



MARCH 2017 NEWSLETTER

OPINION

Enforcement Works For All

According to the HSE published in data published in December, the number of proactive and reactive visits being carried out by local authorities in 2015/16 has declined since 2009 by 70% with only 59,800 visits having been undertaken last year.

Great news many would suggest; but is it?.....

CONTENTS

- Opinion
- New Legislation
- New Guidance
- Work At Height
- Health & Safety Management
- COSHH
- Risk Assessment
- Transport Safety
- International Focus



Evidence suggests that 32% of councils in the UK did not undertake any proactive inspections; it is also not surprising therefore that the number of enforcement notices issued during the same time tumbled with only 1,687 improvement notices and 951 prohibition notices being issued.

This has some worrying effects on some larger organisations who generally have higher standards and rely upon their supply chains to deliver essential services and systems. In our opinion, such organisations are at greater risk as enforcers are not undertaking the additional proactive checks and inspections that many would expect. Organisations therefore are going to have to consider instigating greater, more detailed checks on not only their supply chain but possibly internally as well.

Whilst enforcement activity is down, it is clear that the fines for health and safety incidents have increased substantially in the past year, with some of the UK's biggest brands in business having to pay millions of pounds for failing to control serious risks to employees and the public. It has been suggested, most probably correctly, that the rise in fines is a result of the introduction of new sentencing In 2016 there were 19 fines of £1 million – the largest being £5 million. This compares with three fines of £1 million or more in 2015 and none in 2014. guidelines for health and safety offences which came into force on 1 February 2016, either way we have less enforcement visits and checks but greater fines.

Although it is ultimately the responsibility of businesses to ensure that they provide safe plant and equipment and safe working processes and environments for their employees and others, there is little doubt that the cuts in funding to local government have seen a reduction in the resources the authorities can dedicate to the previous proactive approach. So it is a little worrying that in a recent survey, suggestions provided by the local authorities recommended that the Health and Safety (Enforcing Authority) Regulations be amended to bring enforcement for motor vehicle repair sector, nursing homes and certain tattooists from the HSE to what is clearly an already over worked and apparently under-funded local authority control.

In our opinion enforcement works; enforcement stories remind businesses who may need that little push to ensure compliance to make that extra effort; it brings to book companies and individuals who commit offences and cause harm to employees and others by publically admonishing them when they fail to exercise such responsibility again reminding others of the need to take the subject seriously. Anything that reduces the effectiveness of enforcement surely will have longer term effects on everyone's safety.

We don't know how the insurance industry will deal with the changes that are occurring within the enforcement arena but what is clear is that the current arrangements and approach will have to adapt to the change in enforcement approach being adopted.

We hope that the current trend noted with many of our existing clients in developing and implementing serious, effective internal and third party auditing regimes and supply chain checks continues and whilst such "self-regulation" has a role to play this has to be backed up with an effective enforcement regime to deal with those who, for whatever reason, fail to meet the required standards and put their employees or others at risk.

David Hills

Senior Director, Ark Workplace Risk Ltd

NEW LEGISLATION

Lifts Regulations 2016

Coming into force on the 8th December 2016 the regulations transpose the EU Directive 2014/33 which harmonises product standards across the EU. It imposes new obligations on manufacturers, importers and distributors of lifts and applies across the whole of the UK.

Gas Safety (Installation and Use) Regulations

The Government have recently completed a consultation process looking at proposals which remove the application of the regulations for compressed natural gas filling stations.

NEW GUIDANCE

BS9999:2017 Fire safety in the design, management and use of buildings. Code of practice

The new version of the BS9999 standard was due for publication in January 2017 but has been delayed, due to, according to the BSi an error within the standard.

BS 9999 gives recommendations and guidance on the design, management and use of buildings to achieve reasonable standards of fire safety for all people in and around them. It also provides guidance on the on-going management of fire safety within a building throughout its entire life cycle, including guidance for designers to ensure that the overall design of a building assists and enhances the management of fire safety.

BS9999 is applicable to the design of new buildings, and to alterations, extensions and changes of use of an existing building. It can be used as a tool for assessing existing buildings, although fundamental change in line with the guidelines might well be limited or not practicable. The recommendations and guidance given in the Standard are intended to safeguard the lives of building occupants and fire-fighters. Whilst some of the recommendations and guidance might also assist in the achievement of other fire safety objectives – such as protection of property, the environment, communities and business/service viability – additional measures might be necessary which are outside the scope of the Standard.

So what's new?

