Dispute Resolution & Litigation

Tougher Penalties Including Imprisonment to be Introduced Under the New Health and Safety Offences Act 2008

New legislation, the Health and Safety Offences Act 2008, will increase penalties for those who breach health and safety legislation. The Act received Royal Assent on 16 October 2008 and will come into force in January 2009.

The Act amends the Health and Safety at Work etc Act 1974 in two key respects:

- Imprisonment is introduced as a penalty for most health and safety offences. This could apply to any employee who fails to take reasonable care for the health and safety of himself/herself or of others. It could also apply to any director or senior manager where the company commits a health and safety offence with his/her consent or connivance or due to his/her neglect. The maximum term of imprisonment will be two years.
- The maximum fine which may be imposed by the lower courts for a breach of health and safety regulations has been increased from £5,000 to to £20,000, although the unlimited fines in the higher courts are not affected.

HSE Chair Judith Hackitt said:

"The new Act sends out an important message to those who flout the law. However, good employers and good managers have nothing to fear. In fact, they have much to gain…Our enforcement policy targets those who cut corners, gain commercial advantage over competitors by failing to comply with health and safety law and who put workers and the public at risk."

Pinsent Masons' View

The possibility of individuals being imprisoned for health and safety offences is a significant and worrying development, particularly for company directors and managers. We don’t share the HSE’s complacent view that good managers have nothing to fear. It is our experience that good managers can make mistakes which, when prosecuted with the benefit of hindsight, can now lead to loss of liberty as well as a criminal fine.

Getting health and safety right is now more important than ever and there are some important precautionary measures which we advise our clients to take to reduce their exposure to these increased penalties. By adopting the right incident response procedure, clients will not necessarily need to disclose damaging incident investigation reports to the HSE that admit their failings. Similarly, specialist help is needed for employees through the interview process with the HSE, particularly if imprisonment is now a concern.

Pinsent Masons has a dedicated and leading team of health and safety lawyers and health and safety professionals working across the UK to help companies comply with health and safety laws.

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