

Knowledgebase

Bibby Consulting & Support's Client Quarterly Risk Management Publication

Volume 2, Issue 4; Fourth Quarter January 2011

Employment Law • Health & Safety • Environmental • Risk Management

EQUALITY ACT UPDATE

Pay publishing abandoned and positive action introduced

Our Employment Law Support Line tell us more.

We discuss the ongoing development of this large-scale legislative change and the two important advances.

SENSIBLE RISK MANAGEMENT

Frequently Asked Questions

Bibby Consulting & Support's H&S Team tell us more.

We answer the most frequently asked questions in relation to risk management.

BOTTLED WATER

One of the greatest cons of the 20th Century?

Our Environmental Team tell us more.

We look at how bottled water is becoming more increasingly popular and how it has a serious drain on the environment.

ADDITIONAL PATERNITY LEAVE

NEW PROVISIONS TO BE INTRODUCED FROM APRIL 2011



HAVE YOU EVER WONDERED WHAT AN EMPLOYMENT TRIBUNAL IS LIKE & HOW YOU'D DEAL WITH IT?



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- Discern what is required to prepare for a Tribunal hearing;
- Identify what can be done to improve the chances of success;
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- Ascertain the most effective way to give evidence;
- Pick up strategies for coping as a witness.

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



A belated Happy New Year to you all and welcome to the Winter edition of Bibby Consulting & Support's Knowledgebase newsletter. This edition, however, marks the end of the quarterly newsletter and we will be replacing it with two half-yearly publications.

Our 'legal update', which we will issue in March and September, will focus on giving you a bullet-point digest of the key changes in Employment and Health & Safety legislation and on making sure that you know and understand their implications for you as a business. Knowledgebase will be published in Summer and Winter and will contain best practice 'how to' articles and case studies which we hope will be of interest in helping you to ensure that you can use your compliance activities to gain competitive advantage as well as doing the basics.

As part of this change in approach, we will be checking with you on your preference for electronic or hard copy versions of these two publications. Since our last edition, the UK has seen some of the harshest winter conditions in the last century, with heavy snowfall putting additional strain on many businesses. Whilst the severe weather will most certainly have had an adverse effect on many companies, large and small, it is at least (we hope) a relatively short-term impact. However, many firms are facing the more lasting challenges presented by the recent VAT rise, the increase in fuel duty and the likely impact of reductions in Government expenditure. It remains to be seen whether the Government will honour on its pre-election pledge to introduce the fuel duty stabiliser which will certainly

remove some of the strain on small businesses, allowing them to concentrate on trading and helping the economy to grow.

According to a survey conducted by the Federation of Small Business, confidence declined in the fourth quarter of 2010 for the third successive quarter to a net score of -13.2, the lowest since their 'Voice of Small Business' Index began in March last year.

On a positive note, England's cricketers celebrated 24 years of pain by beating Australia 3-1 to win the Ashes series Down Under. So, encouraging news – showing that we can really win, even in the toughest circumstances, if we focus on our game and perform really well at what we do. That's what we are doing here at Bibby Consulting & Support and we look forward to helping you to do the same!

I hope that you find our 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@bibbycas.com.

Michael Slade

Michael Slade, Managing Director

EMPLOYMENT LAW & HR TRAINING SOLUTIONS

*New dates
added for
2011*



YOU ARE INVITED TO ATTEND THE FOLLOWING OPEN TRAINING DAYS:

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- ▶ 16th February - Liverpool
Disciplinary & Grievance
- ▶ 15th March - Middlesex
People Management
- ▶ 22nd March - Slough
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WHY CHOOSE ONE OF BIBBY CONSULTING & SUPPORT'S TRAINING COURSES?

Making sure your managers are well versed in the correct processes to deal with Employment Law is a constant challenge. Even if only a minor error is made when handling staffing issues, employees will very often lodge tribunals, which are an unnecessary drain on resources.

The key is to provide anyone managing people with concise and easy to follow training, which they can apply outside of the classroom.

Our suite of Employment Law Courses will develop the skills of those staff in your businesses who are involved in HR. Organising Employment Law training will not only demonstrate your commitment to your teams, but it will also provide you with confidence that they have the knowledge to make the right decisions, not leaving you exposed to Employment Tribunal Claims.

For more details on any of our training courses, please call our training department: 08453 100 600

DEPARTMENTS

06 EMPLOYMENT LAW

Our section provides coverage of up and coming legislative changes, re-capping on the new provisions enabling parents to take up to 26 weeks of additional paternity leave. We also take a look at some of the latest case law developments. In addition, we also report on the latest proceedings on The Equality Act and the two new important advances.

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This section creates awareness of Health & Safety legislation that may effect your business and keep staff up-to-date on current Health & Safety issues. We answer important questions on risk management and discuss the hazards of driving at work.

29 ENVIRONMENTAL

Our environmental update provides you with current news and information affecting your business. Inside this issue of **knowledgebase** we discuss the affects global warming has had on the recent weather and we define the real meaning of waste within your business.

FEATURE ARTICLES

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The Royal Wedding between Prince William and Kate Middleton has been set. But what rights do employees have to take time off?

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The Government has confirmed the Default Retirement Age is to be phased out this year.



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We look at the requirements needed to ensure that employers effectively manage the risks.

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We look at the requirements needed to ensure that employers effectively manage the risks.

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An in-depth discussion on recent scientific results of Global Warming.

COVER STORY

▶ Additional Paternity Leave

New provisions that will provide parents with more flexibility in childcare responsibilities have been confirmed to come into force April 2011.

NEWS UPDATE

Statutory Payments Increase

New statutory maternity, paternity and adoption pay rates, applicable from 6th April 2011, have recently been released. The current payments of £124.88 will increase from this date to £128.73 per week.

In addition, statutory sick pay will also be increased and this will rise on the same date to £81.60 per week from the previous £79.15 per week.

Finally, the lower earnings limit for primary class 1 National Insurance Contributions also rises on this date from £97 per week to £102 per week. Employers are also reminded about the planned National Insurance contribution increases occurring on this occasion for both employer and employee contributions.

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

PENSION REMINDER

Introduced from October 2012

Readers are reminded of the impending introduction of the National Pensions Saving Scheme which will be rolled out from October 2012.

Under the scheme, employers will become obliged to contribute to an employee's pension arrangements with up to 3% of their earnings. The employee will also be expected to contribute to the scheme, as will the Government.

The new rules will be staged over a four-year period with the 1st October 2012 being the roll out for larger companies (those with 50,000 plus employees), then 2013 for those with more than 500 employees, finishing then with companies with less than 500 employees in 2014.

Employers should assess their pension arrangements to ensure that they meet the minimum requirements.

ADDITIONAL PUBLIC HOLIDAY

Royal Wedding on Friday 29th April 2011

The Royal Wedding between Prince William and Kate Middleton has been confirmed to take place on Friday 29th April 2010. It has also been announced that this day will be celebrated as a public holiday.

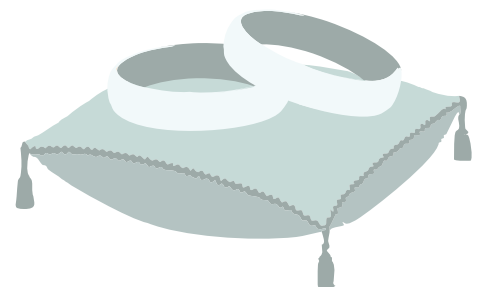
Despite a common misconception, readers are reminded that employees have no statutory right to time off from work on a bank or public holiday other than those who work in banks.

Generally, whilst many contracts of employment will allow employees an entitlement to the 8 regular statutory bank and public holidays each year, the situation on this further holiday may be left a little ambiguous as the contract is likely to be silent on this point.

If the contract of employment is silent and just outlines holiday entitlement as a set number of weeks, days or hours per year, then this extra public holiday can form part of an employee's existing entitlement.

Alternatively, if the terms and conditions specify an amount of holiday per year inclusive of bank holidays or specify it as a number of days per year plus up to 8 bank holidays, then again this can be built into their existing entitlement.

