & Safe System of Work

What happens if one of your employees has an accident?

As per the Health & Safety at Work Act 1974, and backed up by The Management of Health & Safety at Work Regulations 1999, we know it is a legal requirement to issue risk assessments and create suitable and sufficient safe systems of work. This is even more important and crucial when employers ask their employees to work on their own in a high risk environment. What is normally termed "Lone Working".

Employers have to consider what happens if their employee has an accident, what if the place they are working in is potentially unsafe, what would their employee do if a major problem was encountered in trying to complete the job or task they have been assigned to.

In a recent case, an engineer was crushed to death when the lift he was installing went out of control and started moving upwards. The lift control cable became snagged, which in turn led to a rogue command being sent to the lift's control box causing the vehicle to start moving upwards, trapping the engineer between the top of the car and the top of the doorway as it travelled upwards, leaving the engineer to suffer fatal crush injuries.

A simple safe system of work identifying what remedial work was required, how to undertake that work and, of course, ensuring it was understood and could be completed by one engineer in a safe manner was essentially required.

Additionally, the risk assessment and safe system would not only identify potential hazards but also if something untoward was to happen. The next action to be taken may have involved a simple phone call to the engineer's head office to advise them that a unknown problem had been encountered and could help and advice be provided.

After the HSE investigation it became apparent that the engineer in question had no experience of installing this type of lift control system and, therefore, was not able to recognise that a temporary fitting/cable was in place, the cable being round whereas the normal cable would be flat and unable to snag.



Chris Davies,
Chartered Health and
Safety Practitioner

the news in brief...

Arsenal Go Green

Perennial premiership high flyers Arsenal will be playing their games next year wearing shirts made from recycled plastic bottles. The club's suppliers, Nike, have provided the players with shirts made entirely from recycled polyester, with each shirt diverting up to eight plastic water bottles away from landfill where the plastic is slow to break down.

The use of recycled bottles is not all about improving the club's environmental credentials. However, the 'Dri-Fit' fabric is 13% lighter than previous kits and helps to quickly absorb moisture by drawing it through the fabric to the surface, to keep players dry.

Arsenal winger Theo Walcott, who was probably quite glad to have missed out on the World Cup squad in the end, praised the club's new shirts by saying "The colours are very traditional, it feels nice and its made from recycled plastic bottles so what more can you ask for?" – As an Arsenal fan of 30 years, Theo, some silverware this year would not go amis.

EN

Reward Scheme - Not Taxes

Coalition Government's rewards for recycling

The current Government has decided to scrap the last Government's ideas and plans in regards to the implementation of additional tax on bins. Instead, the Coalition Government has decided to reward people for recycling waste.

This follows a piloted scheme undertaken by Royal Borough of Windsor and Maidenhead. It was felt the original proposals would have encouraged fly-tipping and small fire burning by some members of the public, therefore, the new idea is to reward people for recycling.

First:

- Households volunteer to activate a Recycle-Bank account.

- Next step is they receive a blue wheelie bin for their mixed waste.
- Depending on how much residents recycle they will earn points (it is thought that approx 5.5 points for each kilogram the household recycles).
- The points can then be redeemed against rewards (similar to money off products and services from local and participating partners –this includes retailers and service providers).

Reward partners currently include Marks and Spencer, Coffee Republic and Cineworld.

EN

Waste Management Regulations

Changes on the way

Changes likely to affect all businesses one way or another are afoot in the way the Government regulates the handling, transfer and transport of waste. The Government now proposes to bring into force two new sets of regulations in England and Wales in 2010-2011.

Early indications are that Regulations dealing with the registration of waste carriers and brokers, currently enacted under the Control of Pollution (Amendment) Act 1989, will be implemented to simplify the existing waste carrier regulations and make them more effective. Waste brokers and dealers will be required to register with the Environment Agency and to reflect the potential impact that waste can have upon the environment. The maximum level of fines that can be imposed for statutory breaches is to be increased with greater use being made of fixed penalty notices.

Further changes are planned to the Regulations entitling the Environment Agency to stop, search and seize vehicles as part of the waste controls enforcement regime. These are intended to streamline the existing procedures for seizing and make it easier for the Agency to dispose of any vehicle used in an illegal waste operation.

The draft regulations which Labour, under the tongue-twisting title of The Control of Waste (Authority to Transport Waste and Dealing with Seized Property) (England and Wales) Regulations 2010, are expected to come into force later this year, with those dealing with waste carrier/broker registration likely to come into force sometime later.



EN Oil Spill in Gulf of Mexico Storage Regulations

The oil spill in the Gulf of Mexico has been widely reported in the international media. However, oil accounts for over one quarter of all pollution incidents in the UK. This is because many drains lead directly to rivers, streams or lakes so spilt oil will pass directly to the watercourse where it can poison fish and smother plants.

Oil is fully defined in the Oil Storage Regulations but includes petrol, diesel and mineral oils. Breaches of the Regulations (relevant in England and Scotland only) can result in prosecution and fines including potentially substantial clean-up costs.

To meet the requirements of the Oil Storage Regulations one must use robust oil containers and store containers within a drip tray, bund. This will contain any oil escaping from its container. For oil tanks the bund must be able to hold:

- At least 110% of the volume of any single container in the storage area, or;
- If there is more than one container, at least 110% of the largest container's storage volume, or at least 25% of their total volume (whichever is greater).

