

South East Employers
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JAIL SENTENCES FOR FIREWORK FACTORY FIREFIGHTER DEATHS

A father and his son have been jailed after being found guilty of the manslaughter of two fire officers killed whilst tackling a fire at their East Sussex fireworks factory in December 2006. Lewes Crown Court heard how an unlicensed container packed with fireworks exploded whilst firefighters fought a blaze at the Festival Fireworks factory in Shortgate, near Lewes. The two men were found to be 'grossly negligent' in knowing that the container had the potential for a huge blast if ignited yet failed to tell the fire officers in charge of the fire fighting operation. The resultant explosion killed two members of the fire service and injured twenty other people including fire and police officers as well as causing huge damage.

The fireworks company was later fined £30,000 after being found guilty of two breaches of health and safety regulations. Common law manslaughter charges were then brought against Martin Winter, owner of Festival Fireworks, and his son Nathan, a director of the company. Judge Mr Justice Cooke told the pair that they had deliberately flouted the explosives regulations for profit and jailed Nathan for five years and his father for seven. However the judge also criticised East Sussex Fire Service stating that 'ignorance of their own procedures, of explosive regulations and codes of practice for firefighting and their lack of training in dealing with fireworks' contributed to what happened.

Meanwhile a heavy plant operator has been successfully prosecuted for common law manslaughter after a fellow worker was killed at a Plymouth construction site. Nigel Herring was operating a Manitou telescopic handling machine in September 2007 when it tipped forward and a skip it was carrying hit a fellow worker on the head, causing fatal injuries. Following an extensive investigation by the Police and Health and Safety Executive Herring was charged with manslaughter. In court the prosecution alleged that, despite having been trained on the machine, Herring broke five golden rules when operating it, including failing to use the machine's stabilising feet (which would have prevented it tipping forward), moving the machine forward with the boom already extended and ignoring both audible and visual warning alarms in the cab. Both workers were employed by Kier Western at the site of the East End Community Village Enterprise Centre in Catterdown at the time the accident happened.

SENTENCING GUIDELINES TO MEAN SMALLER FINES?

The possibility of multi-million pound fines for convictions resulting in deaths at work looks to have been removed after the Sentencing Advisory Panel rejected a link between fines and turnovers for successful convictions of corporate manslaughter and prosecutions for breaches of the Health and Safety at Work Act 1974 following fatal accidents. In a revised consultation document the Council suggests that fines should generally start at £500,000 for corporate manslaughter and £100,000 for HASAWA offences causing death. This followed consultation that generated over sixty responses, many of which focussed on the complexities of fining organisations of different type and sizes. The formula approach which suggested linking fines to turnover could, the Council argued, have also led to an unfair outcome. The position of public bodies such as local authorities and NHS Trusts, was also a concern.

The Sentencing Advisory Panel has consulted on its revised proposals with a deadline for comments of 5 January 2010.

NEW REGULATIONS TO GOVERN TOWER CRANES

The Health and Safety Executive have announced new regulations requiring the notification of conventional tower cranes on construction sites. This follows a three month consultation exercise that generated over a hundred responses. Tower crane safety has been the cause of much concern over the past few years with several high profile and spectacular accidents, some resulting in fatalities. In fact over the past ten years eight deaths have resulted from such incidents, including one member of the public.

The new regulations come into force from 6 April 2010 and:

- Place the responsibility to notify on the employer – the notification will be able to be undertaken electronically via the HSE website
- Require notification within 14 days of the thorough examination of the crane
- For cranes already erected on 6 April 2010, allow 28 days for registration

The details that will be required are:

- The address of the site where the crane is operating
- Name and address of the crane owners
- Details needed to identify the crane
- Date of its thorough examination
- Details of the employer for whom the examination was made
- Details of any defects that could pose a risk of serious injury

The register is part of a wider raft of measures designed to improve tower crane safety that includes competency requirements for crane erectors and dismantlers, design standards and research to improve understanding of crane accidents internationally

PROSECUTION FOR NATIONAL CONSTRUCTION FIRM

Construction company Lovell Partnerships Limited has been prosecuted after the death of a child who fell over 8 metres from a scaffold in Washington, County Durham. Newcastle Crown Court heard how seven year old Adam Tiffin had been playing on a scaffold erected in order to undertake repairs to a flue. Although the work would have only taken only half an hour to complete the job was unexpectedly postponed and so the scaffold remained in place for another twelve days. During this period local children played on the scaffold, despite an access ladder being removed. In fact children built a play den with cushions and a chair placed on the roof.

Lovell Partnerships admitted a breach of the Health and Safety at Work Act 1974. Judge Esmond Faulks took into account Lovell's previous excellent safety record and said they deserved credit for their guilty plea and fined the company £75,000 with £46,000 costs.

FIRE BREACHES LEAD TO HEAVY FINES

Clothing retailer New Look has been fined a record £400,000 with £136,000 costs for breaches of the Regulatory Reform (Fire Safety) Order following a fire at the company's Oxford Street store in Central London in April 2007. Southwark Crown Court heard how staff initially ignored smoke pouring out of a window during early evening shopping and it was also alleged that a fire alarm was sounded but was switched off until staff finally 'panicked' and evacuated customers. Shoppers reported that the fire alarm then went off intermittently and that staff went from 'no cause for alarm' to 'panic'. The court heard how over 150 shoppers were evacuated from the store, some falling over as they fled whilst others ducked shards of glass as windows were blown out in the fire. Although no one was injured Judge Geoffrey Rivlin said the fire could have been 'a disaster too awful to contemplate'.