Conversely, if the contract specifies an amount of holiday entitlement per year, with words pertaining to there being bank holidays on top of this without specifying the number of these or any limit to the amount, then there is an argument for this to be an addition to the annual leave entitlement.





EQUALITY ACT UPDATE

EL Pay publishing abandoned and positive action introduced from April 2011

Readers will recall from our previous editions of *Knowledgebase* that the majority of the provisions of the Equality Act 2010 were introduced from 1st October 2010. However, in our latest edition, we explained that there were a number of provisions that did not come into force on 1st October 2010, along with the majority of the main provisions and instead, these were to be introduced later.

In order to keep you fully updated regarding the ongoing development of this large-scale legislative change, there have been two important advances on its implementation.

First, the provisions allowing for positive action have now been confirmed as effective from April 2011. When introduced, this concept will allow employers to actively recruit a candidate in preference to another because of their protected characteristic.

The employer must, however, reasonably believe that persons who share a protected characteristic either suffer a disadvantage connected to that characteristic, or that participation in an activity by persons who share a protected characteristic is disproportionately low in order to rely on these new provisions.

However, one key point about this provision in allowing for positive action is that it only permits the employer to choose between two “as qualified” candidates.

The Government have made clear that they are not intending to introduce “quotas” requiring certain proportions of staff members with particular protected characteristics nor is it their intention to allow employers to give someone a job just because they are a woman, disabled or from an ethnic minority for example.

The Government intends to introduce formal guidance on the provisions for positive action in early 2011.

Finally, the controversial provisions which were set to require employers to publish pay details, which were optional provisions for the Equality Act’s implementation, have been abandoned. Equalities Minister Lynne Featherstone has confirmed that compulsory pay publishing will not be imposed on employers and instead, employers are being encouraged to publish these voluntarily in the hope that this will be sufficient to combat the gender pay gap.

▶ CASE UPDATE

Discriminatory References

Bullimore v Potheary
Witham Weld Solicitors

This case makes interesting reading for any employer wishing to provide or inadvertently alert a new employer to previous employment tribunal proceedings or otherwise any “protected acts” undertaken by their ex-employee who they have been asked to act as a referee for.

The Employment Appeal Tribunal held in this case that not only would the subsequent employer be liable for any victimisation claim brought by the employee, but so could the referee, as post-employment victimisation by the new employer was a reasonably foreseeable consequence of providing such discriminatory references.

ADDITIONAL PATERNITY LEAVE

In recent editions of *Knowledgebase*, we have been keeping readers informed about the provisions covering Additional Paternity Leave which are to be introduced from April this year.

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

You will recall that we mentioned in the previous edition of *Knowledgebase* that the implementation of this new legislation had been left a little uncertain following the Coalition Government's indication of a review of the legislation. However, it has since been confirmed that there will be no such review and the previous provisions will come into force as planned from April 2011.

Our summer edition detailed the main provisions of this legislation, but we have recapped the main provisions in this current edition and also provided further information on the provisions of this impending legislation.

Essentially, the new provisions enable eligible parents to take up to 26 weeks of additional paternity leave where the child's mother returns to work early from her maternity leave. In most cases, but not all, it will usually be the child's father taking the additional leave. Readers should be aware that there are similar provisions in place for the paternity element of adoption leave though these are outside the scope of this article.

The concept behind the additional paternity leave provisions is that it will provide parents more choice and flexibility in childcare responsibilities.

Finally, before we look at the specific provisions of this additional leave, readers should be aware that this additional paternity leave is on top of an employee's existing entitlement to two weeks ordinary paternity leave.

Eligibility

In order to be eligible for additional paternity leave, employees must satisfy the following conditions:

- Be the child's biological father (or be the mother's husband, civil partner or be a partner in an enduring family relationship);
- Have or expect to have the main responsibility (other than the mother) for the child's upbringing;
- The child's mother must have an expected date of birth on or after 3rd April 2011;
- Have at least 26 weeks' continuous employment by the Qualifying Week (which is 15 weeks prior to the expected week of childbirth);
- Still be employed at the first week of the additional paternity leave period; and
- Be taking the time off to care for the child.

In addition to satisfying the eligibility criteria, the child's mother must also show that she is eligible for either Statutory Maternity Leave (SML), Statutory Maternity Pay (SMP) or Statutory Maternity Allowance and that she has taken at least 2 weeks of SML (or 4 weeks in certain circumstances) and that she has returned to work.

How it Works

Eligible employees will be entitled to take up to 26 weeks of additional paternity leave where the mother has returned to work early and prior to the expiry of their 1 year maternity leave period. A minimum of 2 weeks of additional paternity leave can be taken, although ultimately it is for the employee to choose the length of additional paternity leave within these parameters.



BRENDAN:
COMPLIANCE OFFICER

The time off must be in full weeks as opposed to odd days. The time off can be taken as early as 20 weeks after the birth but must have been taken within the first year of the child's life.

Employees will also be required to inform you of their intention to take additional paternity leave. This must be provided in writing at least 8 weeks before the start date, which is somewhat at odds with the current requirements to provide 15 weeks' notice of intention to take ordinary Paternity Leave.

One of the most contentious points about the new Regulations is how an employer can be certain that the request is genuine and that the mother has returned to work, particularly if she works for a different employer. However, the Regulations do require the following evidence of eligibility:

- Self-declaration confirming their eligibility; and
- A declaration from the mother confirming, amongst other things, the employee's eligibility;
- As a further safeguard, employers can ask for the child's birth certificate and the name and address of the mother's employer so that they can check she has returned to work.

Payments

During the additional paternity leave period, most employees will be entitled to additional statutory paternity pay providing they earn above the lower earnings limit (currently £97 per week, although this increases to £102 from 6th April 2011). The rate of additional statutory paternity pay is currently £124.88 per week (increasing to £128.73 on 6th April 2011) or 90% of the average weekly earnings if the employee's weekly wage is less than this amount.

It will be paid until the mother's statutory maternity pay or maternity allowance would have ceased, i.e. 39 weeks after the commencement of the maternity leave period. Consequently, some additional paternity leave may be unpaid.

As with statutory maternity pay, the good news is that employers can recover a percentage of additional statutory paternity pay.

Clients can obtain a factsheet from the Support Line which will provide further details on the new provisions. ▶



CASE UPDATES

RECENT CASE DEVELOPMENTS

In this edition of **Knowledgebase**, Support Line Team Leader, Hazel Beeston, updates us on recent case law.



HAZEL:
SUPPORT LINE

EL WATCH OUT FOR LINKING EMPLOYMENT

Hussain v Acorn Independent College Ltd

There may be occasions when one of your employees leaves your employment and returns at a later date and you find yourself wondering whether the two separate periods of employment will be linked together as continuous employment. This will need to be known, for example, when calculating payments based on length of service, such as notice pay, redundancy pay or when assessing if the employee has one year's continuous service to bring an unfair dismissal claim.

The answer to this dilemma comes from the provisions in section 212 of the Employment Rights Act 1996. This allows for three eventualities which would not break continuity of employment.

These include, first, periods of incapacity for work (in consequence to sickness or injury), time when the employee is absent from work on account of a temporary cessation of work and finally time when an employee is absent from work in circumstances where, by arrangement or custom, he is regarded as continuing in employment for that period.

These provisions were explored in this latest Employment Appeal Tribunal (EAT) decision, in respect of a college teacher who finished working at the end of the summer term, took the customary summer vacation before returning at the beginning of the next academic year. When he was then dismissed after his return, he sought to argue that his work prior to the summer break was included within his continuous service.

The EAT held that it was, rendering the vacation an absence from work on account of a temporary cessation of work. The employee, therefore, had sufficient continuity of employment for his unfair dismissal proceedings.

EFFECTIVE DATE OF TERMINATION *Gisada Syf v Barratt*

The Supreme Court have upheld the previous decision of the Court of Appeal in this latest case which required a precise calculation of the effective date of termination, holding that the employee's dismissal only took effect once she had read the letter of dismissal.

Here, the employer relied upon the postal services to advise the employee that she had been dismissed from her employment. However, the employee was on holiday when the letter was delivered and she therefore did not open the letter for a number of days until after she had returned.

