TUPE UPDATES • FIRE SAFETY REGULATIONS • GETTING THE RIGHT ENVIRONMENTAL MESSAGE

Knowledge*base*

Bibby Consulting & Support's Client Quarterly Risk Management Publication

Volume 2, Issue 3; Third Quarter Autumn 2010

Employment Law • Health & Safety • Environmental • Risk Management

CHRISTMAS PARTY

Will it bring you good tidings?

Our Employment Law Support Line tell us more. We remind employers of the potential consequences of a traditional work's party.

DISPLAY SCREEN EQUIPMENT

When is a computer not a computer?

Bibby Consulting & Support's H&S Team tell us more. We discuss the growing health concerns arising from the use of computers in todays age.

LOW CARBON DEVELOPMENT

Investing in the issue

Our Environmental Team tell us more. A new bond fund aims to support financing of 'green' projects in developing countries.

STRESS

MANAGING STANDARDS WITHIN THE WORKPLACE

mhl support has changed to

Bibby Consulting & Support

CHECK OUT OUR NEW WEBSITE AT WWW.BIBBYCAS.COM

CONTACT US

Production t: 08453 100 600

Designer
Lisa Worsdale

Senior Designer
Jason Saunt

Head of Marketing
Katy Vaughan

With thanks to:

Employment Law Support Line Team

Health & Safety Consultants

Operations Manager (Technicals Services)
Paul Cadman

Operations Manager (Legal Services)
Lilian Starkie

Bibby Consulting & Support

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

t: 08453 100 600
f: 08453 100 650
e: enquiries@bibbycas.com
w: www.bibbycas.com

Support Line: 08453 100 999

WELCOME TO BIBBY CONSULTING & SUPPORT'S "KNOWLEDGEBASE" NEWSLETTER

Since we last went to Press, we've had an exciting time, celebrating our 10th Anniversary as 'mhl support' and, on the very same day, rebranding ourselves to Bibby Consulting & Support.

The Bibby Line Group, a 200 year old, family owned business, originally bought a stake in mhl support in late 2006, based on its impressive track record since inception. Our decision to bring mhl under the Bibby Line Group banner was based on moving towards a fresher, more people orientated brand and to strengthen the company and reinforce the values we share with the group. We are very excited about the future and are currently developing a number of exciting new products and services which we hope to launch soon.

In the last edition of **Knowledge***base* I commented on the General Election and the Coalition Government, most notably, the uncertainty over the forthcoming cuts in the public sector. Since that time, the scale of the spending cuts have been unveiled by the Chancellor, with welfare, councils and public services such as the police being particularly hard hit. Whilst the full impact on SMEs is not yet fully understood, it is likely that those who rely heavily upon contracts with the public sector will need to review overheads and consider their own cut backs – which may lead them to consider again the need to outsource compliance activity to ensure that they meet the needs most cost-effectively.

Since the last edition we have also seen the publication of the much anticipated Lord Young Report "Common Sense, Common Safety". As you may be aware, the report refers to the climate of fear arising from a perceived compensation culture and makes the observation that this is exacerbated by the actions of some Health & Safety consultants. Whilst I was initially concerned by this, having read the recommendations contained in the report stating that Health & Safety consultants should be appropriately qualified and professionally accredited, it occurred to me that what he wants is for consultants to be like ours at Bibby Consulting & Support. We pride ourselves on creating a climate of reassurance, providing our clients with Health & Safety systems that are straightforward and user friendly and to that end we believe, absolutely, in line with Lord Young's recommendations.

I hope that you find our latest **Knowledge***base* 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@bibbycas.com.

Michael Slade

Michael Slade, Managing Director

TUPE
guidance

FREE GUIDES AVAILABLE AT WWW.BIBBYCAS.COM

DEPARTMENTS

06 EMPLOYMENT LAW

Our section provides coverage of up and coming legislative changes, focusing on developments brought about by the Coalition Government. In addition, we also take a look at some of the latest case law developments, covering cases in the areas of TUPE, equal pay, contractual issues plus many more. We also consider the recent increases to the National Minimum Wage and offer a further reminder about the Equality Act 2010 implementation. We also report on the latest employment tribunal statistics and offer guidance on preparing for the Christmas festivities.

16 HEALTH & SAFETY

This section keeps you up-to-date with the most recent developments and news to ensure you are competent with Health & Safety for your business. We also include articles on pending changes to the Scaffolding Standards and the effects of Dermatitis within Hairdressing.

28 ENVIRONMENTAL

In this issue we take a detailed look at the new powers available with The Regulatory Enforcement and Sanctions Act 2008 that could develop a specialist Environmental Tribunal. Then there is the topic of how we consider environmental issues and what employers are willing to do about it.

FEATURE ARTICLES

06 Equality Act 2010
A review of some of the main provisions that took effect from 1st October 2010.

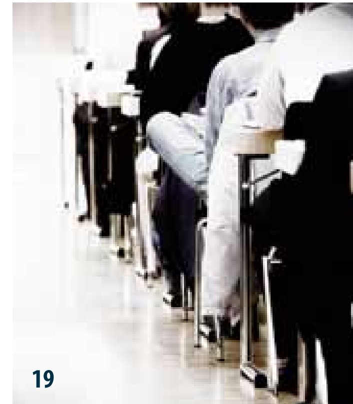
08 Which Labour Law Will Be Lost Next?
In this edition we look at the Coalition Government's review of many Labour laws and the changes that are proposed.

08

10 Contractual Updates
Updates on recent case law concerning contractual issues and how this could effect employers.

10

16 Worker Involvement
The HSE are to encourage employers to fund worker-involvement programmes.


19

21 Dermatitis In Hairdressing
Bibby Consulting & Support look at the staggering percentage of hairdressers that suffer from skin disorders such as dermatitis.

27 Affect or Effect?
We discuss the benefits of communicating Health & Safety messages in the workplace.

31 Getting The Right Environmental Message
What is in your mind's image when we talk about the environment and how willing are you to make a change?

COVER STORY

Stress Within The Workplace

We discuss the effects of stress within the workplace and how you, the employer, can recognise these signs from employees and help to manage the issue productively through your business.

NEWS UPDATE

Government Left Compromised in Equality Act Drafting Error

With the Equality Act 2010 now introduced we see its first problem, namely compromise agreements being rendered potentially void and unenforceable.

It appears that when drafting the provisions for compromise agreements under the Equality Act, the Government have inadvertently made it impossible to reach a binding agreement, thus making the use of compromise agreements for the Equality Act 2010 pointless.

If you are planning to settle claims under the Equality Act 2010 please call the Support Line to discuss this matter further.

Need to know more...

If you are unsure how this affects you please call our Support Line on 08453 100 999 or email enquiries@bibbycas.com

EL

EQUALITY ACT 2010

Introduced on 1st October 2010

As communicated in our summer edition, the Equality Act 2010 has now come into force effective from 1st October 2010 as anticipated. This piece of legislation has had the effect of consolidating the previous legislation governing discrimination as well as introducing some new provisions, further protecting individuals from unfair treatment and promoting a more equal workplace.

Included below are some of the main provisions of the Equality Act which have now come into effect:-

- Associative discrimination now covers all protected characteristics, that is the claimant need not have the protected characteristic on which their claim for discrimination is based in order to succeed. For example, in cases where a carer is treated less favourably because they care for a disabled person, they can now gain recourse for disability discrimination claims;
- Discrimination based on perception is now allowed for in legislation. That is a person is discriminated against because of a wrongly perceived protected characteristic;
- Extended protection from indirect discrimination as a result of a disability;
- Pay secrecy clauses are now rendered unenforceable resulting in staff members being at liberty to discuss pay details with fellow colleagues and make relevant pay disclosures. In addition, anyone discussing pay can no longer be treated unfavourably in consequence, which includes being reprimanded;
- A basic framework of protection against direct and indirect discrimination, harassment and victimisation is now provided for in one piece of legislation;
- Gender reassignment and how you treat resulting absence from work has been clarified; and
- Introduction of a general restriction on employers asking questions about a job applicant's disability or health, contravention of which is enforceable by the Equality and Human Rights Commission who can fine employers up to £5,000.

Certain provisions, including statutory support for the concept of dual discrimination, namely, discrimination as a result of the combined effect of two protected characteristics is not due until April 2011.

In addition, the proposed requirement to publish employees' pay details is not expected until 2013 and provisions for positive action are also not yet in force.

Please call the Support Line on 08453 100 999 if you require more information on this new piece of legislation.

EL

EMPLOYMENT TRIBUNAL STATISTICS

Recently Published Figures

Claims being raised at Employment Tribunals are on the increase. The latest statistics from the Employment Tribunal Service confirms that 236,100 claims were lodged in the period surveyed between 2009 and 2010 which demonstrates a 56% increase on the previous year's claims. This increase is thought to be partly as a result of the economic climate.