BS 9999 is being fully revised to align with current practices, new technology and other parts of the fire safety standards series, namely BS 9990 (published in 2015 – covering non-automatic fire fighting systems such as hydrants and fire mains) and BS 9991 (published in 2015 - covering fire safety design in residential buildings). The new edition of BS 9999 will introduce the following changes:

Inclusion of flowchart showing the sequential steps in the design process, to assist users in the application of the standard

- Revised clause on fire safety management with references to PAS 7
- Inclusion of watermist fire suppression systems
- Expansion of guidance on voice alarms
- Expansion of fire growth rates table to provide more information
- Removal of content now covered by BS 9991
- General update to take into account new and revised standards published since 2008

The standard also features revised recommendations for:

- Smoke and heat control
 - Fire curtain barrier assemblies
 - Mechanical ventilation and air-condition systems
 - Shopping complexes
 - Building exits
 - Ducting
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WORK AT HEIGHT

Incriminating Photos Lead to Double Prosecution

It used to be a fact that there were insufficient numbers of HSE inspectors out in the field to mean that you were likely to get caught breaking health and safety law or recognised company practices; those days have clearly gone.

Two photographs snapped by members of the public showing workers balancing on a roof have been used to land two directors, one company and an employee in the dock.

In two separate prosecutions, both heard in Manchester, an employee was handed a six month suspended jail sentence, fined £1,400 and ordered to pay costs of £2,939 after balancing on scaffold tubes 27m above ground level. A tip off from a member of the public was accompanied by a photo showing the employee operating in a dangerous manner.

In another case two company directors were fined £1,100 and £2,100 with the company also being fined £13,300 after they themselves were photographed by a neighbour working over a single storey drop with nothing to prevent them from falling.

Müllers fine was not so light

Dairy giant Müller has been fined £400,000 after its failure to adequately assess the risks associated with roof work which led to an employee falling 4.5m through a fragile roof panel. Employees were not provided with information about the fragile roof board panels before they accessed a roof void and subsequently fell sustaining serious injuries to head and body.

Ladder Fall for Volvo

Volvo has been fined £900,000 after an employee was seriously injured after falling from a worn step ladder that was not even the company's property. An employee whilst using the step ladder fell and hit his head whereupon colleagues found him lying down and unresponsive on the floor. The HSE found that Volvo had not inspected or carried out any maintenance of the depots multiple items of access equipment for over a year despite allowing over 30 employees to use such equipment every day.

Fatal MEWP collapse land boss in jail

A director of a plant hire firm has been jailed for two years after he was found guilty of deciding not to adequately maintain and repair a MEWP that subsequently failed killing a worker. In addition to the jail sentence, the company was fined £61,000, with the company responsible for such maintenance and repair also fined £30,000 despite being warned by the manufacturer to replace faulty parts and not repair them.

HEALTH AND SAFETY MANAGEMENT

ISO 45001 Delayed...yet again.

The International Standards Organisation have announced that the publication of the ISO 45001 standard covering health and safety management has been delayed yet again after a number of national standards bodies rejected the draft. The expected date of publication has now been pushed back to Spring 2018, that being said this is not the first time the standard has been delayed the initial thoughts were that the new standard would replace the BS OHSAS 18001 standard back in 2016 and it is clear that if the draft standard is rejected again then the whole project could be up for review and/or abandoned. The main area of concern appears to be around the fact that the new standard (as opposed to the BS OHSAS 18001 standard) is more geared towards large companies and organisations and may not be applicable to SME's.

On a separate note it has been suggested by respected QC Gerard Forlin that when the new standard has been introduced it will set the standard for best practice in health and safety management for organisations operating across various legal territories suggesting that its impact could reach and influence prosecutions and court decisions. The existence of the standard could, he suggests, prompt a new set of questions in the minds of prosecutors and judges.

The introduction of the new standard, could he suggests, mean that global organisations will have to modernise and reorganise their operations and health and safety management wherever they take place.

COSHH

Tackling RCS

Firms are expected to be obliged to control respirable crystalline silica (RCS) when undertaking work under a new stakeholder initiative. The Health in Construction Leadership Group (HiCLG) is focusing on respiratory illness and mental health and is looking to gain agreement to work together with others to raise awareness and understanding of the health issues related to RCS and to share good practice across industry sectors. The initiative follows a review undertaken by IOSH and the Construction Dust Partnership which revealed a lack of awareness of illness caused by RCS including cancer, a failure across many organisations to understand the difference between "dust" and RCS and inadequate controls being implemented to control such materials.

RISK ASSESSMENT

Council fined over HAVS issue.

Thanet District Council in Kent has been fined £250,000 after a part time worker developed hand-arm vibration syndrome (HAVS) with a further 15 reporting HAVS issues.