The Supreme Court held that the dismissal could only take effect once the employee had read the letter. This makes it more important than ever for employers to ensure that they communicate the outcome to any formal process by an instantaneous means available and only rely upon the postal services for providing written confirmation of the outcome.

TOO COLD TO BLOW THE WHISTLE? *Easwaran v St George's University of London*

With the December temperatures falling below -10°C on occasions we have not been surprised that adverse weather conditions have found their way into Employment Law realms as this case demonstrates.

Employees complaining about low working temperatures may be placing their employers in a compromising situation not just in respect of Health & Safety guidelines but also if the employees are making qualifying disclosures (more commonly known as whistle blowing).

An employee complaining that cold working temperatures pose a Health & Safety risk may be making a qualifying protected disclosure. However, complaining that the cold weather could cause pneumonia, as was the situation in this latest case, will fall short of a qualifying disclosure because pneumonia is caused virally as opposed to being caused by adverse weather.

There must be a direct link between adverse weather and a Health & Safety risk for there to be a protected disclosure, as was confirmed by this latest case. Had the employee complained instead about the risk of frost bite or something similar from exposure to cold weather, he may well have been deemed to have identified a risk which is causally related to amount to a protected disclosure.

It is important for employers to be fully aware of the extent that their staff complaining about the cold weather can inadvertently be making a protected disclosure; as such individuals are then afforded the full protection of employment legislation.

Legislation prescribes the minimum standards for working temperatures and it is important for employers to ensure that they are fully aware of their obligations in this regard throughout the cold spell.

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DISCIPLINARY WITNESSES

EL

TDG Chemical Ltd v Benton

The Employment Appeal Tribunal (EAT) has reaffirmed the provisions contained within the current ACAS code of practice on disciplinary and grievance in respect of witnesses being available at formal hearings.

Paragraph 12 of the ACAS code of practice reads as follows in respect of witnesses in disciplinary proceedings:

"... The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses."

"They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this."

In this latest case, the employee's trade union representative asked the disciplining officer if he would be able to call the Company's witnesses so that he could ask them some questions, to which the disciplining officer's response was that, *"It would not be the intention of the company to let that happen."*

Given that the factual evidence was in dispute and essentially the case turned upon one person's word against another's, the EAT held that it was procedurally unfair and found in favour of the employee on his unfair dismissal complaint.

This acts as a reminder to employers to give consideration to the attendance of witnesses at disciplinary hearings, particularly where there is conflict or ambiguity as to the facts. However, employers should speak with Support Line to discuss individual cases before proceeding to make witnesses available.

EL COMPANY INCORPORATION FROM SOLE TRADER TO A LTD CO

Marshall v Mrs F Hickling T/A Imperial Day Nursery

Are you planning to become an incorporated business, taking the plunge from being a sole trader or partnership to a limited Company? If so, this latest case from the Employment Appeal Tribunal (EAT) acts as a strong reminder to you that this transaction is one which is likely to be caught by the provisions of the Transfer of Undertakings (Protection of Employment) Regulation 2006 ("TUPE").

The result in this latest case was that a full and proper consultation process, with elected employee representatives, was needed. The EAT held that a letter after the event to advise the employees of the situation was not enough. A failure to consult appropriately will expose employers to potential claims from each employee for the 13 week protective award.

EL TUPE: TEMPORARY CESSATION TO ACTIVITIES

Wood v Caledon Social Club Ltd

The Employment Appeal Tribunal (EAT) has offered employers some much needed guidance on the extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") will apply even where there is a temporary cessation to the activities concerned.

Here, owing to a delay in obtaining an alcohol licence, there was a temporary cessation of activities between the outgoing owner and the incoming one for around 3 months, but this did not negate TUPE applying, held the EAT.

Whilst there is still no precise guidance in this area, employers intending to cease activities temporarily for less than 3 months are likely to find that this will still amount to a TUPE transfer in light of this latest decision.

EL CONSULTING ON SELECTION CRITERIA

Pinewood repro Ltd T/A County Print v Page

Employers should be prepared to justify their scoring on redundancy selection criteria to the affected staff members, held the Employment Appeal Tribunal (EAT) in this recent case decision.

Historically, the Courts and Tribunals have been reluctant to impose a too onerous task on employers insofar as their selection process is concerned, but this latest EAT decision has switched this and has made it clear that employers need to be able to justify their scoring to the employee and it was not enough, as this case has shown, for the employer to simply comment that they believe the scores to be reasonable and appropriate.

It was viewed that they should have gone further to explain why the employee had received the specific scores that he had and why he had not scored any higher.

NEWS UPDATE

Compensation Limits Increase

The 1st February 2011 will see the increase to a number of compensation limits, as routinely occurs on an annual basis. In particular, the following revised limits will apply from this date:

The limit to a week's pay for the unfair dismissal basic award and redundancy payment calculations (plus a few other tribunal awards) – increases from £380 per week to £400 per week.

The limit on the unfair dismissal compensatory award increases from £65,300 to £68,400.

Finally, statutory guarantee pay for those on lay off increases from £21.20 per day for up to 5 workless days to £22.20 per day.

NEWS UPDATE

Flexible Working Extension Confirmed

The Coalition Government have confirmed that they will, as previously pledged, extend flexible working to those employees who have children under the age of 18.

Presently, only those who have children under the age of 16 are eligible to make a request, along with adult carers, or those with children aged up to 18 if the child is disabled.

However, under the latest announcement, this right will be extended to those with children under the age of 18 from 6th April 2011 and the Government will also be publishing details in January 2011 on their proposals to extend flexible working to all employees, with this further extension expected as soon as April 2012.

We will keep you updated in future editions of these proposed further developments, but employers should plan now for April's extension.



PROPOSAL TO CHARGE FOR ET PROCEEDINGS

Towards the end of 2010 we have seen recently appointed but now ex-Employment Tsar, Lord Young propose to charge claimants to bring Employment Tribunal proceedings.

It is thought that the intention behind this proposal is to reduce the number of spurious and repeat claims by employees, thereby reducing the burden on businesses and Employment Tribunals.

These proposals have been met by consternation both ways, with a strong opposition coming from trade unions.

For those readers who are able to remember it, you will recall that in 2001 the Labour Government proposed to introduce a similar charge of £100 to bring proceedings, but this never materialised. We will have to wait to hear further details on this proposal.



IS THE UNFAIR DISMISSAL PROPOSAL FAIR?

Proposals have recently been made to increase the qualifying criteria to bring unfair dismissal proceedings from one year's continuous service to two years.

Historically, prior to the latest changes, the qualifying criteria was set to 2 years' continuous service, but this was reduced by the Labour Government in June 1999 where it was reduced to the current 1 year's continuous service.

If the proposals are implemented, it will allow greater flexibility for employers to assess an employee's absence, conduct, performance and overall suitability for a role, allowing a dismissal within 2 years' service with little difficulty.

We will have to await further updates on this proposal.



AGENCY WORKERS REGULATIONS

A Reminder

Employers are again reminded that the Agency Workers Regulations are on the horizon and are fast approaching. The Coalition Government have confirmed that they will bring the regulations into force, as planned under the previous Labour Government, on 1st October 2011.

Under this legislation, agency workers will become eligible to equal treatment compared with their permanent counterparts. There will be different rights effective from different points in time, with some being available from day one and others being available only after a qualifying period.

Employers should contact the Support Line if they need to learn more about these impending new regulations.



EL DEFAULT RETIREMENT AGE SCRAPPED

How will it affect your business?

As we have communicated in previous editions, the Coalition Government previously arranged for the Department of Business, Innovation and Skills (BIS) with the assistance of the Department for Work and Pensions (DWP), to open up consultation into scrapping the present default retirement age of 65, and the corresponding retirement procedures. The outcome of this consultation has now been released.

It has been confirmed that the default retirement age of 65 will be phased out from April 2011 with the net result that retirements under the present retirement procedures will no longer be possible from 1st October 2011.