Fortunately not all claims lodged will have reached the hearing stage and the table below provides a breakdown of how the various claims were resolved between 2009 and 2010. As this table demonstrates, a relatively large proportion of the Employment Tribunal claims are either settled through the Advisory, Conciliation and Arbitration Service (ACAS) or withdrawn.

Of the 26% of claims which did reach the hearing stage 13% of claims succeeded, 6% were unsuccessful and 7% resulted in default judgments.

The average unfair dismissal award for 2009-2010 was reported to be £9,120 which is 15% higher than the previous year. Additionally, the maximum compensation awarded to a claimant for discrimination was an astonishing £729,347 which was specifically for a disability discrimination case.

These staggering figures are a reminder that there can be serious consequences of falling foul of employment legislation. In order to avoid being part of the next round of statistics please ensure you contact the Support Line.

Claims Settled via ACAS	Claims Withdrawn	Claims Struck Out/Dismissed at Pre Hearing	Claims Proceeding to Hearing
31%	**32%**	**9%**	**26%**

CASE UPDATE

Term by Term Assessment in Equal Pay

Brownbill and Others v St Helens & Knowsley Hospital NHS Trust

The Employment Appeal Tribunal (EAT) has helped remind employers, in this latest case, that the purpose of equal pay legislation (now part of the Equality Act 2010) is to achieve equal pay as opposed to fair pay.

Here, the EAT confirmed that a term-by-term approach was required for equal pay assessment, looking at each individual term distinctly to see if it is comparable to that received by the corresponding comparator.

Whether pay overall is the same for both sexes will not always defeat an equal pay claim under the term-by-term analysis.

WHICH LABOUR LAW WILL BE LOST NEXT?

The Coalition Government has not yet reached its first anniversary of power, although month on month we look set to see the loss of a number of labour laws. But what exactly has changed under the Coalition and what can employers expect to see changing soon? Are these developments all for the employer or are they for the employee's benefit?

By Brendan Wincott, Employment Law Compliance Officer

EL & HR TRAINING SOLUTIONS

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

Visit our website for regular news updates at: www.bibbycas.com

Before we look in detail at the changes that have already occurred and are on the horizon, an interesting survey commissioned by the British Chamber of Commerce found that 87% of Conservative MPs felt that laws had shifted too far towards the employee to the detriment of the employer, whereas at the opposite end of the spectrum, 71% of Liberal Democrats thought it had shifted in the other direction. Whilst, in the bigger picture, this in itself is likely to cause concern amongst the public about the strength of the Coalition, in respect of this current report, I hear you asking yourself, who is right? Is employment law employee favoured or is it on the side of the employer? Everyone will have their own opinions, but having worked during times of both Governments, I certainly believe we are moving more in favour of the employee.

Vetting and Barring

So what have the Coalition changed? We reported in a previous edition how the Coalition had stalled the implementation of the vetting and barring scheme and registration with the Independent Safeguarding Authority. This was just the first of many reviews for the Coalition.

Default Retirement Age

Arguably, the biggest change ahead is the planned removal of the UK's default retirement age of 65. In the summer, the Department of Business, Innovation and Skills (BIS) opened up consultation into exactly how this will be phased out. The consultation closed on 21st October 2010, so we will have to wait for the results to see exactly how this will happen. However, at present, if the consultation proposals are passed, we know the default retirement age is set to be phased out from April next year. Under the current proposals, the last date for serving notification for planned retirements will be April 2011 and these must be for retirements before October 2011.

As such, employers should assess whether they have anyone who will be over or is already over the age of 65 by September 2011 and speak to the Support Line quickly if they intend to retire such individuals as after September 2011, forced retirement may no longer be an option.

Training Requests

Class may also soon get dismissed following consultations over the right to request time off for training. Earlier this year, the Labour Government introduced a statutory right for employees to request time off from work for training. This was first introduced to organisations with 250 staff members or more and is planned to be rolled out to all organisations from April 2011. However, in August this year, the Department for Business, Innovation and Skills (BIS) opened up a further consultation in this area of employment law to review whether this right should be scrapped altogether, left as is or whether to leave it as only applicable to organisations with 250 or more staff.

The consultation has already closed, but the results have not yet been published, so we will have to wait to hear more about what will happen in this area.

SIA's Future left Unsecure?

Additionally, Home Secretary, Theresa May, has confirmed her intention to review the existence of the Security Industry Authority (SIA) which was set up by the Labour Government to help regulate the private security industry with the intention of scrapping the scheme altogether. However, we will need to await further announcements as to timeframes for this.

Additional Paternity Leave

Finally, on the family friendly front, the Labour Government introduced new rights enabling fathers to take additional paternity leave from April 2011 where the child's mother returns to work early from maternity leave. The future of this change was left uncertain when Women and Equalities Minister, Theresa May, confirmed the Coalition's intention to review the regulations. However, October 2010 saw the Government confirm that fortunately they will not be cutting the apron strings on these provisions, leaving them to be introduced as originally planned by the Labour Government. This announcement came at the same time that plans were confirmed to extend flexible working rights to parents of children under the age of 18. Readers should contact the Support Line if they need further details on these new provisions for additional paternity leave.

It is both a challenging but exciting time for employment law as we see the Coalition Government follow through with their pledge to review previous Labour laws. However, what their overall intentions are still remain unclear. Some of the changes proposed so far may help employers, although many still appear to support the employee more so than the employer. However, one reassurance for employers is that the Coalition Government are actively involving employers in consultations for change, so employers can be reassured that their voices can be heard and opinions expressed.

CONTRACTUAL UPDATE

RECENT CASE DEVELOPMENTS

In this edition of **Knowledge***base*, Support Line Team Leader, Hazel Beeston, updates us on recent case law concerning contractual issues and how this could affect employers.

EL £4.2 MILLION AS BREACH OF CONTRACT DAMAGES HELD POSSIBLE

Edwards v Chesterfield Royal Hospital NHS Foundation Trust

HAZEL:
SUPPORT LINE

The Court of Appeal has held in this recent appeal on a preliminary point that the claimant in this case is able to recover all losses flowing from a breach of a contractual disciplinary procedure which are estimated to be in the region of £4.2 million.

The claimant was a Consultant Trauma and Orthopaedic Surgeon working with the respondent Trust until his dismissal in February 2006.

The claimant alleges that his dismissal was carried out in a manner which was in breach of the procedure detailed in the Company documentation which allowed for enhanced procedural requirements, including having a clinically qualified person on the panel and legal representation.

As this was a preliminary hearing, the Court of Appeal had to assume that the claimant can prove his case. That is to show that the disciplinary procedure was contractual, that it was not followed, that he was dismissed in consequence to this breach alone and he would not have been dismissed had the correct process been followed. This would be necessary to demonstrate that all of his losses would flow naturally from the breach of the Trust's disciplinary procedure.

Assuming that the claimant can prove all of this, the Court of Appeal recognised that in this circumstance, the claimant can pursue all losses in consequence, which leaves open his claim for damages in the region of £4.2 million.

Previous case law has always been reluctant to recognise breach of contract claims as an available claim where there is already an existing statutory claim, which in employment law, we have unfair dismissal.

However, this latest case can be criticised for opening the flood gates for those dismissed in breach of contractual procedures and allow individuals to potentially circumvent the requirement to have 1 year's service to bring an unfair dismissal claim or to avoid the statutory cap to compensation applicable to unfair dismissal.

It is difficult to imagine that the claimant will be able to show that he would not have been dismissed had the correct procedure been followed, not least because it is likely that the Trust will assert they would have still dismissed him in any event. As such, the consequences of this latest decision may not be too serious for employers, nonetheless it encourages careful consideration of the procedural correctness of a dismissal especially if you have a written contractual disciplinary procedure.

EL

EMPLOYMENT STATUS AND POWER TO SEND A SUBSTITUTE

Community Dental Centres Ltd v Sultan-Darmon

The Employment Appeal Tribunal (EAT) have confirmed in this latest case that an individual's right to send a substitute to perform their duties could be fatal to that individual gaining the status of an employee or that of a worker.

The claimant in this case was a dentist working for the respondent under a contract for services. The respondent provided the equipment, provided support staff, introduced patients and specified certain hours of work. Notwithstanding these factors, which might cause conclusion to the status of employee, the EAT found that the individual's unfettered ability to send a substitute, where they were unable or unwilling to work, prevented them being either an employee or a worker.

The boundaries between the self-employed, workers and employees are often vague. Navigating this complex area can be a minefield, so call the Support Line today on 08453 100 999 if you have any questions over the employment status of any of your workforce.

