

## ARE YOU AWARE OF THE NEW HEALTH AND SAFETY FINES?

The introduction of new sentencing guidelines will see you face far greater punishments for health and safety breaches.

New sentencing guidelines, which came into force on 1<sup>st</sup> February, are living up to their billing as the most dramatic change in health and safety enforcement for nearly half a century.

From February 2016, fines for health and safety (H&S) offences, corporate manslaughter, and food safety increased substantially. The increase applies to cases reaching the courts from February 2016, even if the incident that led to the prosecution occurred before that date.

You may not be aware that H&S fines are now based on their turnover. For example, a company with a turnover of less than £2m can now face a H&S fine of up to £450,000; between £2m and £10m, the fine can be up to £1.6m; and a company with a turnover of £10m - £50m could face a fine of up to £4m. So-called 'very large companies' will be subject to even higher fines.

If your company is part of a bigger group, it is possible that the court could seek to levy a fine based on total group turnover, and thus increase the level of the fine.

These fines are in addition to court legal costs, and there is also potential for individuals to be imprisoned or disqualified as a director. In the event of a corporate manslaughter conviction, the court may require the offending company to publicise the conviction on their website and other literature. Moreover, the conviction would have to be disclosed on procurement tenders.

- £20m is the maximum fine for corporate manslaughter
- Firms can be fined up to £3m for the worst food safety and hygiene breaches
- For other health and safety offences, the maximum punishment is a £10m fine for companies or up to two years in jail for individuals

We would remind you that prosecutions in respect of events prior to February 2016 will also be subject to the new level of the fine and make appropriate financial provision.

This is a timely reminder of how you approach operational risk management issues such as H&S. How confident are you that your company and your H&S management would be able to withstand a prosecution? Company directors have a duty under the Companies Act 2006 to 'promote the success of the company' and to take into account 'the interests of the company's employees' and 'the impact of the company's operations on the community and the environment.

An alleged breach of duty by a company director could expose you to claims under their Directors & Officers Liability policy. Is this a cover you have?

A useful document is an IOD/HSE publication 'leading health and safety at work' (<http://www.hse.gov.uk/pubns/indg417.pdf>) This document is aimed at company directors and includes a health and safety leadership checklist and a guide to further advice sources.