He fined New Look £250,000 for failing to supply a 'suitable and sufficient' fire risk assessment for the premises and £150,000 for failing to adequately train staff, adding that the charges represented 'significant failures that constituted a risk of death and very serious injury'. The building was almost gutted by the fire and subsequently had to be demolished.

In another development senior fire officers and the Fire Protection Association have called for further action on timber frame construction sites. This follows the recent fire at Peckham, South London, in which a fire at a partially built block of flats spread to neighbouring homes. The FPA are concerned at fires involving timber framed buildings under construction because of the potential rapid fire spread, enormous radiated heat and the large spread of embers. The United Kingdom Timber Frame Association, which has developed its own guidelines for fire safety during construction, argued that the Peckham fire should be considered in the context of the large number of timber frame sites under construction at any one time. They also point out that this method of construction is fast and so quickly reach a stage where full fire protection is reached.

NEW SOUTH EAST EMPLOYERS EVENTS!

Following consultation and comments from various individuals South East Employers have revised their health and safety events as follows. 'Aspects of Health and Safety' seminars will now be renamed and held twice yearly, rather than quarterly, again at the University of Surrey in Guildford. The 'Brief Bites of Health and Safety' Workshops will be replaced by 'Fundamentals of Health and Safety' aimed at ensuring that managers sufficient health and safety knowledge. The first event will take place on 29 January 2010 at SEE offices in Winchester and the topic will be 'An Introduction to Health and Safety for Managers'. For full details and booking contact Bev on 01962 840664 or visit the SEE website at www.seemp.co.uk.

IN COURT (1)

The tragic drowning of a seven year old boy at a Dundee Leisure Centre arose from senior management failings according to the Health and Safety Executive and resulted in the prosecution of the operator, Dundee Leisure. Dundee Sheriff Court heard how a friend of Luke Hutton raised the alarm after reporting him missing at the end of public swimming session at Dundee's Olympia Leisure Complex in September 2007. Following a forty minute search Luke's body was found in a covered wave pool.

HSE Inspector Peter Dodd alleged that the company failed to have robust procedures in place to ensure the safety of their customers at all times. Lifeguards were not adequately trained to ensure that every part of the pool was supervised. As a result the HSE served seven Improvement Notices on the company, including failing to appoint a competent person and failing to undertake risk assessments at five leisure premises.

Dundee Leisure, a company set up in 2006 by Dundee City Council to manage and operate its leisure facilities, pleaded guilty to charges under s3 Health and Safety at Work Act 1974 and were fined £40,000.

IN COURT (2)

A lifting operation at a Shell refinery that went wrong resulted in a container falling 30ft onto a contractor's Human Resource Manager, causing serious injuries. The incident occurred in February 2007 during the refurbishment at the Stanlow Manufacturing complex near Ellesmere Port. Stephen Razzoli was working for S G Blair and Co (now Dalprop Ltd) when a container carrying 500kgm of waste materials suspended over a walkway fell onto him, causing serious injuries including a broken back, two broken legs and a broken pelvis.

The three companies involved, Shell UK Oil Products, Dalprop Ltd and Hertel UK were all prosecuted and pleaded guilty to breaches of health and safety legislation. Shell were fined £166,666 with costs of £16,000 whilst both Hertel UK, who had installed the scaffolding and platforms for the project, and Dalprop were each fined £83,333.

REFUSAL TO PROVIDE CAR DOCUMENTS

Q. We have an employee who is required to drive his car for work and for whom we provide mileage allowance. Despite repeated requests he has failed to provide a copy of his insurance documents or an MOT certificate for the vehicle. He assures me that there's no problem, he's just forgotten them but I'm concerned at the authority's legal position if he has an accident whilst on business and we've not seen evidence of the certificates. Should we take this further?

A. I think you're right to be concerned. Although in law its the driver who is responsible for having the correct licence, insurance and MOT when driving their own vehicle the fact that he's using it for work means that you're involved. You should verify that he has the correct driving license, is insured to drive for business purposes and that the vehicle has a valid MOT certificate. If he can't (or won't) produce the documentation then I suggest that you don't allow him to use the vehicle for work. Should an accident occur then the authority could be criticised for not taking reasonable measures to establish that he is authorised to drive at work. In extreme cases it has even been suggested that employers could face charges under the Corporate Manslaughter and Corporate Homicide Act if a fatal accident results in such circumstances.

CONTRACTING OUT HEALTH AND SAFETY?

Q. Our authority is seriously considering contracting out its health and safety service to a private consultancy in order to cut costs. I always understood that for large employers such as local authorities any appointment of a safety adviser had to be made internally,

prohibiting the use of external consultants. Am I correct?

A. Unfortunately the situation is not as simple as you describe. Under the Management of Health and Safety at Work Regs 1999 (MHSW) every employer has to appoint one or more 'competent persons' to assist and advise with regard to health and safety matters. There are no requirements in terms of qualifications or experience required and so many smaller organisations prefer to appoint an external consultant to assist them in this way. However the MHSW regulations do specify that, where there is a competent person in the employer's employment then that person should be appointed in preference to an external appointment. In larger organisations such as local authorities individual departments often employ their own designated safety liaison officers who may have a basic qualification in health and safety such as a NEBOSH certificate. In such circumstances then the employer may already have fulfilled the basic requirements under the MHSW regs. Where an external consultant has also been appointed then under the MHSW regs the employer must make arrangements to ensure that there is adequate co-operation between them and any internal health and safety staff.

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