EL

CONTRACTUAL REDUNDANCY PAY AND AGE DISCRIMINATION

Hastie v Kraft Foods UK Ltd

Do you have a contractual redundancy payment scheme? If so, do you taper off or limit the payments that are made when an employee nears their retirement age to prevent them receiving a windfall? If yes, then this latest decision of the Employment Appeal Tribunal (EAT) offers useful guidance.

Here the claimant was made redundant and was contractually entitled to three and half weeks pay for each year of service with uncapped pay. The claimant had nearly 40 years of service which made him eligible to receive just over £90,000 in redundancy pay.

However, the employer's scheme allowed this to be capped to the earnings the employee would have received until his retirement at the age of 65 hence it was capped in this case to around £76,000. The claimant argued this was indirectly discriminatory towards older workers.

The EAT accepted that it caused both the claimant disadvantage and older workers generally a disadvantage but went on to find that the employer could justify this discriminatory effect as it was aimed at preventing employees from receiving a windfall. The EAT held that the employer's aim was both a legitimate one and proportionate in the circumstances.

However, if the default retirement age is removed as is currently proposed, the principles from this case may soon cease to be relevant.

CASE UPDATE

Cannot Afford To Pay a Tribunal Award?
TAO Herbs & Accupunture Ltd v Jin

The Employment Appeal Tribunal (EAT) has sent a strong reminder recently to all employers that makes it clear that the employer's financial position and ability to pay an unfair dismissal award is not a relevant consideration when determining whether and to what extent an award of compensation should be made.

When an employee is successful in an unfair dismissal claim, the Employment Tribunal is able to award the employee compensation that it considers just and equitable in the circumstances having regard to the loss sustained by the employee in so far as that loss is attributable to the employer's actions.

However, the EAT made clear in this latest case that nowhere in the legislation does it allow the Employment Tribunal to consider an employer's ability to pay the award or the consequences to the business in making the award.

EL

NATIONAL MINIMUM WAGE CHANGES

Latest Rates

1st October 2010 brought some significant changes to the National Minimum Wage Rate. Although the Low Pay Commission reviews these rates every year, as of 1st October, new age bands have been implemented. This could have a significant impact upon employers as workers are now entitled to the full National Minimum Wage from the age of 21 as opposed to 22 as previously was the case. Please see below for the new National Minimum Wage rates:

Age	National Minimum Wage
21 and Over	£5.93
18-20	£4.92
16-17	£3.64

In addition, 1st October 2010 marked the introduction for the first time of a National Minimum Wage rate for apprentices. Apprentices under the age of 19 or between 19 and 26 and in the first year of their apprenticeship are now entitled to a National Minimum Wage of £2.50 per hour.

EL

RETRACTING WORDS OF DISMISSAL

Willoughby v C F Capital Plc

Have you ever dismissed an employee in the heat of the moment and thought afterwards, what have I done? If so, this latest case from the Employment Appeal Tribunal (EAT) is unlikely to offer much reassurance to you.

Whilst the EAT did recognise here that in some limited special circumstances, an employer might be able to retract ambiguous words amounting to a dismissal where these were uttered in the heat of the moment and retracted immediately. They made clear that relying on such special circumstances is going to be difficult for most employers, as the employer found in this latest case.

The employer attempted unsuccessfully to retract a letter of dismissal sent to an employee.

However, this letter was not ambiguous, written in the heat of the moment or retracted immediately. This, therefore, made the dismissal stand.

Employers are, therefore, urged to avoid dismissing any employee without going through a fair and recognised process, as doing so exposes them to risks for claims of unfair dismissal. The key to avoiding such claims is to instead suspend employees in cases where a heated exchange ensues before then taking steps to commence any formal disciplinary action if this becomes necessary.

However, remember the Support Line is here to provide you with pragmatic advice on dealing with your employees and employers must avoid acting without first seeking advice or face the consequences in an Employment Tribunal.

CHRISTMAS PARTY

EL

Will it bring you good tidings?

As the festive season is rapidly approaching, the Support Line sends a reminder that the traditional Christmas party may not always bring good tidings to employers.

Although no employer wants to be seen as Scrooge during the Christmas season, it is important that employers are aware of the potential consequences of the traditional work's Christmas party.

Any social gathering organised by an employer constitutes an extension of the workplace and this is regardless of whether this is held at the office or at an alternate venue and whether inside or outside of working hours. As a result, employers are likely to be held responsible for any behaviour by their employees who may have had a little too much Christmas spirit.

As many Christmas parties will involve the consumption of alcohol, employers should be mindful that along with this comes the potential consequences of incidents of fighting, harassment or accidents.

But should this mean the end of Christmas parties? Not necessarily. However, it is important that employers take steps prior to organising Christmas parties to ensure that expected standards of behaviour and rules are clear.

All employees should be made fully aware that the Christmas party is a work event and therefore if anyone steps out of line, then the Company's normal disciplinary procedures will apply. It is a good idea to put this in writing in the form of a memo to ensure that this is not in any doubt.

As some employers will also be providing the alcohol at the work Christmas party, it is also a good idea to regulate the amount of alcohol supplied. Remember, if you supply the alcohol, you may potentially be liable for the actions of any employees acting inappropriately under the influence.

You should also consider informing staff of travel arrangements, providing taxi numbers, reiterating they should not drink and drive.

If you expect employees to attend for work the next day, it is important that they are made fully aware of the potential consequences should any over indulgence make them unable to attend for work or alternatively to attend but be unfit for work. Employers should also decide how lenient they intend to be in such cases.

If planned well, the Christmas party can go ahead without a hitch but remember that as much effort may need to go into managing the staff members' behaviour at the function as it does to arrange the party itself.

If you intend to have a Christmas party this year, please call the Support Line today on 08453 100 999 to discuss the implications further.

EL & HR TRAINING SOLUTIONS

For more information on our Employment Law Training Courses please call our team on 08453 100 600 or email enquiries@ bibbycascom

Visit our website for regular news updates at: www.bibbycas.com

TUPE UPDATE

RECENT CASE DEVELOPMENTS

In this edition of **Knowledge***base*, Compliance Officer, Brendan Wincott, updates us on recent TUPE case law and how this could affect employers in the event of relevant transfer.

BRENDAN:
COMPLIANCE OFFICER

EL CONSULTATION AND APPROPRIATE REPRESENTATIVES

Todd v Care Concern GB Ltd and Others

This latest case from the Employment Appeal Tribunal (EAT) tells the dire consequences of Todd's employers who failed to adequately adhere to their consultation requirements over their impending TUPE transfer.

The duty to inform and consult with staff members in connection with a TUPE transfer is derived from legislation which requires that this occurs with appropriate representatives. The legislation is clear that in the first instance, this is any recognised trade union and in the absence of this, with any pre-existing employee forum. If an employer has neither, then they need to make arrangements for the election of employee representatives from the affected staff members.

The only exceptions to this rule are where the staff members are invited but do not wish to stand as representatives or, secondly, where there is a special circumstance which makes it not reasonably practicable to elect representatives, which would typically be where insufficient time is available before the transfer.

Many employers do, as the respondent did in this case, neglect to elect employee representatives, instead preferring just to inform and consult with the staff members individually.

The EAT sent a sharp reminder to the employer that this approach still falls foul of the consultation requirements and the respondent remains liable for a protective award in respect of each affected employee. It is important for employers to note that unlike collective redundancy obligations, the duty to inform and consult with representatives in a TUPE transfer exists irrespective of the number of staff members transferring.

Fortunately, the only saving grace for the respondent is that the EAT accepted, as mitigation, that there had been some consultation and reduced the previous award of 13 weeks pay to each employee down to just 7 weeks.

However, employers should ensure that they take measures to elect employee representatives where they have no existing forum for staff consultation and this means at least asking staff members if they wish to come forward to stand as representatives. Failing to do so leaves them exposed to costly protective awards which are solely designed to be punitive in nature.

WILL TUPE DEFEND PAY INEQUALITY?

EL *Buchanan and Holland v Skills Development Scotland*

An interesting Employment Tribunal decision has indicated that differences in pay between the female claimants and their comparator will not always defeat an Equal Pay claim even when these can be traced back to a TUPE transfer.

The claimants in this case were transferred to the Company under TUPE working as Customer Service Managers. At the time of the transfer, a male comparator already earned more than the claimants due to a previous TUPE transfer. The claimants, however, later discovered that the gap between pay had increased over the years since the transfer and the male comparator had continued to receive pay rises leading to an increase in the disparity.

The respondent argued that the reason for the disparity was due to TUPE and them being their obligation to honour the pay raises due to the TUPE Regulations. The Employment Tribunal did not agree and held that, although this was true at the date of the transfer, there was no obligation under TUPE to continue to honour annual pay rises to the male comparator as the employer had done so. Therefore, the reason for the growing pay disparity could not be related to TUPE.