In addition, the current retirement notification process will also be repealed. There will, however, be transitional arrangements in place that still allow retirement notifications to be issued before 6th April 2011 for retirements prior to 1st October 2011. Whilst the 6th April 2011 is now technically the last date allowed for serving retirement notifications, as a minimum of 6 months advance written notice is required under the current retirement procedures, employers should provide notification by no later than 31st March 2011.

The abolition of the default retirement age does not prevent employers continuing to set their own retirement ages but it will only be legal to do so if a set retirement age can be objectively justified.

This leaves some hope for employers to lawfully retire people from their employment. However, case law suggests that being able to successfully demonstrate that an employer is justified in setting a specific retirement age may prove difficult. The exact mechanism for using an objectively justified retirement age still remains unclear though, as BIS have confirmed that “retirement” as a fair reason for dismissal will be removed from October 2011.

With this in mind, it is difficult to see how any of the remaining 5 potentially fair reasons for dismissal (namely capability, conduct, redundancy, illegality, and some other substantial reason) will easily allow for a fair termination of employment due to retirement.

The BIS consultation recognises that employers will need support in managing without a default retirement age and to this end, they have asked that ACAS produce some statutory guidance. This has been produced and has been released at the same time as the consultation outcome being given.

Further guidance on the specific points arising from the latest consultation can be obtained by contacting the Support Line.

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SENSIBLE RISK

FREQUENTLY ASKED QUESTIONS

Sensible Risk Management enables businesses to identify events that could have a negative effect on the business and allows them to take timely action to either eliminate or minimise those risks. Doing so clearly gives those businesses an advantage over competitors who just leave things to chance.

By Pete Harrower, Health & Safety Consultant

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Most managers understand the logic of risk management but often put off implementing formal risk management procedures because they believe the work involved is overly complicated. Complex operations clearly require more complex control strategies but for many activities it is a case of identify what hazards are (or could be) present, assess the risk, if reasonably practicable eliminate the risk, if not possible to eliminate the risk then identify and implement appropriate control measures and finally, monitor activities to see the controls are followed and are actually effective.

Hazard? Risk? – Aren't they the same thing?

The remainder of this article gives basic answers to a number of the most frequently asked questions in relation to risk management. If you require more detailed explanations you should contact either your local Bibby consultant or the Bibby Consulting & Support Health and Safety Helpline (08453 100 999).

What is risk assessment?

A risk assessment is nothing more than a careful examination of what, in your work, could cause harm to people, so that you can weigh up whether you have taken enough precautions or need to do more to prevent harm.

Isn't risk assessment nonsense?

Everyone is a grown-up in my firm and can look after themselves. All workers are entitled to work in environments where risks to their health and safety are properly controlled. Accidents and ill health can ruin lives and harm your business too if output is lost, equipment is damaged,

insurance costs increase or you have to go to court. Doing a risk assessment is key to preventing accidents and ill-health. Under Health & Safety law, the primary responsibility for this is down to employers. However, workers also have a duty to take care of themselves and others who may be affected by their actions. Legislation, therefore, requires employers and workers to co-operate.

Are most risk assessments necessary?

No. When done properly, it should identify the measures that are needed to reduce the risk to as low as “reasonably practicable” and no further. It is important to remember that risk assessment can show that a process is safe enough with the measures you already have in place, and no further action needs to be taken.

Why is risk assessment important?

Managing Healthy & Safety risks puts you in control since it leaves your business less open to chance. An assessment helps prevent accidents and ill health to you, your workers and members of the public. Accidents and ill health can ruin lives and harm your business too if output is lost, equipment is damaged, insurance costs increase or you have to go to court. You are legally required to assess the risks in your workplace so that you can put in place a plan to control the risks.

Do I need to engage consultants to do my risk assessment?

In most cases, this is not necessary. Risk assessment is a straightforward process that most people can do, given a little time and effort. You will probably need help if you have particularly hazardous or complex processes, but for the

MANAGEMENT



majority of organisations you or a competent member of staff should be able to complete a satisfactory assessment. The HSE's "Five Steps to Risk Assessment" leaflet can help. Just use your common sense: you don't necessarily need an electrician to re-wire a plug, but most people would need one to re-wire their house. Its the same with risk assessment.

When do I need to do a risk assessment?

You should carry out an assessment before you do the work that contains the hazard, and review it as necessary.

How do I perform a risk assessment?

Read the HSE publication "5 Steps to Risk Assessment". This advises you on how to carry out a risk assessment for occupational health and safety. This is not the only way to do a risk assessment, there are other methods that work well, particularly for more complex risks and circumstances. However, this method is the most straightforward for most organisations. You can also seek advice and guidance from your Bibby Health & Safety consultant.

Is the HSE's 5 Steps to Risk Assessment the only acceptable method?

No. "5 Steps to Risk Assessment" provides a straightforward method, but it is certainly not the only acceptable way. A number of alternatives exist. However, most follow the same format as that in "5 Steps to Risk Assessment" in as much as they seek to:

- Identify the hazards;
- Decide who might be harmed and how;
- Evaluate the risks and decide on precautions;
- Record your findings and implement them;
- Review your risk assessment.

Where methods tend to differ is at the "evaluate the risks" stage. You can compare your controls with good practice to assess whether more needs to be done. Another common method involves plotting the likelihood of harm occurring and potential

severity of harm against each other in a matrix, which can help to prioritise which risks should be tackled first. It is suitable for many assessments but particularly for more complex situations. However, it does require a degree of expertise and experience to judge the likelihood of harm accurately. Getting this wrong can result in applying unnecessary controls or failing to apply important ones.

Who do I involve in a risk assessment?

Make sure that you involve employees and/or safety representatives in carrying out the assessment. Remember to speak to workers who may have particular requirements e.g. new and young workers, new or expectant mothers and people with disabilities.

What things must I include in a risk assessment record?

In your risk assessment you need to be able to show that:

- A proper check of the hazards was made;
- You asked who might be affected;
- You dealt with all the obvious significant hazards, taking into account the number of people who could be involved;
- The precautions are reasonable and the remaining risk is low; and your staff or their representatives were involved in the process.

Do I have to record the findings of the risk assessment?

Health & Safety law requires that you keep a record of the significant findings of your assessment if you employ five or more people. It makes sense to keep a record of the assessment so that when you come to review it, you can check back to see if anything has changed. It is also useful to keep a record so that you can share the findings with your staff. Finally, it proves that you have carried out the process if an inspector asks about it.

Is there a specific form/format that I have to use to record a risk assessment?

No, you can record the assessment in any

convenient way. However, there is a blank template with the "5 Steps to Risk Assessment" leaflet that you can use, if you wish. Bibby Consulting & Support can also provide a blank template you can use.

When should I review my risk assessments?

Few workplaces stay the same. Sooner or later, you will bring in new equipment, substances and procedures and that could lead to new hazards or even the elimination of existing hazards. Therefore, you need to review where you are every year or so, to make sure you are still improving, or at least not sliding back. During the year, if there is a significant change, don't wait: check your risk assessment and, where necessary, amend it. Ideally you should think about the risk assessment when you are planning your change - that way you leave yourself more flexibility.

What is a hazard?

A hazard is anything with the potential to cause harm, e.g. working at heights on scaffolding.

What is risk?

A risk is the likelihood that a hazard will cause a specified harm to someone or something e.g. if there are no guard rails on the scaffolding it is likely that a construction worker will fall.

What does "reasonably practicable" mean?

This means that you have to take action to control the Health & Safety risks in your workplace unless it can be shown that the cost (in terms of time and effort as well as money) of doing so is "grossly disproportionate" to the reduction in the risk.

Is society becoming too risk averse?

A safety professional approach is to seek a balance between the unachievable aim of absolute safety and the kind of poor management of risks that damages lives and the economy. In a nutshell: risk management, not risk elimination. ▶



DRIVING AT WORK

HS

Eliminating the Hazards

People who drive for work expose themselves to the risks of road use more often. As Health & Safety law applies to on-the-road work activities, the risks associated with driving must be effectively managed as part of a Health & Safety management system. As with all risks, consideration should be given to eliminating the hazard, where possible. Promoting sound Health & Safety driving practices and a good safety culture at work may well spill over into private driving, which could reduce the likelihood of accidents further.

