

4directors

Director's Briefing: April 2008

Corporate Manslaughter and Corporate Homicide Act 2007

How Does the New Act Affect Our Management Team?

Existing legislation already enables those who personally fail in their duties to be prosecuted; so why the new Act?

The Corporate Manslaughter and Corporate Homicide Act introduces a new offence, across the UK, for prosecuting companies and other organisations where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences. The Act sets out a new offence where gross negligence or serious corporate failings have been identified within an organisation, which has resulted in a person's death.

In previous cases, prosecution of an individual has proved difficult, even when evidence of failing appears to be present. When pursuing an individual under current legislation, the emphasis for enforcing authorities is on proving that a 'controlling mind' gave specific instructions that have led to an accident, which can be difficult to obtain. With the company or organisation now being targeted rather than the individual, the prosecution will look for more general failings in management systems, procedures and even culture.

Are You REALLY Managing Your Risks?

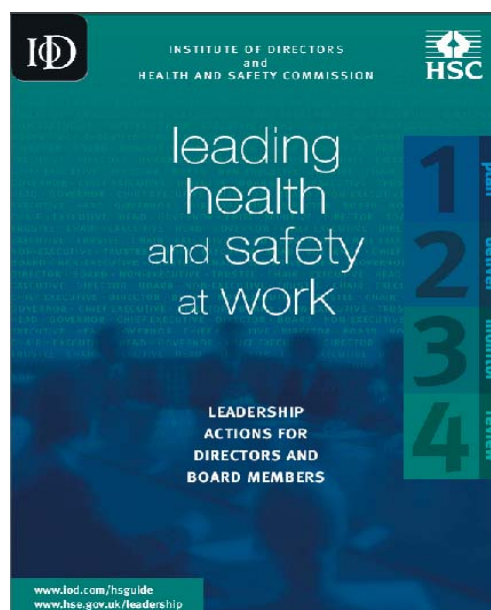
As a management team, you may currently feel a degree of comfort based on the amount of resource you invest in health and safety, but are you sure it is reducing your potential for accidents, loss and liability? For example, a directly employed safety manager may give some evidence of how seriously you view health and safety by the sheer level of investment; that individual may prepare your health and safety policy and procedures and inspect your workplace regularly. But this individual is no assurance that health and safety is being managed effectively. Without oversight from the management team, the safety culture may easily become negative, even deconstructive due to issues such as points scoring on reports, poor reporting to senior management, lack of endorsement at management level, all of which can lead to tolerance or acceptance of poor practices.

What Do We Need To Do Now?

In the event of a fatal accident, you can rest-assured these issues will come to light, so what can you do now to reduce these issues in the future?

The Institute of Directors (IOD), in association with the Health and Safety Commission has released a new guidance document entitled 'Leading in Health and Safety at Work'. (INDG417)

This legislation is an ideal time to examine carefully whether your investment is proving effective and this approach is promoted by the enforcing authorities and the IOD.



This document highlights the need for all Directors and Senior Managers to ensure they are actively involved in health and safety and to ensure they recognise how critical to the overall success of any company positive health and safety management is.

The document highlights Core Actions that should be in place in any organisation and encourages all to:

- **PLAN** the direction for health and safety, then
- **DELIVER** in line with your plans
- **MONITOR** by means of regular inspection
- **REVIEW** formal review through regular meetings, audit programmes and statistical analysis to agree and record future actions.

With the penalties for failure likely to start at 5% of annual turnover, it is clear that the costs of a fatal accident could put a company out of business and other recommendations such as publicity orders could simply compound these penalties.

But positive action will bring positive rewards for the management teams who understand that health and safety is integral to their success. Any Board of Directors with a healthy concern for their workforce, based on their moral responsibilities will see the need to ensure their safety management system is robust, practical, effective and consistently implemented.

To discuss how this Act affects you, feel free to contact our team of professionals at 4See Risk Management Limited on **01908 263336** or email us at **enquiry@4seerisk.com**