The Employment Tribunal found that the continued pay rises had unnecessarily led to an increase in the gender pay gap and found in the claimant's favour. The award has yet to be decided.

WHO NEEDS TO BE AFFECTED BY TUPE CHANGES

EL *Nationwide Building Society v Benn & others*

The Employment Appeal Tribunal (EAT) has offered employers useful guidance on the extent that Economic, Technical or Organisational (ETO) reasons need to affect the workforce.

In this latest case, the 18 claimants had their employment transferred from Portman Building Society to Nationwide under TUPE. Their roles were assimilated to existing roles at Nationwide and, whilst the employer contended they were similar to the roles already undertake at Portman, the employees thought differently. In addition, the staff members' bonus payments appear to have reduced is following the transfer.

The employees resigned their employment and both the Employment Tribunal and the EAT were satisfied that this was in consequence to the unilateral changes to their terms and conditions imposed upon them and thus that they had been constructively dismissed.

It felt to be determined if such dismissals were automatically unfair as they were transfer related. Nationwide relied on the ETO defence to the claims of automatically unfair dismissal and argued that because the changes affected some staff, namely the transferring staff, this was enough to satisfy the second limb of the ETO test which is to entail changes in the workforce. The EAT rejected the claimants' opposing contention that the ETO reasons had to affect the entire workforce, holding this was not necessary.

As such, Nationwide have successfully managed to rely on the ETO defence to the claimants' proceedings for automatic unfair transfer related dismissals, but the case has been returned to the Employment Tribunal to assess if the dismissals were unfair on normal unfair dismissal principles.

However, in the meantime, this case has provided useful clarity that ETO reasons only need affect some of the workforce, not all.

CASE UPDATE

Collective Agreements Frozen at Time of Transfer

Worrall v Wilmott Dixon Partnership

Ever wondered what happens to collective agreements where there is a TUPE transfer? Do they transfer? If they do, what happens when changes are negotiated afterwards? The Employment Appeal Tribunal (EAT) has helped to answer some of these questions in this latest case.

The TUPE legislation confirms that collective agreements do transfer at the point of transfer and are treated as if made with the transferee even though they will have actually been made with the transferor. However, it has not always been clear whether subsequently negotiated changes to such agreements by the transferor continue to bind the new employer.

The EAT have helped provide clarity in this latest case, confirming that collective agreements are "frozen" at the point of the transfer and the new employer is not obliged to continue to honour any changes made to such agreements negotiated by the transferor after the transfer.

STRESS IN THE MANAGING STANDARDS

Many articles have been written in the past on this subject, some say that stress is the same as pressure and we often hear "I work better under pressure" but do you as employers truly understand.

By Ray Warlow, Health & Safety Consultant

KEY INFORMATION

Research shows how the body adapts to stress in three stages:

1. The alarm reaction stage in which the defences go up and adrenalin flows.
2. The resistance stage during which the body will resist the stressor or adapt to the effects.
3. The exhaustion stage, where adaptation or resistance has failed and the body succumbs to effects of the stressor.

Stress is not always given the recognition it deserves and often is seen as being a weakness. However, research has shown that stress can affect the stability of an organisation and that human factors are an important part of stress management. If people and organisations are to manage stress effectively then they must: identify the true causes of stress; measure and evaluate the effects; and develop strategies to handle stress.

What is stress?

There have been many different definitions of what stress is, whether used by psychologists, medics, management consultants or others. There seems to have been something approaching open warfare between competing definitions: views have been passionately held and aggressively defended.

What complicates this is that we all intuitively feel that we know what stress is, as it is something we have all experienced. A definition should therefore be obvious…except that it is not. The current consensus now, the most commonly accepted definition of stress, is that stress is a condition or feeling experienced when a person perceives that demands exceed the personal and social resources the individual is able to mobilize.

Stress can involve physical effects, such as raised heart rate, increased sweating, headache, dizziness, blurred vision, aching neck and shoulders, skin rashes and a lowering of resistance to infection.

Behavioural effects, such as increased anxiety and irritability, a tendency to drink alcohol and smoke more, difficulty in sleeping, poor concentration and an inability to deal calmly with everyday tasks and situations.

These effects are usually short-lived and in themselves may cause no lasting harm. When the pressure recedes, there is a quick return to normal. Stress is, therefore, not the same as ill health, but in some cases can be more sustained and far more damaging, leading to longer term psychological problems and physical ill health.

WORKPLACE

Research has shown that many previous ideas about stress had been wrongly stated i.e.

- Stress is not the same as nervous tension.
- Stress is not always a negative response.
- Some people do survive on stress.

Simply put, stress is produced by a stressor. These may be environmental, such as extremes of temperature, noise, vibration and lighting. They may also be social, such as rejection, change, isolation or they can be organisational i.e. increased workload, conflict at work, uncertainty, job security or new work patterns.

There are many causes of stress and many reasons why people are affected by it. These can roughly be categorised as follows and recognised within your organisation or affecting you personally:

Physical Causes

- Poor working conditions;
- Poor layout including open plan work areas;
- Extremes of temperature;
- Bad lighting;
- Excessive noise; and
- Poor ventilation.

Organisational Causes

- Heavy workload;
- Bad or ineffective communication;
- Lack of/excess supervision;
- New work patterns;
- Lack of training;
- Poor management styles;
- Role perception;
- Interpersonal problems; and
- Promotion/reward concerns.

Social Causes

- Lack of social contact;
- Sexual harassment;
- Racism;
- Ageism; and
- Fear of change.

What are the effects of stress on your business and workforce. Stress affects different people in different ways. However, no matter how the stress affects the person, the effects on the business and workforce can result in one or more of the following:

- Increased absenteeism;
- Increased accident potential;
- Increased mistakes/errors; and
- Poor staff relations.

How can your employee or you cope with stress? The most important aspect of coping with stress is determining that which can be done at a personal level. However, as stress affects people differently, the methods of coping with stress also differ. The following points can be used on a trial and error basis until the right way of coping with stress, personally, is found.

Develop a Knowledge of Stress

- Understand how it works;
- Know your own stressors;
- Learn your stress limitations; and
- Know your own stress level.

Manage Your Own Systems

- Divide problems into manageable steps;
- Decide why problems exist;
- Review possible courses of action; and
- Select the most appropriate for you.

Enhance Positive Behavioural Skills

- Be positive not negative;
- Be productive;
- Handle conflicts effectively;
- Learn to say no;
- Be realistic about ability;
- Consider your lifestyle;
- Alcohol in moderation;
- Do not smoke; and
- Rest and exercise effectively.

Stress management, in some types of organisation, are considered more stressful than others. These are organisations that:

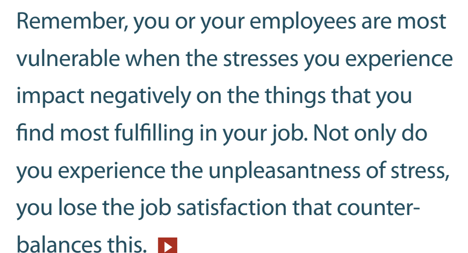
- Are larger and more bureaucratic;
- Are more formal and regulated;
- Have expectations of long hours and hard work;
- Have badly motivated staff; and
- Have a culture in conflict.

There is much that can be done to encourage an effective management of stress like:

- Promote employee health, safety and welfare including health surveillance, health promotion and excellent facilities;
- An effective management style that recognises the value of its people;
- An open communication network that encourages feedback and communication across all levels; and
- Introduce management tools and techniques that ease the obvious stress caused by fear of change.

Any organisation which intends to manage stress at organisational level should have an Action Plan. This Action Plan should follow a number of clearly defined stages as follows:

- Recognition of Causes and Symptoms of Stress;
- Decision on How to Handle the Stress;
- Evaluation of Key Personnel to Manage Stress; and
- Review of Specific Stressors.



Remember, you or your employees are most vulnerable when the stresses you experience impact negatively on the things that you find most fulfilling in your job. Not only do you experience the unpleasantness of stress, you lose the job satisfaction that counter-balances this.

EMPLOYERS RELUCTANT TO INVEST IN WORKER INVOLVEMENT

HS

HSE to review progress of employers

A recent study has found that there is little enthusiasm on the part of employers to fund worker-involvement programmes aimed at improving health & safety and in the majority of cases, most employers have few clues on where to start.

The recent study, which aimed to find out what worker involvement looks like in practice, built on evidence that organisations with "properly involved" unionised safety representatives achieved better health & safety performance than those without such representation. The study comprised of a telephone questionnaire survey of 240 individuals, a series of eight interactive workshops and the preparation of several good-practice case studies.