Road accidents can cause a great deal of disruption to a business through lost time, work-related ill health and even death. Clearly employers have a duty to comply with Health & Safety legislation (e.g. the Health and Safety at Work, etc. Act 1974 and the Management of Health and Safety at Work Regulations 1999), in addition to road traffic law to ensure that employees drive safely whilst at work, through providing suitable and sufficient risk assessment; driver competency and training; sufficiently fit and healthy drivers; ensuring that the vehicle being used is safe and fit for purpose. It is vital that employers take steps to reduce the risks associated with driving at work.

According to the Health & Safety Executive, it is estimated that up to a third of all road traffic accidents involve somebody who is at work at the time. This may account for over 20 fatalities and 250 serious injuries every week in the UK.

What controls are required?

The following controls should be considered:

- Restrict driving where possible - encourage travel by public transport or use of telephone conferences, where necessary, to avoid the need for travel.
- Prohibit the use of mobile phones whilst driving.
- Prohibit poor driving techniques, such as speeding.
- Apply limits to driving time without a break.
- Make sure there are realistic time-schedules for allocated work.
- Ensure suitable training is in place (e.g. in defensive driving techniques, symptoms of fatigue, what to do in the event of a breakdown, etc.).
- Ensure new drivers are adequately trained and supervised until they have adequate experience.
- Ensure a planned preventative maintenance schedule is in place for company vehicles.
- Review documentary evidence from users of private vehicles regarding MOT, servicing, insurance for business driving, etc.
- Make sure there is a breakdown recovery plan.

Some controls may already be in place. Determine whether the existing controls are adequate or whether further controls are required.

Employers need to ensure that they have competent and fit drivers, well maintained vehicles, safe systems for driving (where consideration is given to the effects of time, weather, fatigue etc.) and procedures for monitoring driving activity.

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



WORKER SCARRED FOR LIFE

HS

Welder suffers serious burns from working at a plant in Cumbria

A welder suffered serious burns from a dust explosion at a chemicals plant in Cumbria.

David Lightfoot, 58, was working as a sub-contractor at Indorama Polymers (Workington) Ltd's facility in Siddick, when the incident took place on 29 October 2008. He was welding a silo that contained 380 tonnes of the explosive powder terephthalic acid, which the company was selling as a raw material for use in the manufacturing of plastic drinks bottles.

The powder had solidified in the silo and the company had created a hole in the side of the container so the compound could be broken up with a metal rod. Mr Lightfoot was welding a metal component around the 2.5-inch diameter hole, which had been sealed with a temporary bung. He had been welding for around 20 seconds when he was suddenly engulfed in a fireball.

He and a colleague jumped 10 feet to the ground to escape the flames. He suffered severe burns to his head, arms and hands, and he is still receiving treatment for his facial scarring. His colleague escaped with minor injuries.

The sub-contractor and the responsible person working at the chemicals plant in Cumbria should have carried out a far more robust risk assessment PRIOR to allowing any contractors to carry out welding work especially in the knowledge that the contents of the silo, being explosive powder, were likely to have a potential explosive effect.

Bibby Consulting & Support suggest **ALL** employers review hazardous work or activities in their workplace and ensure suitable risk assessments and safe systems of work are formally drawn up and fully communicated to **ALL** relevant persons .

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FIRE WITHIN CARE HOMES

HS

What are the Dangers?

The care and nursing home sector has been identified by the FIA (Fire Industry Association) as a particular focus. The responsible person's legal obligations under the Fire Safety Order, the importance of robust risk assessments and the safe use of extinguishers by care home staff are areas which require significant improvement.

In addition, designers of such properties need to be aware of how their buildings are likely to be used, taking into account, at the design stage, not only the fire safety implications but also factors such as disabled access and the requirements under the Disabilities Discrimination Act. A national body for the sector has stated that planning for fire in a care home has to be more realistic.

David Vallender of the National Association for Safety and Health in Care Services (NASHICS) said that those responsible for fire safety had experienced problems in interpreting rules set out by the Fire Safety Order (2005).

He commented that infirm patients or residents with a limited capacity for understanding evacuation tests meant plans needed to be more 'innovative'. The use of role play for carers to understand the worst-case scenarios associated with frail patients is also recommended, despite the two and a half minute evacuation time recommended guidance under the FSO being potentially unrealistic.



HS POTENTIAL DANGERS OF CLEARING SNOW AND ICE

Some useful tips

Prevent slips

Pay extra attention to clear snow and ice from steps and steep pathways - you might need to use more salt on these areas.

If you clear snow and ice yourself, be careful - do not make the pathways more dangerous by causing them to refreeze. But do not be put off clearing paths because you are afraid someone will get injured.

Remember, people walking on snow and ice also have responsibility to be careful themselves. Follow the advice below to make sure you clear the pathway safely and effectively.

Clear the snow or ice early in the day

It is easier to move fresh, loose snow rather than hard snow that has compacted from people walking on it. So, if possible, it is recommended that you start removing the snow and ice in the morning. Perhaps you can introduce a procedure whereby certain staff arrive early and they could start to clear the walkways around the office, or warehouse areas. If you remove the top layer of snow in the morning, any sunshine during the day will help melt any ice beneath. You can then cover the path with salt before nightfall to stop it refreezing overnight.

Use salt or sand - not water

If you use water to melt the snow, it may refreeze and turn to black ice. Black ice increases the risk of injuries as it is invisible and very slippery. You can prevent black ice by spreading some salt on the area you have cleared. You can use ordinary table or dishwasher salt - a tablespoon for each square metre you clear should work. Try not to use the salt found in salting bins - this will be needed to keep the roads clear.

Be careful not to spread salt on plants or grass as it may cause them damage. If you do not have sufficient salt, you can also use sand or ash. These are not as effective as salt, but will provide good grip under foot.

Take care where you move the snow

When you are shovelling snow, take care where you put it so it does not cause obstruction on paths or drains. Make sure you create a pathway through the middle of the area to be cleared first, so you have a clear surface to walk on. Then shovel the snow from the centre of the path to the sides.

LEGISLATION UPDATES

Equality Act 2010

The Equality Act 2010 came into force on 1st October 2010. This Act intends to provide a new cross-cutting legislative framework to protect the rights of individuals and advance equality of opportunity for all.

Control of Artificial Optical Radiation at Work Regulations

This new regulation came into force on 27th April 2010 and will ensure that employers using hazardous sources of light review their approach to take proper account of the risks.

Tower cranes

This new regulation came into force on 6th April 2010. The Regulations require certain information about conventional tower cranes used on construction sites to be notified to the HSE.

Corporate Manslaughter case adjourned

The case against Cotswold Geotechnical Holdings and its MD, Peter Eaton, was adjourned. This will be the first prosecution to be heard in the UK under the Corporate Manslaughter and Corporate Homicide Act 2007. It is due to begin towards the end of January 2011.

DEVELOPING PROPERTY ?

HS

Legal responsibilities for Health & Safety

Anyone developing property and having construction or building work carried out has legal duties as a 'client' under the Construction (Design and Management) Regulations 2007 (CDM 2007), unless they are a domestic client.

If the construction work lasts longer than 30 days or involves more than 500 person days of work, then the project has further duties such as notifying the HSE of the work, appointing a CDM co-ordinator, appointing a principal contractor, making sure a Health & Safety plan is in place and keeping a Health & Safety file for any property.

If you are developing a property then:

- Appoint the right people, those who are competent in design and building and have sufficient resources.
- Allow enough time for the design, planning and construction work to be undertaken properly.
- Provide information to the team on how the site will be used and existing structures or hazards, such as asbestos.
- Make sure that you and your team communicate and co-operate. During the design stage, it is particularly important that you and your designers and contractors talk early on about issues affecting how the structure will be built, used and maintained.
- Make sure that the contractors have been provided with adequate welfare facilities for construction workers (a source of drinking water; enough toilets; adequate washing facilities with warm water; storage for clothing; and somewhere under cover for workers to rest and eat).

