

Does your company have adequate health and safety management systems in place?

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CATEGORY:
ARTICLE

The Health and Safety (Offences) Act 2008 (the 'Act') came into force on 16 January 2009. While the Act introduces no new duties on employers or businesses, the effect of the Act is to introduce much tougher penalties and to bring an increased risk of imprisonment for individuals. The Act:

- Increases the maximum fine which may be imposed in the lower courts for offences under health and safety regulations from £5,000 to £20,000;
- Makes imprisonment for up to two years (six months in the Magistrates' Court) an option for more health and safety offences;
- Makes certain offences, which are currently triable only in the lower courts, triable in either the lower or higher courts (where fines are unlimited).

Prior to the introduction of the Act, imprisonment was a punishment rarely imposed by the courts. There are specific provisions under the Health and Safety at Work etc Act 1974 that contemplate the prosecution of individuals:

- Employees have a duty to take reasonable care for the health and safety of themselves and others (section 7)
- Where any offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer then that individual can be prosecuted as well as the body corporate (section 37)

For the first time an individual convicted of any of these offences now faces the risk of a sentence of imprisonment. Companies also now face criminal prosecution for corporate manslaughter and for more information on this please see our Corporate Manslaughter Homicide page.

In the context of commercial transactions health and safety law has, in some respects, been given a low priority due to, among other things, the availability of insurance cover, the fact that fines following health and safety breaches were generally low and the risk of prosecution has traditionally been seen to be low. With the introduction of the Act the situation is now dramatically different and this will lead to a change in the manner in which health and safety issues are dealt with in commercial transactions.

The Institute of Directors published guidance for promoting health and safety at work (the 'Guidance'). The guidance outlines three principles to follow to ensure good health and safety performance: strong and active leadership from the top, worker involvement, and assessment and review. To view the guidance, please [click here](#).

The message from the Government is clear: health and safety must be incorporated into the organisations' culture and companies and directors must ensure that they review their health and safety policies and procedures to ensure they operate in day-to-day practices.

Our corporate team has assisted a number of clients with their health and safety procedures and ensuring that a suitable reporting structure is built into clients' corporate governance. For an example reporting cycle, please [click here](#).