

# Ignorance of health & safety law amongst manufacturing companies is staggering

Only 10% are aware according to HSE Independent survey

Most manufacturers now have fairly sophisticated Health & Safety policies in place, a whole industry having sprung up in the last 30–or–so years to support them in preventing accidents and complying with the Health & Safety at Work Act 1974. However, ignorance of how those laws affect directors and managers is staggering according to the experience of manufacturing litigation specialists Andrew Jackson and Michelle Di Gioia from Thomas Eggar LLP. Their findings are supported by an independent survey commissioned by the HSE suggesting that as few as 10% of directors are aware that they or their managers could ultimately face imprisonment if they failed to comply with the law.

Will the threat of individual prison sentences wake up directors?

Thanks to high profile cases such as Enron, directors tend to be aware that they could face imprisonment if they personally fail in their fiscal responsibilities in running their company. But many remain blissfully unaware that this now also applies if they are found guilty of failing in their duty to protect employees and others from accidents. Jackson and Di Gioia say this has come about because, it's too easy for directors to be cynical and pay lip service to Health & Safety. In some ways this is understandable; there are over 50 sections under the Health & Safety at Work Act, with numerous regulations and approved codes of practice, and even a specialist lawyer needs a sounding board from time to time to be able to interpret them. So as a way of complying, most companies will engage a law firm or H&S consultant to write the company policy, the box is ticked and the job is done without the director having to do much more than write the lawyer's cheque. In litigation cases, even when sentencing has included a fine against one director, it has invariably been paid by the company, and so the personal accountability has ultimately remained one step removed from the individual.

You can't delegate a prison sentence

So, how to get directors to take safety seriously and make it part of the culture? The Corporate Manslaughter and Corporate Homicide Act 2007 which came into force in April 2008 will make it easier for companies to be convicted where a 'gross failure in the way activities were managed or organised results in a person's death'. The penalties under this act are severe. In addition to organisations being convicted there are also now increased penalties as a result of The Health and Safety Offences Act 2008 which came into force at the beginning of last year for company directors and senior managers found guilty under existing health and safety legislation, and they may face individual prison sentences as well as fines. The increased penalties provide courts with greater sentencing powers for those who break health and safety law. You can't delegate a prison sentence, explains Jackson. When corporate manslaughter hit the headlines last year, Jackson and Di Gioia along with many professionals expected the first prosecution to be brought against a large corporate; however it wasn't. Instead, facing the threat of a prison sentence under the Health & Safety at Work Act legislation is the director of a small company whose member of staff was accidentally killed during a mudslide while carrying out a soil survey at a site. The trial of that case commences shortly and the result will be eagerly awaited.

The law will interpret a culture as much as a procedure

As the partner responsible for Health & Safety at Thomas Eggar, a firm with over 500 employees across six offices in London and the South, Jackson is extremely mindful of taking his own medicine. My own attitude has shifted considerably the more litigation cases we take and the more company bosses I meet, he says. My initial scepticism about all manner of seemingly innocuous

issues has been replaced with a serious consideration of potential risks. Someone that Jackson feels strikes the right balance is the CEO of a client company running a large utility. I was delighted to hear his remarks when addressing an audience of senior managers; suppliers and partner companies that he would not do business with or allow anyone to work for his company who put profit before safety. He has made Health & Safety a cultural issue, as well as a procedural one, the same approach the Courts adopt in prosecutions.

It is not only directors who are at risk

Another common misconception is that it is only directors who are at risk for breaches of the Health & Safety legislation. In fact any senior manager responsible for Health & Safety in that organisation could face a possible fine and imprisonment.

Safer manufacturers at similar risk to heavy industry

It is common for companies with highly sophisticated advanced manufacturing to take Health & Safety less seriously than a traditional metal-bashing company, according to Di Gioia. People are always surprised when we advise them of potential penalties and consequences. We give them specific examples of what has happened to other companies.

Accidents will happen stories of damage mitigation in the courts

Thomas Eggar's history in handling Health & Safety litigation goes back 30 years to when James Morgan-Harris of the firm handled some of the very first and largest prosecutions.

Even though prevention has become a big industry since those days, says Jackson, accidents will always happen and when a company or individual is charged, the courts will look at how the company was operating in relation to the accident. Our many years of experience mean we are good at the job of mitigating the damage to our client. Recent cases have included an employee whose finger was chopped off whilst cleaning machinery, another who suffered severe burns, and a charity charged with breaches of The Regulatory Reform (Fire Safety) Order 2005. In the latter case, an accident had not actually happened; the prosecution was brought as a result of breaching a prohibition notice. The CEO had pleaded guilty before taking legal advice, added Jackson, and it would have been much better for him had he come to us as soon as the charges were put to him. As it was, a potential unlimited fine which could have been hundreds of thousands, this was mitigated to £22,500.

Bulletin subscription available

Thomas Eggar issues regular bulletins for company bosses to support and encourage them in keeping health & safety as a daily, cultural matter; subscription is free and is available through [lee.harding@thomaseggar.com](mailto:lee.harding@thomaseggar.com)

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For more information, please contact Zoe Mitchell: [zoe@lcm.co.uk](mailto:zoe@lcm.co.uk) or call 0845 345 6969. Thomas Eggar LLP is a leading law firm in the south of England providing legal services to both commercial organisations and private individuals. Thomas Eggar LLP has offices situated in Chichester, Gatwick, London, Newbury, Southampton and Worthing. Thomas Eggar LLP has specialist, industry-specific legal expertise that is relied upon by national and international clients. The firm has a strong reputation acting for both corporates and wealthy private individuals and has been in existence for over 250 years. The firm has been recognised as an Age Positive employer. Age Positive is a Government initiated campaign that promotes the benefits of employing a mixed-age workforce including younger, as well as older, people. It also encourages employers to

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