Examples of what can go wrong

Asbestos: A developer purchased a block of flats for refurbishment into luxury apartments. The building, dating from the 1960s, contained asbestos in all the bathroom ceilings and in the lift shaft. He took on the role of principal contractor and recruited workers to

make up a demolition crew for the "soft-strip" of the building. They thought this included the bathroom walls and false ceilings. The whole building became heavily contaminated with asbestos dust.

The clean up and disposal of the asbestos cost the developer £170,000. He had not planned for any means of escape in case of fire during refurbishment; he had to pay for scaffolding around the building to provide a secondary means of escape costing £100,000 and was later prosecuted for failing to prevent the spread of asbestos fibres and inadequate fire precautions. He was fined £150,000 plus £34,000 costs.

Falls from height: A couple bought a former bakery to convert into a bistro business at a projected cost of £77,000. They appointed a building contractor recommended by their architect who and gave him £40,000 up front. The contractor failed to plan the work to make sure the workplace was safe. Three weeks into a 12-week job, one of the contractor's workers fell through an unprotected skylight opening and was killed.

The couple fired the contractor and their project was seriously delayed, costing them valuable time and money as they were unable to trade during this period. They had to appoint another firm to complete the job. The contractor was sent to prison for manslaughter.

Public Safety: A property developer had bought a row of houses and was refurbishing them himself. He was working an excavator when the bucket unintentionally hit a wall. The wall collapsed onto his neighbour, who had just stepped into the alleyway between the houses, and killed him. He knew the man that died. He could not face doing further work on the properties.

He could have appointed a competent plant operator and a banksman for the day. He could also have put-up a perimeter fence, which would have cost him about £200 including delivery, collection and assembly.

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

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



HEALTH & SAFETY TRAINING SOLUTIONS

New dates
added for
2011



YOU ARE INVITED TO ATTEND THE FOLLOWING OPEN TRAINING DAYS:

- ▶ 9th February - Fire Awareness (*½ day*)
- ▶ IOSH - every Thursday for 4 weeks (*1 day*)
Starting 17th February until 10th March
- ▶ 16th March - General Health & Safety Awareness (*½ day*)

COURSE DETAILS:

Venue:
Bibby Consulting & Support Head Office,
Brunswick Court, Brunswick Street,
Newcastle under Lyme, Staffordshire, ST5 1HH

Course Duration:
1 day courses are run from 10:00am-4:00pm
Tea, coffee and a buffet lunch are included.
½ day courses are run 10:00am-1:00pm
Tea, coffee and light refreshments are
included.

**TO BOOK A PLACE, OR FOR FURTHER
DETAILS ON THE FORTHCOMING
COURSES, PLEASE EMAIL:
TRAINING@BIBBYCAS.COM**

OUR TRAINING COURSES:

- Are delivered by experienced and professional trainers.
- Consist of direct content and delivery; straightforward and focused on the key issues.
- Have a relaxed and interactive forum, allowing you to share and build on your experiences with other delegates.
- Are supported by clear, easy to follow guidance material.

WHY CHOOSE ONE OF BIBBY CONSULTING & SUPPORT'S TRAINING COURSES?

Section 2 of the Health and Safety at Work Act 1974, requires that employers must provide information, instruction and training for their staff relating to their safety and health at work. Whilst you may be considering training because you are aware of your legal obligations, there are also commercial benefits which you may want to consider too. According to ROSPA (Royal Society for the Prevention of Accidents) there were over 36 million working days lost due to ill health and work-related accidents in 2009, but ensuring that your business doesn't become another statistic is actually easier than you think.

By taking some proactive, yet simple steps to train your staff, you can easily improve the Health & Safety culture in your business and protect yourself from personal injury claims and even criminal prosecutions.

For more details on any of our training courses, please call our training department: 08453 100 600



A POSITIVE SAFETY CULTURE AND SAFE METHODS OF WORK

HS

Firm fined for not acknowledging workers concerns

A factory worker received serious injuries while cleaning an unguarded machine at a food-processing factory in Telford. A general operative was cleaning a conveyor-fed potato-processing machine. This was the first time that he had worked on the machine and he was shown how to clean it by a supervisor. He was instructed to wipe the conveyor belt with a scouring pad while the machine was in operation.

As he carried out this process his hand came into contact with an in-running nip and it was drawn into the machine. He was unable to free himself and cried out for help. One of his colleagues isolated the machine and then reversed the conveyor belt to free his hand. The operative was rushed to hospital and treated for lacerations, friction burns and tendon damage to his left forearm and elbow. The injuries were so severe that he has lost feeling in part of his arm and was unable to return to work for three months.

Workers at the factory had previously spotted the potential dangers of this method of work and reported their concerns to management, but no action was taken to rectify the situation.

The firm was fined £10,000 and ordered to pay £5,000 towards the HSEs costs. The HSE inspector said: "Adequate safeguards on moving machinery and safe systems of working should always be in place. Employees had themselves spotted fundamental flaws in cleaning procedures and raised their concerns that insufficient safeguards existed for their protection, but senior management did not heed those warnings."

"This incident could have been avoided if the company had established a safe way of tackling the job and ensuring that competent persons are regularly assessing and minimising the associated risks."

All Health & Safety policies include a statement by senior management which conveys the intent among other things to provide adequate control of the Health & Safety risks arising from our work activities; to consult with our employees on matters affecting their Health & Safety; to provide and maintain safe plant and equipment.

It will also contain employee duties which can be summarised as: Employees shall, co-operate with supervisors and managers on Health & Safety matters; not interfere with anything provided to safeguard their Health

& Safety; take reasonable care of their own Health & Safety; and report all Health & Safety concerns to an appropriate person. Managers need to be seen to lead by example when it comes to Health & Safety. Good managers appear regularly on the 'shop floor', talk about Health & Safety and visibly demonstrate their commitment by their actions – such as stopping production to resolve issues.

It is important that management is perceived as sincerely committed to safety. If not, employees will generally assume that they are expected to put commercial interests first, and safety initiatives or programmes will be undermined by cynicism.

Management should listen actively to what they are being told by employees and take what they hear seriously.

Active employee participation in safety is important, to build ownership of safety at all levels and exploit the unique knowledge that employees have of their own work. This can include active involvement in workshops, risk assessments, plant design etc. In companies with a good culture, the story from employees and management is consistent, and safety is seen as a joint exercise.

HS

TRAINING FOR THE FUTURE

Ensuring that your staff receive regular Health & Safety Training

Training our employees is a legal requirement. At Bibby Consulting & Support we offer a wide range of training courses to organisations who want a competitive edge and to enable them to fulfil their legal obligations. The website link is www.bibbycas.com, where full details of our training courses can be found.

All areas of training for industry and commerce can be met within our organisation. Our view of training courses and the delivery methods and content are regularly reviewed. Training needs to be informative and accurate but it also needs to be a memory that is retained and used for future wellbeing.

Training also needs to be relevant, fun and an enjoyable experience. At Bibby Consulting & Support we are looking to use more interactive training techniques, where possible, to involve the delegates; and allow them to learn and develop skills by participation. These techniques may involve storytelling and sharing of personal experiences. The use of films and role play can also be used in the training, but with a serious focus on accident causation. The development of e: learning training for suitable topics is also another area to be explored.

Training can be made bespoke to our clients' requirements and can be conducted at our training facilities or on our clients' own premises.

MORE ON THE WEB

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

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HS

ELECTRIC GATES- A POTENTIAL CRUSH KILLER?

Safety Alert

There have recently been two separate fatal accidents involving a child being trapped between the gate and gatepost of an automatic vehicle access gate.

The primary cause of the accidents were that the child's presence near to the gate was not detected and the gate's closing force was greater than that specified in BS EN 12453:2001 (Industrial, commercial and garage doors and gates- Safety in use of power operated doors – Requirements).

In order to prevent a reoccurrence of such accidents, force limitation or sensitive protective equipment should be fitted to the gates to ensure that the forces associated with the gate's movement do not exceed those specified in the Standard. These forces will need to be tested using the appropriate test equipment on installation and as part of maintenance activities.