The investigation results suggested that the concept of worker involvement was low on the agendas of most employers.

While the researchers found that positive action is occurring in some non-unionised workplaces, they concluded that it generally follows an employer's agenda and is confined to practical consultation rather than anything approaching joint decision-making. Examples of very good practice were evident in around 10% of the participating organisations, with a further 20-30% doing something positive. Most of the remaining companies claim they are, in principle, interested in involving their workforce to some extent, but are unsure where to start.

It was also felt that worker involvement in Safety & Health needs to be sold to directors and managers as something that is integral to the way a company runs its business and support good decision-making. Equally, they felt that if it is sold as a "bolt-on", commitment from management would fall by the wayside, especially in the current economic climate.

Some of the more common barriers to worker involvement, which was highlighted by the project, included:

- lack of resources, knowledge and time;
- fear of managers;
- lack of respect shown by managers;
- transient workforces; remote and peripatetic; workers; and
- cultural attitudes among the workplace and wider society.

Recommendations to review progress by employers in worker involvement in Safety & Health are going to be made to the HSE who will be asked to actively encourage "buddying" between organisations that perform well on worker involvement and those organisations anxious to enhance their approach to worker involvement in Safety & Health but perhaps are not sure which or what steps to take. "Businesses that want to improve the way they manage Health & Safety are often failing to make use of their single biggest asset, namely the people they employ."

MORE ON THE WEB

Visit the Bibby Consulting & Support website to read more about the current issues and challenges facing your business today.

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

HS OFFSHORE FIRMS FINED £243K FOR CRUSH INJURY

Agency worker loses leg

It has been reported that on 24th September 2010, two companies have been fined a total of £243,750 following an accident that led to an offshore worker having a leg amputated.

Aberdeen Sheriff Court heard that oil and gas operator Talisman Energy (UK) had contracted Scaldis Salvage and Marine Contractors N.V to install two wind-turbine generators on the Beatrice AP Oil Platform, which is 20 kilometres offshore in Moray Firth.

On 25th August 2006, Alexander Murray, 48, an agency worker employed by Talisman Energy, was standing on a partly-completed structure while another section was lowered into place by a heavy lift vessel, during the construction of Beatrice Windfarm Turbine B. As the part was swung into position it struck Mr Murray and crushed his leg. He was airlifted to hospital where doctors were forced to amputate his leg. He is still unable to return to work owing to his injuries.

A Prohibition Notice was issued on 12 December 2006, which ordered work to stop until a safe lifting plan had been created. The case demonstrates the importance of adequately planning and assessing the risks and implementing sensible management controls, for all lifting activities, what is termed a "Safe system of Work".

Talisman Energy appeared in court on 23rd September and pleaded guilty to breaching s3(1) of the HSWA 1974 and was fined £225,000. Scaldis pleaded guilty to the same breach and was fined £18,750.

In mitigation, Scaldis said it had no previous convictions and had complied with the Prohibition Notice. The work was completed safely after it installed a hanging basket for workers to stand inside when the parts were lowered into place.

At the start of any task or activity we would recommend all our clients to:

- Review the operation;
- Undertake to complete a risk assessment;
- Undertake to complete a safe system of work.

In completing a safe system of work, the organisation would be identifying the safest way of actually conducting that specific task and, in this case, that information may well have saved an operator's limb.

HS SO YOU THINK YOU ARE NOW PROTECTED?

The importance of regular risk inspections

Having worked through the Health & Safety Risk Management System, carried out the risk assessments, trained the staff and completed the documentation, you can now sit back and say to yourself, "That was a job well done". But… are you sure you are now protected?

Murphy's Law says that if it can go wrong, it will. So how can you be sure that you can withstand a visit from the authorities or a claim from a member of staff for injuries received?

Whilst you continue to sit inside your comfort zone, you will probably miss the gaps in your system. You need to test your defences, think of yourself as an inspector and carry out an inspection from an inspector's point of view. Be determined to find errors, issues and problems. Or consider a potential accident with you as the victim, think of the questions that you would want to ask and if your company can defend every aspect. Can the company prove that suitable and sufficient training was given, or that suitable precautions were in place?

By putting yourself on the other side of the fence, this enables you to identify the weaknesses. Continue with this approach during your annual reviews and never take your documentation for granted.

HS

DERMATITIS IN HAIRDRESSING

Hairdressing Health & Safety in the workplace

Did you know upto 70% of hairdressers suffer from work related skin damage such as dermatitis at some point during their working lives. Most of these cases are preventable.

What is work related contact dermatitis?

The main signs and symptoms are Dryness, Redness, Itching, Flaking/Scaling, Cracking/ Blistering and Pain. Dermatitis cannot be caught ie passed from person to person. It can develop at any time, or not at all. There are two types of contact dermatitis.

1. Irritant contact dermatitis

This can flare up after a few contacts with strong chemicals like bleach. More commonly it develops gradually through frequent wet working or working with milder chemicals like shampoo.

2. Allergic contact dermatitis

This can develop quickly after only a few contacts with a substance like shampoo or colour and sometimes it can take months or even years for the allergy to develop. Once you are allergic, you are allergic for life and this could happen at any time, even if you have had no problems previously. With allergic contact dermatitis, things you become allergic to at work might well also be in things you use at home eg. shampoo or household cleaners. So if you become allergic to something in the workplace it could also affect aspects of your life.

What causes dermatitis?

One of the main causes of dermatitis is wet working. You are more at risk of developing it if you have your hands in contact with water for long periods of time in a day, over 2 hours for example. Or if your hands are wet several times a day eg shampooing 10 clients a day or more.

Therefore staff that spend their time doing a lot of the washing are more at risk.

The other main cause of dermatitis is contact with the chemicals in hairdressing products, when shampooing, colouring or bleaching, or in cleaning products.

There are several ways that your hands can come into contact with water and products:

- Washing/shampooing/colouring hair with bare hands;
- Handling equipment soaked in chemicals;
- Touching contaminated clothing, tools or containers;
- Splashing chemicals on to your skin when mixing or handling them; and
- Aerosols and dust landing on your skin and surfaces you might touch.

How to prevent dermatitis

Five steps to prevent dermatitis becoming a big problem:

1. Wear disposable non-latex gloves when rinsing, shampooing, colouring, bleaching, etc.
2. Dry your hands thoroughly with a soft cotton or paper towel.
3. Moisturise after washing your hands, as well as at the start and end of each day. It is easy to miss fingertips, finger webs and wrists.
4. Change gloves between clients. Make sure you do not contaminate your hands when you take them off.
5. Check skin regularly for early signs of dermatitis.

DID YOU KNOW

HSE results on workers fatally injured in 2009/10 in summary:

By Main Industry

In agriculture, there were 38 fatal injuries in 2009/10 with a corresponding rate of 8.2 deaths per 100,000 workers. This compares to a rate of 8.7 when an average of the previous five years is examined. Thus, the rate for 2009/10 is 6% below the average for the previous five years.

In ***construction***, there were 41 fatal injuries, with a rate of 2.0 deaths per 100,000 workers. This compares to an average rate of 3.2 for the previous five years. Thus, the rate for 2009/10 is 37% below the average for the previous five years.

In ***manufacturing***, there were 24 fatal injuries, with a rate of 0.9 deaths per 100,000 workers. This compares to an average rate of 1.2 for the previous five years. Thus, the rate for 2009/10 is 28% below the average for the previous five years.

In the ***services sector***, there were 42 fatalities, with a rate of 0.2 deaths per 100,000 workers. This compares to an average rate of 0.3 for the previous five years. Thus, the rate for 2009/10 is 42% below the average for the previous five years.

HS

CHANGES PENDING TO SCAFFOLD STANDARDS

The European Standard BS EN12811-1:2003

By the end of the year, the UK scaffolding industry should be fully conforming to the European Standard BS EN12811-1:2003 rather than the withdrawn British Standard BS 5973:1993.

The HSE (Health & Safety Executive) has advised the UK scaffolding industry that time is now running out for the continued use of BS5973. Philip White, Chief Inspector of Construction said, "As from 1st January 2011 the Health & Safety Executive will no longer acknowledge BS5973:1993 as a recognised standard for the design of tube and fitting scaffolding structures."