For oil drums the drip tray must be able to hold at least 25% of the total storage capacity of the drums. All valves, filters, sight gauges, vent pipes and other equipment, other than fill pipes or draw-off pipes or pumps must be located within the bunded area and the base and walls of your bund must not be penetrated by any valve, pipe or opening that is used for draining the system.

If any fill pipe or draw-off pipe goes through the base or walls, you must seal the junction of the pipe with the base or walls to prevent oil escaping from the system.

Where a fill pipe is not within the bund, you must use a drip tray to catch any oil spilled when the container is being filled. You should make sure this drip tray is clean and empty prior to delivery. In the event of a spill one should try to prevent oil from entering drains or watercourses. Drain covers, sand and spill kits can be used to address the spill. For the spill procedures to be effective, keep a spill kit and absorbent materials near to the oil store and train staff in the spill procedure.

Pollution incidents should be reported immediately to the Environment Agency emergency hot line on 0800 80 70 60.

Need to know more...

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

✓ Please visit our website at www.mhlsupport.com





EN

Environmental Prosecutions Waste Offence

Fines of £74,250 have been given to nine defendants involved with a massive illegal waste operation at Polhill, Kent.

More than 8000 cubic metres of waste was tipped at the illegal waste site in Polhill, Kent. The waste was made up of construction and demolition waste and included very small bits of wood, plastic, metal, paper and tarmac. This would fill more than three Olympic size swimming pools.

Following a tip off, the Environment Agency conducted surveillance to gather evidence of those illegally tipping at the site. Once evidence was gathered, the site was raided in May 2008. Two arrests were immediately made. At that point the pile of waste was 300 metres long, up to 5 metres wide and up to 3 metres high.

The nine defendants received the following fines:

- PJ Brown Limited – fined £25,000, ordered to pay clean-up costs of £6,250 and costs of £5,000.
- Peter Alexander – fined £14,000, clean-up costs of £16,000 and costs of £5,000.
- Gregory Roff – fined £9,000, clean-up costs of £10,000 and costs of £3,000.
- Marc Gwyther – fined £4,000, clean-up costs of £1,500 and costs of £1,500.

- United Grab Hire Limited – fined £9,000, clean-up costs of £500 and £3,000 costs.
- LMD (Crushed Aggregates) Ltd – fined £7,000, clean-up costs of £750 and costs of £3,000.
- Craig Starbuck – fined £2,000, clean-up costs of £200 and costs of £250.
- John Anthony Ryan – fined £250, clean-up costs of £200 and costs of £250.
- BSP (Knockholt) Limited – fined £4,000, clean-up costs of £250 and costs of £3,000.

mhl support's clients are advised to ensure that whilst they might not have a specific Waste Management Policy, System or ISO140001, it is still very important to ensure that your waste is managed appropriately. Remember, you are still responsible for your waste from leaving your premises up to the point of disposal/recycling.

Simple steps like obtaining a copy of your waste carriers' license, choosing only reputable carriers and carrying out basic checks with the waste disposal/recycling centre, where your waste is being processed can go a long way to ensuring your company name does not appear on the Environment Agency's website.



Bill Collins,
Environmental
Manager

Battery Directive

EN

How do these regulations affect your company?

On 5 May 2009, the Government's new regulations relating to the collection, treatment and recycling of batteries in the UK came into force. They are the Waste Batteries and Accumulators Regulations 2009. The regulations apply to all 'producers' of batteries and accumulators. A 'producer' is anyone who places batteries and/or accumulators on the UK market for the first time, eg through import or wholesale supply. Batteries within products count including anything from computers and household items to animated toys.

All producers must now record the weights and types of batteries they place on the UK market. And in January 2010, they must report quantities, broken down by weight of lead-acid, nickel cadmium and 'other' from 5 May to 31 December 2009.

The Regulations treat large and small producers differently. 'Large' producers are those placing more than one tonne of

portable batteries onto the UK market each year. They will have to pay for the collection, treatment, recycling and disposal of waste batteries in proportion to their market share. They will do this by joining a Battery Compliance Scheme, which will also register member producers with the appropriate environmental regulator.

'Small' producers are those that place less than one tonne of portable batteries onto the UK market each year. They will not have to pay for the collection and treatment of waste portable batteries but must still register with their environmental regulator.

Retailers selling more than 32kg of portable batteries/accumulators each year must take them back in-store from 1 February 2010. The batteries will then be collected under arrangements with compliance schemes. However, the regulations also allow retailers to contact any compliance scheme to arrange a collection, with a 21 day deadline to do so.

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



Waste policy to be reviewed

EN

Urgency on new approaches to waste monitoring

The Government has announced that it is to review the current waste policy in England. They will look at the most effective ways of reducing waste and maximising the money to be made from waste and recycling. How waste policies affect local communities and commercial undertakings will also be reviewed.

It is intended that the review will include:

- The effect of waste policies on local communities and how local authorities can best work with people to decide on the best way forward.
- Exploring ways of maximising the contribution of the waste and recycling industries to the economy and the environment.
- How we can move towards a zero waste economy and drastically reduce the amount of waste created.
- Looking at the entire process of waste creation from source to disposal and minimising the amount of valuable resources sent to landfill.
- Looking at a new approach to commercial waste and promoting "responsibility deals" to try and reduce the amount of waste produced by the production and retail industries.

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Course	Area	Month
People Management	Bury, Gtr Manchester	29 th September 2010
People Management	Nr Gloucester	27 th October 2010
Interpersonal Skills	Newcastle, Staffs	11 th November 2010
People Management	Durham	2 nd December 2010

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