Sensors should be fitted to the gates to ensure that they stop on detecting an obstruction. If there are areas where someone could be trapped or crushed, then these areas should be protected. The use of pressure sensitive strips on the gate's closing edge should also be considered as part of the risk assessment for the gate's operation.

In the event of an accident occurring, quick release of the injured person is paramount. Often quick release is conducted by the use of a release key and lever to disconnect the drive from the gate, allowing manual operation. The release key and instructions for their use should be made available to authorised users of the gate.



SAFETY PROMOTION AND SAFETY CONCEPT SCHEMES

The importance of safety within the workplace

The promotion of good safety attitudes and safety awareness is an important and essential part of any safety programme, providing an opportunity for the total workforce to become involved in some aspect of safety in the workplace.

Accidents are nearly always caused by people and happen to people. There are few accidents that cannot be traced to an act or omission on somebody's part: somewhere down the line, people have been careless or wilfully negligent. It might be argued that errors resulting in accidents are sometimes made because of ignorance.

Most companies seek to promote safety generally and safe working practices in particular, with varying degrees of success. Safety promotions used range from gimmicky ideas to carefully thought-out and often expensive programmes. In some cases, the gimmick works well and is extremely effective (Remember clunk click every trip), while the carefully planned promotion fails for no apparent reason. Without conducting a detailed examination of any promotion it is not usually possible to show the true causes of its success or failure.

What is certain though is that each promotional campaign must have a clearly defined objective and will require very careful thought and consideration if the maximum benefit is to be obtained.

Ideas

There are a great many ideas that can be used to promote safety in the workplace, a short selection follows:

- Safety Week - but it should be mounted as part of a continuing campaign and not in isolation.
- Safety quizzes - done as questionnaires designed to encourage the individual to seek out information or as inter-department competitions with a senior manager or director as quiz master.
- Poster competitions - open to families as well and organised by different age groups.
- Safety award schemes - to include internal, external and national awards.
- Photographic displays - of good and bad practice, results of accidents etc.
- Exhibitions - of safety equipment that has prevented or minimised injury, e.g. shoes that have saved feet, glasses that have saved eyes.
- Wage packet slips - containing a safety slogan or safety message from the Managing Director.
- Short safety talks, film shows, etc. - using a theme of the month.
- Are details of current accidents (injury/non-injury) and safety performance published regularly?
- Does a planned safety promotion campaign exist - are themes selected and are all workers involved?
- Are safety contests, competitions, quizzes and special events held and rewarded with prizes?
- Is there a monthly/quarterly work's safety publication; is space allocated in the house journal; is safety information communicated in some printed form to all staff?
- Are closed circuit TV, films, slides, models, mobile displays, magnetic boards or other audio/visual media used and integrated into the safety programme?
- Does an organisation exist to measure the results of the safety promotion programme; measured in terms of the increased use of protective clothing, better housekeeping, safety committee effectiveness etc?
- Is the entry to external safety award schemes actively and effectively promoted throughout all levels within the company?

These are just a few ideas, the inventive mind will think of many more. It must be appreciated though that a safety promotion is not a panacea for all safety problems. It is only one part of the overall safety programme and must be continuous if it is to be successful. Safety promotions that involve people are likely to be more successful than wholly static promotions that become part of the background and which eventually cease to have any impact or meaning.

Further ideas

- Is there an appreciation of the value of general safety promotion, posters, banners, leaflets, signs, wage packet slips?
- Do sufficient, properly designed, carefully sited bulletin boards exist in each work area?
- Are professionally produced safety posters on specific themes selected, posted and regularly rotated?

It is not implied that any or all of the above must in fact be put into practice; that is a matter for the company to decide upon. But have such ideas been discussed by management? There is little to lose by so doing. ▶

HS

SELF-STORAGE WAREHOUSE DESTROYED IN THREE-DAY FIRE

The need for suitable and robust fire risk assessments

A fire which burned for almost three days has virtually destroyed a large self-storage facility in Burscough, Lancashire.

At one point, it was reported that around 80 firefighters tackled the blaze at the 50m x 50m Abacus self storage facility. According to Lancashire Fire and Rescue Service, the single storey panel construction of the building meant that crews fought the fire from the outside only, because of fears of the building collapsing.

Local residents were evacuated from surrounding properties because of thick black smoke from the fire. Fire crews were called to the blaze soon after 8.00pm on Tuesday 16 November, but it was not brought under control until around 3.00am the next day. Damping down and monitoring of hotspots continued for the next two days.

Other factors hampering firefighting operations included a lack of information on the contents of the

self-storage units – which are believed to have been a mix of commercial and domestic items – and reports of asbestos in the roof. An urban search and rescue team was also deployed to help shore up parts of the building and provide lighting. Water from a nearby canal was used to tackle the blaze, with some of the run-off water being recycled for further firefighting use.

Barry Sutcliffe, the watch manager at Ormskirk fire station said, "It was one of the biggest incidents of the year. We had to use several ground monitors, an aerial monitor and an aerial ladder platform to deal with the incident."

Again this shows the importance of having a suitable and robust fire risk assessment in place, taking into account what is being stored, (i.e. combustible items) and the measures in place to control the fire, bearing in mind the safety of fire officers.



CHRIS:
HEALTH & SAFETY

HS

CONFINED SPACES

What is or what are confined spaces?

A confined space is defined as "space that is large enough and configured in such a way that an employee can enter and perform assigned work. It also has limited or restricted means of entry or exit (e.g. tanks, vessels, silos, storage bins, hoppers, vaults and pits) and is not designed for continuous employee occupancy."

Entrants into a confined space, where hazards are present, have greater risk due to the work conditions. Whilst it is unlikely that all organisations can eliminate the need for confined space entry, it is very unlikely that many organisations can, at least, reduce the frequency of entry.

Reasons for entrance are many and could include cleaning, maintenance or removal of product. Despite the many reasons why confined space entry may be required, there are overriding reasons why not to enter. Physical issues such as entrapment and mechanical hazards, the required use of specialised equipment such as rescue equipment and the provision of the correct number of trained personnel are all significant resources.

A large proportion of confined space entry can be eliminated with the use of specialised equipment, changes to procedure and non-entry by design.

THINKING OF WORKING ABROAD?

HS How does UK law protect you?

The relevant statutory Health & Safety provisions (i.e. Health & Safety laws and regulations) do not apply outside the UK nor to people who work for British employers but who are based abroad (e.g. on secondment). However, the laws of the countries in which they are based may require the employer to, e.g. insure them or have measures to ensure their safety.

Because of this, the British employer is not required to take out compulsory employers' liability insurance in respect of employees abroad, but must still do where any employee spends more than 14 days continuously in Britain (or 7 days continuously on a British off-shore installation). If an overseas based employee of a British employer had a work-related accident abroad and wanted compensation, he/she would have to pursue the overseas wrongdoer.

It is theoretically possible that the wrongdoer might try and pursue the British employer for an indemnity or contribution in respect of the damages, depending on the procedures applicable under the legal system, applicable to the wrongdoer - but I think it is a remote possibility and it is difficult to envisage what facts could exist to support such a case.

Employers should know that, notwithstanding the above, a great many UK employers who have employees permanently based abroad, do undertake risk assessments as far as they are able and implement control measures to try and keep their employees safe.

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



THE IMPORTANCE OF CE MARKING ON GOODS

HS Be careful not to get confused

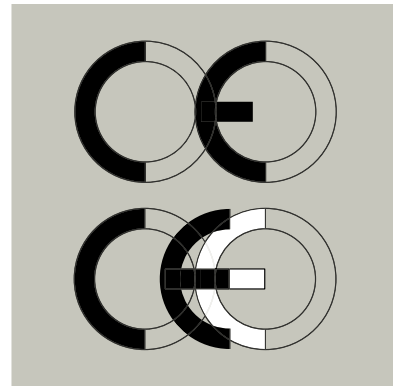
The CE Mark (an acronym for the French "Conformite Europeene") certifies that a product has met the health, safety and environmental requirements of the European Union, thereby ensuring consumer and workplace safety.