However, BS EN12811-1 is a performance document and does not give detailed advice on safe systems of work for erecting, altering or dismantling scaffolds when erected using tubes and fittings. To overcome this, the NASC (National Access and Scaffolding Confederation) has produced TG20:08 - Technical Guidance on the use of BS EN12811-1, as a guide to good practice for scaffolding with tubes and fittings. BSI (British Standards Institution) withdrew BS5973:1993 because of the conflict of information within the two standards. The principal differences between BS EN12811-1 and BS 5973 are:

- The European standard requires all scaffolds to be designed.
- There are six service Load Classes, some with partial area loads.
- There are seven width classes and two headroom classes.
- A requirement for a minimum unimpeded area along the full length of the working platform.
- BS5973 gives no differentiation between the loading on main platform and the inside boards.
- The definition of an in-service condition and an out-of-service condition.
- A reduction in the number of working platforms in use for light duty, general purpose and heavy duty scaffolds. When in use a scaffold is considered to have one platform with 100% of the service load and one adjacent platform (above or below) with 50% of the service load.
- In the absence of wind, a scaffold shall have a notional horizontal load, on every bay, applied separately parallel and perpendicular to the bay.
- Wind loads on scaffolds shall conform to the national standard BS 6399/EN1991.
- Reappraisal of effective lengths for the purpose of estimating the safe loads on standards.
- The structural design according to Limit State theory.

The new standard is said to offer a number of benefits which include:

- It covers a wider scope than BS5973.
- It covers the whole of the UK (BS 5973 was not valid in Scotland).
- It includes scaffold designs that comply with BS EN12811-1 and the requirements of the WAHR 2005 - Schedule 3 - Part 2.
- Retention of ledger bracing every other bay (as agreed with the HSE).
- Differentiation between unclad, debris netted and sheeted scaffolds.
- The maximum height for netted and sheeted scaffolds is well above those in BS5973.
- TG20 includes a wider and more varied arrangement of tie patterns to achieve maximum heights based on a 4m x 4m grid.
- A return to light duty loading on inside boards
- TG20 covers standard solutions for basic independent and putlog scaffolds.

NEED TO KNOW MORE

If you are unsure how this effects yo please call our Support Line on 08453 100 999 or email enquiries@ bibbycas.com

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

COSHH

CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH

FREE GUIDES AVAILABLE AT WWW.BIBBYCAS.COM

HS

WHEN IS A COMPUTER NOT A COMPUTER?

The Health & Safety (Display Screen Equipment) Regulations 1992

The Health & Safety (Display Screen Equipment) Regulations were introduced in 1992 as computers were increasingly being used in the workplace. Historically, large, clunky IBM-equivalent computers barely scraping even 1GB of memory were used to word process DOS format equivalent software programmes. Back then, computers were regarded as the way businesses needed to move forward to progress.

The DSE Regulations were launched during the proliferation of computers in the work-place and during this period, suitable for the intended purpose: to provide instruction, training and guidance on how to use a computer workstation. Approved Code of Practice L26 offers guidance on this subject, detailing the requirements of workstations, desks, chairs, adjustable computer items and workplace environment.

In light of technological advances, improvement in ergonomic equipment; workstations, chairs, laptops, keyboards, mice and LCD screens – the DSE Regulations are starting to show signs of a legacy piece of legislation. Social factors have changed. Many employees have access to at least one or more computers, society is increasingly computer literate, software is written in an easy to use point and click format. Computers have simplified the way we work yet the diversification and continuation of health concerns arising from the use of computers continue today.

In today's digital age, computers are the centre process of many business activities. Laptops, desktops, palm tops, net-books, tablets, iphones, blackberry, Bluetooth and so on, computer equipment has evolved to a stage where the DSE Regulations are no more relevant than last year's Intel processor and not have kept pace of the latest technology or IT developments.

The DSE Regulations require employers to train employees in the use of IT equipment and provide suitable workstation equipment including desk, chair, separate keyboard, separate mouse and adjustable screen, whilst ensuring there is sufficient ventilation and lighting.

Whilst these regulations are explicit for the use of conventional desktop computers, laptops, netbooks and smaller handheld IT devices are now prolific in the workplace, suggesting a suitable control measure (information, instruction and training) is required for all electronic devices.

Approved Code of Practice L26 for the safe use of display screen equipment, is subject to review in February 2012. In light of the fact that computer workstations are now an accepted part of business practice, there is a growing feeling this area of legislation should be updated to reflect the change in IT equipment available and concentrate on employees more susceptible to Work Related Upper Limb Disorders (WRULD's).

WRULD's present a real and continuous workplace concern, more commonly known as "aches and pains" or "tingling feeling" when using computers. 45% of workplace Occupational Health cases were as a result of WRULD's, accounting for a significant amount of lost working time arising from a relatively low risk task.

Upper limb disorders can be easily identified as an ache or pain usually as a result of poor posture, repeated or continuous task. The use of workstations, laptops, desktop computers and now the proliferation of smartphones may suggest this issue will continue in the workplace for some time to come.

For more information on Work Related Upper Limb Disorders, visit the HSE website at www.hse.gov.uk.

NEW FIRE SAFETY REGULATION ISSUED

HS

The Fire Safety (Employees' Capabilities) (England) Regulations 2010

These Regulations only apply to England and specifically require employers to take employees' capabilities, both physical and emotional, with regard to fire related health & safety into account when entrusting tasks to them.

When the Regulatory Reform (Fire Safety) Order came into force in 2006, a small gap in the implementation of the EU Framework Directive became apparent. By adding fire safety to the general health & safety requirement to take employee's capabilities into consideration when assigning tasks, the introduction of these new Regulations makes good that gap.

How does this affect you?

It is not expected that these Regulations will impose any extra burden on your business. They simply re-impose the duty that you had before the Regulatory Reform (Fire Safety) Order 2005 came into force in October 2006 which is already implicit in wider health and safety legislation.

What do I have to do?

Before you give any of your staff fire related tasks or assignments, you need to assess their capabilities. For example, do they need an element of strength if they are to help disabled staff from a building? Can prospective fire wardens demonstrate an air of calmness and an ability to control others when directing staff to assembly areas? Are they confident and not likely to lose their nerve when required to operate fire fighting equipment?

LITERACY ISSUES & CONCERNS FOR EMPLOYERS

HS

Problems understanding Health & Safety guidance

Obviously the ability to read and understand health & safety guidance may depend on an individual's literacy level. Employers need to take this into account and ensure anyone who is issued with a written notice has an understanding of that notice.

Some facts

1. The 2003 Skills for Life survey by the then Department for Education and Skills (DFES) found that:
   i. In England, 16% of 16 – 65 year olds had literacy skills of Entry Level 3 (a level expected of an 11 year old) and below;
   ii. Also it was found that age was not a factor in literacy or numeracy levels.
2. Recent statistics say there are 720,000 people studying to obtain literacy qualifications.
3. Unison have identified that literacy, language and numeracy skill gaps are a fundamental health & safety concern.
4. In 2006, 70% of men with poor literacy/numeracy skills were in manual jobs and found to have fewer work related training courses. Quote from Literacy Changes Lives, Emily Thorne, National Literacy Trust 2008.
5. A study conducted by the CBI in April 2008 found that businesses operating in the agriculture and construction sector felt that poor literacy skills impact most on health & safety measures as people simply do not understand and in many cases are too embarrassed to ask or seek help.

Therefore, employers are asked to be aware of this situation and try to help, where possible. This may involve training courses, time allocation, taking time to verbally explain the content of signs and notices, particularly urgent action notices, evacuation details etc. This could also affect employees who's language is not English in the first instance. Again, help from employers to ensure their staff fully understand notices and signage information is essential.

MORE ON THE WEB

Visit the Bibby Consulting & Support website to read more about the current issues and challenges facing your business today.

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

HS

THE HEALTH & SAFETY (ENFORCING AUTHORITY) REGULATIONS 1998

The benefit of communicating Health & Safety messages

Most of organisations know that the principal enforcing authorities for health & safety in Great Britain are either the Health & Safety Executive or Local Authorities (usually through their Environmental Health or Safety Enforcement Departments). What many don't know is what determines whether the HSE or the Local Authority will deal with a particular matter?

The answer is to be found in what are called "the EA Regs" - the Health & Safety (Enforcing Authority) Regulations 1998. These tell us which enforcing authority takes jurisdiction and that it depends on the organisation's main activity.

Schedule 1 to the EA Regs lists the activities that will bring the matter under the Local Authority's wing; Schedule 2 lists those that bring it under HSE's. We've set out Schedule 1 below, and if your business' main activity is listed there the Local Authority will be keeping an eye on you. We haven't set out Schedule 2 (that clarifies where HSE has jurisdiction) because the general rule is that if it isn't in Schedule 1 HSE will cover it.

It's worth pointing out that Schedule 1 doesn't apply to any premises (or part of premises) occupied by - a county council, council or other local authority; a police or fire authority; Defence premises; the Atomic Energy Authority; and Crown premises (other than HSE). For those, HSE is the relevant authority.

