

NEW HEALTH & SAFETY SENTENCING GUIDELINES

In February 2016 new guidelines came into force on how Courts should assess the level of penalty, when companies are prosecuted for offences under the Health & Safety at Work Act 1974. Since then there has been a significant increase in the level of fines and custodial sentences.

The first consideration for the court is the level of culpability, where there is a scale of Very High, which involves a deliberate breach or flagrant disregard for the law, to Low Level, where it is established that significant efforts were made to address the risk (albeit inadequate), there was no warning of the risk and the failings were minor and an isolated incident.

The next consideration is the seriousness of harm risked and the likelihood of harm occurring; again using a scale of High to Low. An important criterion is that there is no requirement at this stage to consider actual harm; it is the potential for the risk of harm which arises from the breach of duty. Having established that, the court then will consider the actual harm.

Once the levels of culpability and harm are established the Court will then consider the level of the Company's turnover, to identify the appropriate range of penalty. For example, a company with a turnover in excess of £50m, could face a fine of up to £10 million, a company with a turnover of £10m - £50m a fine of up to £4m, a company with a turnover of £2m - £10m a fine of up to £1.6m, and for micro-businesses with a turnover less than £2m a fine of up to £450K. In deciding on the fine the Court will take into account mitigation.

The following cases give some indication of the level of penalties now being issued:

Company A, involved a fatality of a customer due to lack of transport control and the company was fined £2m.

Company B involved an arm injury, the machine did not have the correct safety guard fitted and the company was fined £1.8m

Company C involved hand-arm vibration syndrome, insufficient risk assessment had been carried out and the company was fined £200k

Company D involved a worker who was fatally injured after falling through a fragile roof, the company was fined £480K.

In addition directors, sole traders, partners and employees that commit a serious offence with high culpability can now expect custodial sentences; particularly if the court forms the view that profit was a motivating factor in the offence. The new guidelines give sentences with a range of 26 weeks up to 2 years.

It is important that health & safety is taken seriously, that policies and procedures are in place, risk assessments are conducted, safe work practices are documented, and individuals are trained and that there is a pro-active health & safety culture throughout the business.

If you require any further details or advice on health & safety in your workplace, or require an audit to assess your risks, please do contact us at H-ELP Systems.