All manufacturers in the EU and abroad must meet CE mark requirements, where applicable, in order to market their products in Europe. Once a product has earned the Conformite Europeene mark, it may be marketed throughout the EU without having to undergo further modifications in each member state. That is why the CE Mark has been called the "trade passport" for Europe.

The China export mark, however, is very similar to the European mark and may cause confusion for safety practitioners and companies, when buying safety products which may not have been tested and which may not conform to the standards.

Therefore, companies and safety officers should be aware of the difference to avoid the risk of purchasing untested products unwittingly, thereby putting their staff and customers at risk.

Refer to the illustration, can you tell which is which?



The Conformite Europeene Mark is pictured at the top and the China Export mark is shown below.



BOTTLED WATER

EN One of the greatest cons of the 20th century?

Bottled water is an extremely popular beverage. It is becoming increasingly popular, holding its own against milk, beer and soft drinks sales. Some people buy bottled water for convenience, others for perceived health reasons, but bottled water is a serious drain on the environment. In the western world, tap water is about as safe as it can be and it is relatively cheap. Yet many people are prepared to pay up to 1,500 times as much when the same stuff comes in a bottle.

Bottled water is sold as a natural product, which it is, however natural water is pure when it falls on the hills as rain. Once it hits the ground and seeps into the soil, changes in the content start to happen. As it travels through the rock strata it acts on the rock and dissolves metals, salts and minerals along the way. Its character changes, depending on the type of rock through which it passes. Eventually, it arrives in underground lakes or aquifers - the sources of most bottled mineral waters.

Spring and mineral waters have always had a reputation for health-giving properties because of their natural origins. But this does not mean that they are safe to drink merely because they are natural and come from underground.

The University of Wales carried out a study of the water from Bath Spa and found elevated amounts of several elements, regarded as poisonous. Bath's waters emerge after coming up from 20 miles below the surface. On their way, like most spring or mineral water, they absorb quantities of minerals, fluoride and sulphates. The levels of metals, salts, minerals, fluoride and sulphates can exceed the safe levels which are applied to tap water. The minerals can often do harm if enough are consumed.

Most plastic water bottles are not recycled. Furthermore, getting a litre of bottled water from its source to your refrigerator takes up to 2,000 times more energy to produce, package and transport the bottles as it takes to provide you with the same amount of tap water.

Despite occasional concerns about potential health issues related to municipal water supplies, most tap water is safe and poses no serious health risks. So next time you are about to buy a bottle of water, consider if it is not better to purchase a dedicated drinking bottle and filling it up from the tap.



BILL:
ENVIRONMENTAL

EN

IS THE SNOW OUTSIDE WHAT GLOBAL WARMING LOOKS LIKE?

Are these cold winters a result of heating elsewhere?

Unusually cold winters may make you think scientists have got it all wrong. But scientific data reveals a chilling truth. Is this global warming?

There is now strong evidence to suggest that the unusually cold winters of the last two years in the UK are the result of heating elsewhere. Professor Julia Slingo, the Met Office's chief scientist, is adamant that the current cold weather is merely a natural fluctuation – and does not mean that global warming is all a myth.

Professor Slingo, who is in charge of Britain's biggest research team investigating climate change, insisted that global warming was a reality despite the bitterly cold temperatures and heavy snowfalls that have brought much of the country to a standstill.

"This is not a global event; it is very much confined to the UK and Western Europe and if you look over at Greenland, for example, you see that it's exceptionally warm there," she said. "Global warming is continuing and we know that from the global trends. There will, of course, be large local and regional variations from year to year. So this event that we're currently experiencing is not unprecedented."

A "blocking" high pressure over the North Atlantic has been a recurring feature of the current cold spell, which has split the path of the high-altitude Jetstream, sending warmer weather to Greenland and allowing bitterly cold winds from the Arctic to spread across Britain and Europe.

Professor Slingo said other factors may also be affecting the weather, such as the current

in the tropical Pacific Ocean, called La Nina, which is disturbing the Jetstream over the north Pacific and North America.

Warming oceans, thought by many to be associated with climate change, are contributing to reductions in sea ice in the Arctic area. Computer models suggest that a reduction in sea ice in the eastern Arctic leads to a loss of ocean heat and a consequent warming of the lower atmosphere which can trigger atmospheric circulation anomalies that can in turn lead to an overall cooling of northern continents, according to research which was published in the *Journal of Geophysical Research* in November. This can result in a continental-scale winter cooling reaching, on average, -1.5C colder than it would otherwise have been.

A drastic reduction of sea ice was observed in the Barents-Kara Sea north of Norway and Russia during the cold European winter of 2005 and 2006 and the exposed sea surface lost a lot of warmth to the normally cold and windy arctic atmosphere. Warming of the air over the Barents-Kara Sea seems to be associated with bringing cold winter winds across Europe.

At the same time, the diminishing Arctic sea ice may be influencing a change in the weather patterns that are still not understood. A final complication is that a regular pattern of natural climate change over the North Atlantic, called the multi-decadal oscillation, may be about to enter a cooler phase, just as it did in the 1960s, when Britain also experienced colder-than-normal winters.

"We've had a run in the past two decades of relatively mild winters, so our resilience to these kind of events has not really been tested," Professor Slingo said. "And yet during those 20-plus years the way we live has changed, so our vulnerability has changed."

Last October, the Met Office warned the Government that Britain is likely to experience a colder-than-average start to the winter. But long-term forecasts are still notoriously difficult to make with any accuracy, as the Met Office discovered with its "barbecue summer" prediction. Professor Slingo said: "The key message is that global warming continues."

The global temperature maps NASA present a striking picture. Last month's shows a deep blue splotch over Iceland, Spitsbergen, Scandanavia and the UK, and another over the western US and eastern Pacific. Temperatures in these regions were between 0.5C and 4C colder than the November average from 1951 and 1980.



But on either side of these cool blue pools are raging fires of orange, red and maroon: the temperatures in western Greenland, northern Canada and Siberia were between 2C and 10C higher than usual. NASA's Arctic oscillations map for 3-10 December shows that parts of Baffin Island and central Greenland were 15C warmer than the average for 2002-9. There was a similar pattern last winter. These anomalies appear to be connected.

The weather we get in UK winters, for example, is strongly linked to the contrasting pressure between the Icelandic low and the Azores high. When there's a big pressure difference, the winds come in from the south-west, bringing mild damp weather from the Atlantic. When there's a smaller gradient, air is often able to flow down from the Arctic. High pressure in the icy north last winter blocked the usual pattern and allowed cold air from the Arctic to penetrate all the way into Europe. NASA reports that the same thing is happening this winter.

The denial of man-made climate change mutated first into a denial of science in general and then into a denial of basic arithmetic. If it is snowing in Britain, a thousand websites and quite a few newspapers tell us, the planet can't be warming.

According to NASA's data, the world has just experienced the warmest January to November period since the global record began, 131 years ago; 2010 looks likely to be either the hottest or the equal hottest year.

This November was the warmest on record. This almost appears paradoxical as we look out of the window or fight with the transport problems, however the wider picture still points towards global warming. ▶



WHAT IS WASTE?

The treatment and management of waste

The UK's Environmental Protection Act 1990 indicated that waste includes any substance which constitutes a scrap material, an effluent or other unwanted surplus arising from the application of any process or any substance or article which requires to be disposed of which has been broken, worn out, contaminated or otherwise spoiled; this is supplemented with anything which is discarded otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.

This definition was amended by the Waste Management Licensing Regulations 1994 defining waste as:

Any substance or object which the producer or the person in possession of it, discards or intends or is required to discard but with exception of anything excluded from the scope of the Waste Directive.

In short, you may like to think of waste as anything other than the product which either goes up the chimney, down the drain or out the door.

The European Union has started a discussion that will end in an End-of-Waste directive which will clarify the distinction between waste, which shall be treated for disposal, and raw materials that can be reused for the same or other purposes.

ENVIRONMENTAL MANAGEMENT SERVICES

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



Our training course will introduce staff to the hazards of manual handling, the risks involved, the controls available and what to expect from a manual handling assessment.

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