One last point, some businesses (e.g. dry cleaners and vehicle repairers), are enforced either by HSE or Local Authorities depending on the main activity at the particular premises. And responsibility for enforcement at certain premises may be transferred between HSE and Local Authorities by agreement between themselves.

Schedule 1

Main activities which determine whether local authorities will be enforcing authorities:

1. The sale of goods, or the storage of goods for retail or wholesale distribution, except:

(a) at container depots where the main activity is the storage of goods in the course of transit to or from dock premises, an airport or a railway;

(b) where the main activity is the sale or storage for wholesale distribution of any substance or preparation dangerous for supply;

(c) where the main activity is the sale or storage of water or sewage or their by-products or natural or town gas; and for the purposes of this paragraph, where the main activity carried out in the premises is the sale and fitting of motor car tyres, exhausts, windscreens or sunroofs, the main activity shall be deemed to be the sale of goods.

2. The display or demonstration of goods at an exhibition for the purposes of offer or advertisement for sale
3. Office activities.
4. Catering services.
5. The provision of permanent or temporary residential accommodation including the provision of a site for caravans or campers.
6. Consumer services provided in a shop except dry cleaning or radio and television repairs, and in this paragraph "consumer services" means services of a type ordinarily supplied to persons who receive them otherwise than in the course of a trade, business or other undertaking carried on by them (whether for profit or not).
7. Cleaning (wet or dry) in coin operated units in launderettes and similar premises.
8. The use of a bath, sauna or solarium, massaging, hair transplanting, skin piercing, manicuring or other cosmetic services and therapeutic treatments, except where they are carried out under the supervision or control of a registered medical practitioner, a dentist registered under the Dentists Act 1984(1), a physiotherapist, an osteopath or a chiropractor.
9. The practice or presentation of the arts, sports, games, entertainment or other cultural or recreational activities except where the main activity is the exhibition of a cave to the public.
10. The hiring out of pleasure craft for use on inland waters.
11. The care, treatment, accommodation or exhibition of animals, birds or other creatures, except where the main activity is horse breeding or horse training at a stable, or is an agricultural activity or veterinary surgery.
12. The activities of an undertaker, except where the main activity is embalming or the making of coffins.
13. Church worship or religious meetings.
14. The provision of car parking facilities within the perimeter of an airport.
15. The provision of child care, or playgroup or nursery facilities.

HS

SAFETY SIGNS IN THE WORKPLACE

The benefit of communicating Health & Safety messages

Communicating Health & Safety messages can, for some organisations, be off the radar when it comes to team meetings, annual general meetings or toolbox talks. In all examples here, communicating a positive Health & Safety message to staff needn't be a chore or a blot on the agenda for a meeting.

Communicating safety messages is a statutory requirement, yet the simplest of safety communications are missed and often overlooked. For starters, a Health & Safety Notice Board is often the first place safety information can be posted. Maintaining the notice board with monthly themes, tied in with your business activities, seasonal changes or even a special event will keep the board looking fresh and informative. Examples may include Skin Protection in July or August, highlighting the need for skin care when in the sun. Slips and Trip in the Winter often proves a successful campaign.

Nominate an employee to maintain the safety notice board. That way, unauthorised for sale notices will not pop up where they are not wanted.

The Health & Safety notice board can be used for a number of purposes including the location to store all statutory notices. The Health & Safety poster, Employers Liability Certificate, Bibby Consulting & Support Health & Safety Certificate, a list of Fire Marshals, a list of First Aiders, all the local emergency contact details, the general workplace risk assessment, a section for Health & Safety feedback/ideas, workplace inspection reports, a wall mounted first aid kit may be kept adjacent to the notice board. The Safety notice board can be a useful tool for the effective communication of all Safety activities, meeting the need to communicate Health & Safety issues whilst empowering staff to provide feedback and comment on safety activities.

Communicating Health & Safety messages needn't be an onerous task. If you have an intranet site, linking all employees together, this can often be a useful tool to post documents but never a full replacement for a physical Safety notice board.

Staff should feel empowered to comment and feedback any issues relating to Health & Safety in the workplace. With the provision of a notice board, the aim and purpose to improve communication and change workplace safety culture is only a few stepping stones away. First and foremost is to ensure all staff feel they are part of a changing process. With your continued support, staff will feel empowered to make a change and feel part of the change of culture in the workplace.

CHRIS:
HEALTH & SAFETY

INVESTING IN LOW CARBON DEVELOPMENT

A new bond fund aims to support financing of 'green' projects in developing countries

According to World Bank estimates approximately US$200 billion to $1,000 billion per annum of financing is needed to mitigate the effects of climate change. This task is overwhelming for Government resources to tackle alone, particularly in developing countries. Innovation and initiative from private investment is urgently needed to supplement scarce Government funds and credit. In response to this, Nikko Asset Management has collaborated with the World Bank, the international development organisation, and earlier this year the Nikko AM World Bank Green Fund was launched.

A key objective is to provide bond investors with a product that meets their risk-adjusted investment return objectives, as well as supporting the financing of projects that reduce greenhouse gas emissions and help countries adapt to the effects of climate change.

The fund is actively managed and invests in a diversified range of developed and emerging market currency bonds issued by the World Bank. The bonds support projects that address the climate challenge and fall into two broad categories-mitigation and adaptation.

Using these criteria, one of the many World Bank projects currently underway that would be eligible is an energy efficiency financing project in China. China's energy-intensive manufacturing industries account for a significant portion of worldwide final energy consumption and operate at higher levels of energy intensity than international best practices.

The potential for conserving energy and reducing greenhouse gas emissions is largely untapped in these industries. This World Bank project will improve the energy efficiency of medium and large-sized industrial enterprises and reduce their impact on climate change.

The project includes:

- Developing sustainable energy conservation lending lines of businesses within selected banks through a line of credit operations that support energy conservation investments in industries; and;
- Strengthening Government ability to enforce related laws, regulations and standards, and to supervise and monitor energy efficiency-related activities.

Definitions

But how is 'green' defined within these projects? A key facet of this Fund is the vetting process undertaken to determine eligible projects financed by the World Bank by the climate change and sustainable development specialists from World Bank's Environment Department and World Bank Treasury. All World Bank projects are based on country assistance strategies which detail a country's development plan for a three to five year period.

Once a project has been identified and undergone an environmental and social assessment, it is then monitored for effectiveness and efficiency throughout its implementation phase. Eligible green projects are selected by World Bank environment specialists from a universe of over 200 projects that are annually approved and meet specific mitigation and adaptation criteria for low-carbon development. Financings are reviewed for eligibility for green bond support in several steps:

1. Environment and climate change specialists develop a preliminary list of eligible projects based on the green bond criteria disclosed to investors in the two areas of focus: mitigation and adaptation to climate change.
2. This preliminary list of eligible projects is then cross-checked with the projects tracked by the relevant technical unit.

Examples of eligible mitigation projects	Examples of eligible adaptation projects
• Solar and wind installations	• Improvement of food security and stress-resilient agriculture
• Projects that reduce GHG emissions through new technologies, rehabilitation of power plants and transmission facilities	• Protection against flooding
• Carbon reduction through reforestation and avoided deforestation	• Sustainable forest management and avoided deforestation

Energy projects, for example, are tracked separately by the energy anchor unit to fulfill the World Bank's quantitative targets for renewable energy and energy efficiency.

3. The detailed description of each project is reviewed to confirm eligibility and to ascertain that the activities supported by the project directly (through investments and technical assistance) or indirectly (through an enabling policy framework and technical assistance) will lead to reductions in greenhouse gas emissions and help developing countries adapt to climate change.
4. The shortlist is vetted by other World Bank environmental and sector specialists and the final list of eligible projects is confirmed.
5. Funds raised through purchases of World Bank green bonds are assigned to a 'green account' to track disbursements of the approved eligible projects.

This vetting process is key to ensuring that the 'green' activities supported help tackle climate change. It is these types of initiatives which will continue to raise awareness for climate change efforts, and help raise much needed funds from private sector investors to make a difference.

ENVIRONMENTAL LAW

Carrot or Stick - which is best and when?

For quite some time there has been a concern about the way in which a number of regulatory regimes are enforced. Various commentators, and indeed regulators, have expressed the view that just limiting the enforcement sanctions leading onto criminal prosecution has a number of disadvantages. One of the main disadvantages among these are the general inability of the criminal courts to deal with any financial gain which there might be from conducting a breach of regulatory legislation, including environmental legislation. Additionally, another complaint is the prosecution can often be disproportionate to the actual breach itself.

A new toolkit or piece of legislation is now available, namely, Part 3 of the Regulatory Enforcement and Sanctions Act 2008. This Act provides a scheme to those regulators who have, or will receive, the necessary powers to use it.

On 6th April regulators (Environment Agency & Natural England) received those powers with Defra publishing guidance on parts of the legislation concerned.

