

## **New tough sentencing guidelines for health and safety offences**

New sentencing guidelines came into effect on 1 February 2016 in relation to health and safety, corporate manslaughter, food safety and hygiene offences. All organisations and individuals who are sentenced after 1 February 2016 will be subject to the new guidelines.

### **The guidelines**

The new definitive guidelines represent a different approach to those currently being followed by the courts. In cases which evidence the most serious health and safety breaches, fines could exceed £10 million. In corporate manslaughter cases, the fines could exceed £20 million. The sentencing ranges for fines depend upon the size of the organisation and the size of their turnover. However, for breaches that are serious enough, either because of repeated breaches or a very serious failure, the aim of the court may be to effectively close the offending business down.

### **The starting point**

According to the new guidelines, the starting point for assessing the appropriate penalty is the seriousness of the offence and whether you have pleaded guilty or been convicted after trial. Any credit for entering an early guilty plea is only given after the court has identified the appropriate sentence. The courts will also take into account the means of the offender. It is not necessary for someone to have actually been hurt for a breach to be deemed serious. The courts will assess the risk of serious harm. Organisations that ignore concerns raised by their employees, and those who fail to make changes following other, perhaps more minor, breaches will be particularly susceptible to harsher penalties for a deliberate breach or flagrant disregard for the law.

### **Mitigating and aggravating factors**

Those organisations that have deliberately tried to conceal what has happened or have a poor record overall will be dealt with more harshly.

However, those organisations that otherwise have a good safety record and have made significant efforts to mitigate a risk are likely to fare better before the court.

Mitigating circumstances might also include those organisations that have co-operated with the health and safety investigation and those that have taken steps to remedy the wrong after an incident has occurred. The list of mitigating and aggravating factors is not exhaustive. The court will deal more harshly if organisations give their financial concerns priority over health and safety responsibilities.

Company directors including charity trustees could find themselves at personal risk if they are found guilty of 'consent, connivance or neglect' in relation to a health and safety breach. They could be sentenced to a term of imprisonment of up to two years and could face unlimited fines.

## **The fines**

*“The sentencing guidelines make clear that the fine must be sufficiently substantial to have a real economic impact”*. The level of fine could effectively mean that an organisation may become insolvent or otherwise have to cease operation and is forced to close and if the court feels that the breaches are serious enough, that could indeed be their intention.

The new guidelines will be applied regardless of the date that the offence was committed.

It is therefore important that organisations prioritise health and safety issues and take the time to review their existing checklists, systems and policies. It is now more important than ever that health and safety issues are at the top of any board meeting or management agenda.

## **Risk management**

It may not be possible to avoid all accidents. It is however now more important than ever to review your checklists, policies and systems in order to identify those issues which are most likely to arise and address your resources accordingly in order to avoid serious health and safety breaches. The new guidelines are intended to target those organisations that take a cavalier approach to health and safety as well as those that commit the most serious breaches, so it is important to show that your business takes matters seriously and is being proactive to try to mitigate the most obvious risks.

### **Nicola O'Connor**

Partner

+44 (0)20 8394 6371

[Nicola.OConnor@russell-cooke.co.uk](mailto:Nicola.OConnor@russell-cooke.co.uk)

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