

A Guide to Health and Safety – Summary of the Health and Safety Statutory Framework and Main Duties (Companies, Company Directors, Officers and Employees)

Breaches of Health and Safety legislation are investigated within the criminal law. The Health and Safety Executive (as well other agencies like the police in fatal cases) operate with powers under the Police and Criminal Evidence Act 1984. Health and Safety Inspectors also have powers under the Health and Safety at Work Act etc 1974.

1 What duties are imposed on an employer?

There is no doubt that the investigation of health and safety duties has become more “criminal” in recent years. Never has there been a more important time to understand health and safety duties and to do all that is reasonably practicable to comply with them.

The main provisions which apply to an employer can be found in the Health and Safety at Work Act. An employer’s general duties are set out at Sections 2-6 of the Act. There are also numerous Health and Safety Regulations which have been implemented under the Act.

The main duty on an employer relating to its employees is Section 2. This imposes a duty on the employer to ensure the health safety and welfare of its employees so far as it is reasonably practicable.

Section 3 creates a similar duty in relation to those persons who are not employees such as members of the public or contractors but may be affected by the employer’s work.

2 How does an employer comply with the law?

Many of the general duties under the Health and Safety at Work Act impose duties to ensure safety “so far as is reasonably practicable”. This means that an employer does not have to “ensure” safety but has to do all that is reasonably practicable. An assessment of reasonable practicability involves looking at the risk on one side against the time, trouble and expense that might be involved in controlling that risk.

There are also some strict duties imposed under some of the Regulations made under the Health and Safety at Work Act.

3 Does an employee have similar duties?

An employee can be prosecuted for breaches of the Health and Safety at Work Act. An employee has a duty under Section 7 of the HSWA to take reasonable care for themselves and other persons affected by their work. Employees can be prosecuted for a breach of Section 7 where it is alleged that they have breached that duty. In reality, prosecutions for breaches of Section 7 are rare.



4 Is the duty on a director different?

There is no positive duty on a director to take reasonable care of themselves and other people affected in the same way as there is for an employee. However, officers of the company, including company directors or other senior officers have a potential criminal liability under Section 37 of the Health and Safety at Work Act where it can be shown that any failure by the company was committed with their consent, connivance or was attributable to any neglect on their part.

There has been a marked increase in recent years in investigations of directors for breaches under Section 37, with an increase also in the number of prosecutions actually brought.

5 What are the penalties for breaching health and safety offences?

Companies can face unlimited fines for breaches of health and safety legislation and corporate manslaughter. Fines are increasing dramatically in the light of a new Sentencing Guideline which came into force on 1 February 2016.

The calculation for a fine under the Guideline uses a company's turnover and an assessment of its culpability and the harm category relevant to the case in order to identify a starting point for the fine. The use of a turnover based approach is a change from the previous sentencing regime.

Another change in the regime is that the harm category is calculated on the basis of the risk of harm and the likelihood of that harm occurring rather than specifically the actual harm that took place.

6 What about sentencing of employees and directors?

Since the introduction of the Health and Safety Offences Act 2008, both employees and directors can be sentenced to imprisonment for breaches of health and safety legislation. The new Sentencing Guideline applies to individuals as well as companies. That Guideline has lowered the starting point for which a custodial offence may be considered.

7 What can a company and/or individuals do if under investigation?

It is important that it is recognised by companies and their employees/directors that investigations are conducted within the criminal law and therefore legal advice should be sought where an incident has led to an investigation. There is a natural desire to wish to cooperate with investigations. Generally it is essential that proper cooperation is given, but this should be carefully managed to ensure that the company and/or individual does not unnecessarily incriminate themselves.

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