

Firms face massive manslaughter fines

The Corporate Manslaughter Act will make it much easier for prosecutors to secure convictions in outbreaks of Legionnaires' disease and in the aftermath of building fires linked to poorly maintained ventilation, according to leading legal experts.

The Act also provides that unlimited fines can be imposed on organisations if their gross negligence was proved to have resulted in the death of an employee or member of the public.

As well as commercial companies, the Act covers a wide range of organisations including local authorities, NHS bodies, government departments, police forces and some business partnerships.

"Under the law you are required to render a piece of equipment safe," said Simon Joyston-Bechal, a partner in the firm of solicitors Pinsent Masons. "This includes putting in place a suitable maintenance regime.

"If, for example, fire investigators found that there were no access doors in the ductwork so making it impossible to carry out proper ventilation cleaning and this led to somebody's death in a fire, then the building owner could be guilty of negligence and face prosecution under the Act."

Mr Joyston-Bechal was speaking at a special seminar organised by the Institute of Directors (IoD) and a Ministry of Justice spokesman confirmed his interpretation.

"This new law can provide proper justice for victims of corporate negligence," he told the seminar at the IoD's headquarters in London. "An organisation can be found guilty of an offence if the way its activities are managed and organised causes a person's death and this amounts to a gross breach of a duty of care to the deceased. A substantial part of the failure must have been in the way those activities were organised by senior management"

Legal experts confirmed that the outcome of recent investigations into outbreaks of Legionnaires' disease might have been different if the Corporate Manslaughter Act had been in force.

“The Barrow-in-Furness case [where seven people died and over 150 were seriously harmed in 2002] is very important,” said Mr Joyston-Bechal. “Prosecutors were not able to find a ‘controlling mind’ behind the outbreak so could not press manslaughter charges against the local authority involved.

“The new Act would make it much easier to achieve a prosecution because you would only have to show that anyone involved had control over a substantial part of the organisation’s activities. This Act is creating a whole new landscape for Legionnaires’ disease prosecutions.”

In circumstances where a death is not caused, the organisation can still face prosecution under health and safety legislation, the seminar heard.

Trevor Allan, a principal inspector at the Health & Safety Executive, told the meeting that the new Health & Safety (Offences) Act that comes into force in January 2009 will increase the fines dished out by Magistrates Courts to £20,000 and introduce up to two years in prison for “virtually all health & safety offences”.

He said this had clarified the situation and made the process of prosecuting non-fatal breaches of legislation easier. This would include Legionnaires’ disease cases where victims did not die.

“If you put someone at risk you can be prosecuted under the legislation,” said Mr Allan. “In fact, you can have a ‘near miss’ with no-one hurt or killed and still end up in court.”

Ventilation and water hygiene expert Gary Nicholls, who attended the seminar, said the legal opinions had clarified the seriousness of this issue for building owners and operators.

“Duty of care is so important,” he said. “The legal framework now makes it clear that you must have a strategy for keeping your ventilation and water services safe. Planned, preventative maintenance is the only way to minimise the risk of fires being spread through dirty ductwork and of legionella bacteria thriving in untreated water.”

Mr Nicholls, managing director of legionella control and ductwork hygiene contractor Swiftclean, added that the cost of carrying out essential maintenance was tiny compared with the potential penalties and human misery organisations risked by ignoring their responsibilities.

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