

The Health and Safety Executive is entitled to recover costs incurred by them from employers where an Inspector assesses that the employer is in “material breach of health and safety legislation. These fees are charged at £174 per hour and can be substantial. Employers should be aware of the dispute mechanism where it disputes a material breach has been committed.

1 What is the scope for Fee for Intervention?

The Regulations which introduced the Fee For Intervention Scheme provide that where a person is contravening or has contravened health and safety legislation and the HSE Inspector is of the opinion that this constitutes a “material breach” then the Inspector can notify the employer in writing of that opinion requiring the employer to pay a fee.

2 What is a material breach?

A material breach is when an Inspector forms an opinion that there has been a contravention of health and safety law and that it is so serious that it requires them to give notice in writing. An Inspector is obliged to give reasons for that opinion in writing and to inform the employer. The notification should make it clear what breaches of duty are alleged and which legislation it is alleged is being contravened.

3 What should an employer do on receipt of a Notice of Contravention?

An employer who is informed that a Fee for Intervention is payable should consider the Notice of Contravention and make its own assessment as to whether or not a material breach has in fact been committed.

This may involve taking legal advice.

Where the Fee For Intervention is served following an incident that is also under investigation by the Health and Safety Executive then it is imperative that legal advice is sought as payment of an invoice may be viewed later in the substantive investigation as an admission of liability.

If having reviewed the Notice of Contravention and/or taken advice, it is concluded that there has been a material breach then the Regulations require that an employer should pay the invoice within 30 days of the date of the invoice. The fee is set at £174 per hour for Inspectors and costs for third party involvement such as the Health and Safety Laboratory technical expertise will be charged at actual cost. The rate of £174 per hour applies to an employer whether it is a multinational company or a sole practitioner.

4 What if an employer disputes that a material breach has been committed

There is a procedure for employers to query and dispute a Notice of Contravention/Invoice for a Fee for Intervention. All initial enquires about an invoice are treated as a query. An employer can raise a query to a Fee for Intervention without paying any fee and even if unsuccessful in the query, no costs are involved to the employer.

If the query is upheld by the HSE then the Notice of Contravention and invoice will be cancelled.

If the query is not upheld then the invoice becomes payable unless the employer serves a formal dispute to the invoice. Disputes are considered by a panel of HSE staff and independent representatives appointed by the HSE

5 Practical considerations

Fees For Intervention can run to hundreds of thousands of pounds even where there is no separate incident under investigation for prosecution. It is therefore important that employers recognise promptly where a Notice of Contravention has been issued and make early consideration as to whether or not the alleged contravention of material breach is accepted or whether any form of query/dispute should be raised.

Employers should be particularly careful where there is a connected investigation following an incident to ensure that they are not accepting an invoice which might later be referred to as an admission of guilt in the main investigation.

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