



EMPLOYERS BEWARE OF THE HEALTH AND SAFETY (OFFENCES) ACT 2008

All employers will be aware of the Health and Safety at Work Act 1974 which was enacted to impose criminal liability on both employers and employees for certain health and safety breaches. Largely as a result of the effect of inflation, the fines that could be imposed have lost their bite and penalties no longer reflected what was thought to be appropriate in the modern environment. By virtue of the Health and Safety (Offences) Act 2008, Parliament has brought matters up to date with a vengeance for breaches committed after 16 January 2008 such that all employers should sit up and take notice particularly in this time of official recession where few can afford the severe financial fines that can now be imposed, to say nothing of the possible imprisonment of company officers. This Act was introduced "to punish the criminally negligent who put life and limb in danger in the work place and to deter those who are tempted to cut costs by breaking the law" (Keith Hill MP).

Although this Act has received little media attention, it makes substantial amendments to the landscape of health and safety law which will include the call centre environment, by introducing tougher penalties for existing health and safety offences. In particular, the threat of long term imprisonment for individuals involved in a breach of the health and safety law is now real.

The New Powers

The Act amends Section 33 of the Health and Safety at Work Act 1974 in three ways:-

1. Raising the maximum fine which may be imposed by the Magistrates Courts to £20,000 for most offences. The previous maximum for certain offences was

£5,000. The Act also allows the Crown Court to impose unlimited fines for some breaches of health and safety regulations and most offences under the Health and Safety at Work Act.

2. Making a prison sentence an option for most health and safety offences in the Magistrates or Crown Court. This is a major change. Previously only one health and safety offence could lead to a potential prison sentence for an individual, but now all offences (with only four minor exceptions) will potentially attract a prison sentence from the Magistrates or the Crown Courts.
3. Making certain offences triable in the Magistrates Court or the Crown Court. This change aims to increase the flexibility of the Court system by allowing more offences to be heard by either Court.

Implications

The new Act creates a threat of imprisonment for all employees who may have contributed to the offence by their consent, connivance or neglect. Having said that, it will only be in the most serious cases. These will include cases:-

- where there has been reckless disregard for health and safety requirements and/or risk of harm;
- repeated breaches which cause significant risks to occur or where there has been persistent and insignificant non-compliance;
- false information with regard to enforcement of health and safety where such false information is wilfully supplied by an individual;

- there have been serious risks that have been deliberately created to increase profit.

We can expect more in depth HSC and Police investigations leading to more intrusion into individual employees lives.

Call centres are not immune from this legislation and its consequences. Health and safety policies should be updated and these important changes communicated to all employees. Does your own health and safety policy consider all the risks to which your employees are subjected to include the risk of acoustic shock? Have you provided appropriate equipment to carry out the work safely? That includes head sets. How would you convince a Health and Safety Inspector that what you have provided is safe and appropriate?

As knowledge develops, perceptions as to best practice constantly change. An employer needs to be up to date with current thinking and recommendations. Actions do, however, need to be proportionate. The bigger the call centre operation, the higher the duty that will be imposed by the Health and Safety Executive.

You must consider whether you have carried out a sufficient review recently so as to ensure that you and your colleagues are not at risk of imprisonment and/or significant company fines which usually lead to disastrous adverse publicity. If the Health and Safety Executive see fit to prosecute, it is highly likely there will be civil claims from employees to deal with additionally. Even if fully insured, this can result in increased insurance premiums and a significant loss of management time. Is it not now the time to stand back and review your position at leisure before having to react to a Health and Safety Executive Inspector's visit?

The Acoustic Safety Programme (www.acousticsafety.org) has for some time now been championing the issue of acoustic safety and has linked up with a large cross-section of interested parties with the intention of promulgating best practice throughout the call centre industry based upon its own research and lobbying. Eversheds is pleased to assist in helping ASP to achieve best practice through the adoption of appropriate and tested measures which will meet current legislation and the needs of the industry.

If you would like further information, you can contact Alan Simpson of Eversheds by email at alansimpson@eversheds.com or telephone 0845 497 6135. Eversheds is a leading international law firm with offices in the UK as well as worldwide and it offers an entire range of bespoke services to all employers.

If you would like further knowledge on hearing conservation and acoustic safety issues, or support and advice please contact the Acoustic Safety Programme by email to: info@acousticsafety.org