The Court heard that a council worker was diagnosed with HAVS after consulting his GP and an investigation by the HSE found that he was spending up to 6 hours a day using a range of powered equipment including mowers, strimmers and hedge cutters. No health surveillance was provided nor training provided on recognising symptoms. After the HSE issued an improvement notice and the council instigated a regime of surveillance 15 further cases were noted.

The HSE also found that such equipment had been used for over 10 years without training being provided nor any risk assessment and/or adequate controls being provided. Training, according to the HSE, was so poor that workers themselves had to look up how to use and operate new equipment on the internet when these were introduced.

Trench collapse leads to major fine

Construction giant Kier have been fined £1.5m after a worker was seriously injured when a trench collapsed due to it being only partially shored. After the incident the defendant attempted to backdate documents to make it appear that workers had seen a risk assessment and method statement that had not been drawn up for the work. The trench was 21m in length and up to 2m in width, appeared to have water leaking into it and it was reported was left open overnight. In addition to the Kier fine, the company's advisors were ordered to pay £550,000 with over £166,000 costs and a sub-contractor fined £40,500 and ordered to pay over £53,000 in costs. In handing down the fines the judge suggested that all had "*disengaged from the whole process.*"

TRANSPORT SAFETY

Two guilty of Manslaughter following Bath runaway truck

The owner/director of a haulage company and its self-employed mechanic have been convicted of the gross negligence manslaughter of four people when a 32 tonne tipper truck crashed on the outskirts of Bath. Both have been handed down significant jail terms.

The company was found to have inadequately maintained the brakes on the lorry and employed inadequate safe systems of work and maintenance regimes. In addition, the company had failed to exert adequate supervision over the maintenance undertaken and failed to completed recommended brake efficiency tests on the vehicle.

Worker struck by 90MPH train

Network Rail have been found guilty and fined £800,000 after a maintenance worker was struck by a train travelling up to 90mph. The prosecution suggested that within Network Rail there was a culture of poor planning for works which gave rise to serious risks. The planning of such works did not, the prosecution suggested, consider undertaking such works during night time or arranging such works with other scheduled maintenance which would have meant that no trains would be running.

INTERNATIONAL FOCUS

United States Of America

With the election and inauguration of President Donald Trump, concerns have been raised about the eight years of occupational health and safety reform implemented by his predecessor. The New President pledged during the election campaign to slash business regulation to as he described it "unleash the power and productivity of US businesses and entrepreneurship."

The Presidents, in his "Contract with the American Voter" promises to introduce regulatory relief vowing to eliminate all needless and job-killing regulation.

President Obama's administration had successfully introduced significant changes to the USA's health and safety legislation including lowering the respirable crystalline silica exposure limits to 50 micrograms per cubic meter; half of that of the UK. Senior Republicans have suggested that this requirement is ripe for repeal as businesses have proven that compliance is just not feasible. Other initiatives such as walking working surfaces and personal fall protection rules are also at risk.

The planned new guidance and requirements on practices in construction are now being reviewed which, according to OSHA (the USA's version of the HSE), has been considered to be a hotspot in the USA with OSHA recently reporting that 23 workers had died in trench collapses in 2016, twice the total recorded in 2015.

The US Bureau of Labor Statistics suggests that there were 2.9 million non-fatal workplace injuries and illnesses in 2015, a rate of 3.0 cases per 100 full time workers and in 2014 there were 4821 fatal injuries / illnesses or 3.4 per 100,000 workers. The largest penalty handed down in 2016 was \$2.9m (£2.3m) to an Ohio based automotive parts manufacturer.



New Zealand

Health and safety legislation in New Zealand has a familiar look to that here within the UK. The NZ regulator WorkSafe is continuing to implement a new Health and Safety at Work Act (which came into force in April 2016) which repealed the Health and Safety in Employment Act 1992 and has targets of reducing workplace injuries and deaths by 25% by 2020.

WorkSafe recently introduced an online tool to assist businesses identify and manage health and safety issues called "Around the Block" which takes users on a journey through 13 business types identifying typical risks and hotspots. The tool is aimed specifically at SME's which make up 97% of businesses in New Zealand.

Current fatality rates in respect of workplace injuries and illnesses is at a rate of 2.2 per 100,000 with 45 people dying at work. Workplace injury statistics are currently at 16.2 per 100,000 with WorkSafe targeting a figure of 12.9 by 2020. WorkSafe recently reported that in 2011-16, agriculture accounted for 114 deaths out of a total of 203 during that period; of these 31 related to quad bike incidents.