Part 3 provides for regulators an extended toolkit of alternative civil sanctions as a more proportionate and flexible response to cases of regulatory non-compliance normally dealt with in the criminal courts. In particular, the extended toolkit allows regulators to remove the financial benefit gained by businesses that deliberately seek an advantage though non-compliance with their regulatory obligations, while at the same time helping to secure increased compliance.

Some of the details within the new sanctions are:

1. Fixed monetary penalties. These would be at the lower end of the range of potential financial penalties and have a capped maximum which would be at the same level as the maximum penalty imposed by a Magistrates' Court and in those cases is only tried in the Magistrates Court.
2. Enforcement undertakings, they permit an agreement between the Environment Agency and an operator or individual to require certain works to be undertaken. This allows an operator to deal with an incident or a breach of permit in a way which does not attract issues of liability or the stigma of prosecution. From the Environment Agency's point of view and those interested parties who are concerned about the incident, the advantage is that the focus is on putting right that which was the problem, rather than questions of punishment or deterrent.
3. Stop Notices - as the name suggests the power to enable the Environment Agency to serve a notice to require that a certain activity is ceased.
4. Discretionary requirements including variable monetary penalties (VMPs). More details on this issue below.

For those cases which are more serious in nature, whether because the act is overtly criminal, reckless, or undertaken with a deliberate view to profit - those matters would still result in prosecution in much the same way as they would at present.

The Environment Agency expects that some 20% of matters which are currently prosecuted would move to the civil sanctions regime. Rather than moving a very high proportion of prosecutions to the civil sanctions regime, it appears likely that a higher proportion of those incidents, which are subject to warning letters or formal cautions, will move to the civil sanctions regime.

Given the further training and development work to be undertaken within the Agency, it is unlikely that civil sanctions will come into significant use before the end of 2010. At the moment, the range of offences to which the new legislative toolkit applies is relatively modest but in due course the extent of the scheme will be expanded to include a greater proportion of the criminal sanctions which are available to the Environment Agency. In Wales, the same powers are likely to be available but the matter still remains to be considered by the Welsh Assembly Government.

Do we think these new sanctions will have much of an Impact?

If the use of civil sanctions succeed in bringing about a less costly and better tailored approach to sanctioning then there will be real differences, both directly and indirectly. The potential indirect effects include a real possibility that a specialist environmental tribunal may start to develop. The decisions of that tribunal will be informed by, and are likely to inform, decisions on regulatory penalties in other spheres of regulation which remain within the criminal jurisdiction. Given that the powers available under a VMP extend to £250K per offence that may be a significant influence.

EN

GETTING THE RIGHT ENVIRONMENTAL MESSAGE

What is your mind's image when we talk about the Environment?

The contrast of communicating Environmental messages can never be treated as a precise science due to the fact we all perceive differing Environment issues from one another. Some of the key factors when working with companies and individuals about Environmental issues is their personal belief, motivation, understanding of Environmental issues and most importantly, ability and willingness to make a change.

Modern Environmentalists will try and convince everybody the Global Carbon Challenge is the reason Environmental messages need to be communicated, reinforced and legislated for, in the event of a sustained increase of carbon dioxide into the atmosphere. Whilst this makes great headline news albeit in the short term, the Environmental message continues in the background for businesses to reduce overheads, minimise waste, reduce lost energy and cut back hidden losses.

Whether you believe in the Carbon conundrum or not, your Business Environment consists largely around the activities your organisation undertakes on a day to day basis. Whilst there may not be an apparent link between the volume of waste you dispose of and Global Warming, there are many direct business consequences of getting, for instance, waste disposal right, the first time, every time.

Legislation requires you to dispose of waste in a controlled manner. The definition of waste and items of waste continues to evolve. Quite simply, any discarded material whether it be rubbish, end of life, for recycling, unwanted, for collection or any other generic term used for "waste materials", becomes controlled waste. It is for you and your business to ensure waste is disposed of correctly, with the correct documentation and controls to prevent fly tipping and uncontrolled discharges of waste into the natural environment. This is a regulatory requirement. Communicating this message is relatively straightforward. But what about the issue of Global Warming, how can we get this right first time, every time?

Quite simply, the issue of Global Warming is too complex to look at as a whole. With all natural Earth systems, there are checks and balances to ensure feedback cycles; cooling, heating, rain, wind, snow and so on. Global Warming, or the

concept of it, makes great headline news with little in the way of action. So how can your business make a change for the better after all the mixed Environmental messages?

With 24/7 communications and media around us, the Environmental message has now become a business activity with the aim to improve Business Environmental Performance. Initially, large multi-national companies and Local Authorities were focused on improving their Environmental Performance, mainly as a result of shareholder and community pressure. As a continuation of their Environmental Management System (EMS), service suppliers, contractors, distributors and all businesses and organisations working with larger clients are now asked to demonstrate their environmental performance.

Today, however, many SME's, in order to supply a larger organisation, are being asked for their environmental performance criteria, in line with their supplier questionnaire. This has subsequently encouraged many businesses to consider their organisation's environmental impact. All is, however, not lost. Whilst on one hand reviewing your environmental performance may win a new piece of work, there are several business advantages to this review, potentially putting you ahead of your competitors.

Every business is a system. Goods in, goods out, goods stored and an amount of waste by-product. Waste can be generated by the loss of heat from storing an item, the waste disposed of from receiving goods or materials, prior to remanufacturing an item or repackaging an item, material waste can be generated by various methods, all of which cost businesses money and time.

All businesses buy and sell goods, ranging from an IT/office suite to a haulage company to a woodworking factory. The scale of the model in figure 1 will differ, from business to business and the type and range of materials purchased will change from reams of paper to fuel to untreated wood materials. In essence, goods, materials and equipment will flow through a business, often without thought, until one day, a potential supplier asks whether you have considered the amount of waste materials your business is generating.

The introduction of an EMS in any workplace addresses how goods and materials flow through your organisation, reducing, minimising and, where possible, eliminating the need for waste materials. Frequently, businesses accept the fact that waste is a part of their business and pay the charges to dispose of items without due thought. What if there was another way?

An EMS helps to identify the volume of type, volume and nature of waste generated and seeks an alternative solution to paying the waste contractor to remove waste materials, saving money and time. What business in the current climate could not afford to consider environmental issues at a time when all businesses are looking to save overheads?

The key point to this article is that the Environmental Message needn't be something you read about in the newspaper. Your business could take an active role to not only reduce its impact on the environment but also reduce overheads in the process. This makes sound business sense given today's economic climate but also helps to promote your business as an ethical, modern, forward-thinking organisation. It gives you a strong competitor advantage and offers your company a "badge" which many customers are increasing becoming aware of by the headline news articles.

ENVIRONMENTAL MANAGEMENT SERVICES

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

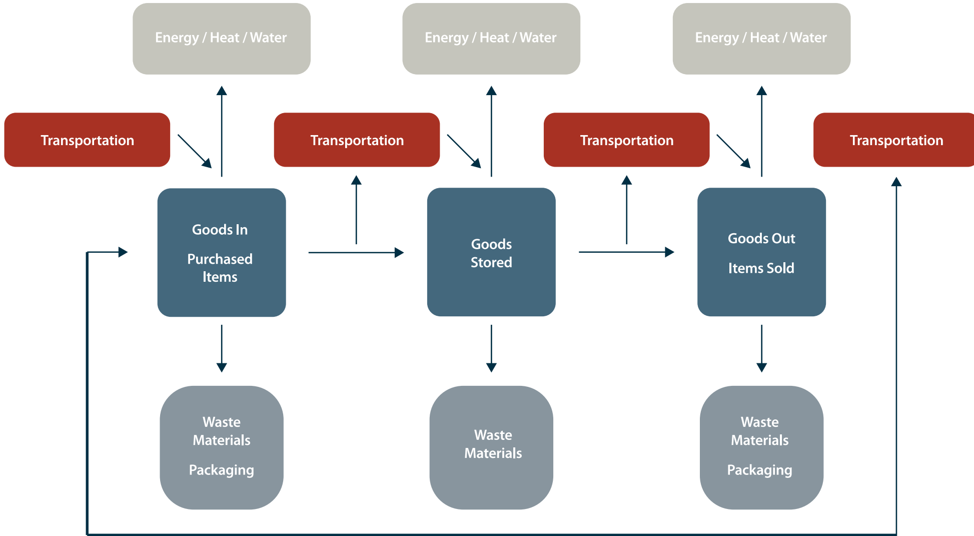


Figure 1. Business Goods In/ Goods Out Materials Process / Environmental Cycle

Environmental Management Systems

LEARN MORE ABOUT OUR ENVIRONMENTAL SERVICES