

White Paper **Corporate Manslaughter implications for Work Related Road Safety**

The much-heralded Corporate Manslaughter legislation has now received Royal Assent and from April 2008, fleet managers and employers of those who drive vehicles in the course of their employment, will have another piece of legislation to contend with.

We cannot say that we were not warned of its arrival, there have been calls for legislation holding employers accountable for fatalities arising in the course of a work activity for many years, from the Piper Alpha rig disaster to the Herald of Free Enterprise to the recent Rail Crashes such as Hatfield.

For those of us involved in work related risk management, we have in the last few years had to contend with the findings of the Richard Dykes Task Group, the Health and Safety Executive management of work related road safety guidelines and the addition of a fleet section to the Association of Chief Police Officers investigation of road death manual. All of which are designed to educate and encourage managers to effect a change in their organisations management culture by embracing health and safety in the driving activity. These requirements apply regardless of whether the employees are true company vehicle drivers, be it trucks, vans or cars or part of the `Grey Fleet` of drivers in cash for car schemes or driving their own vehicles under expenses arrangements.

The new Act merely reinforces the obligation on a Company to comply with existing health and safety legislation, by introducing a viable alternative to a health and safety prosecution, the current method of tackling employers whose drivers are involved in fatal accidents on the road.

One of the problems with a health and safety prosecution is that it has been seen as a fallback, not carrying the appropriate gravitas of a finding that the organisation unlawfully killed someone by the actions of their employee, in future a successful prosecution of corporate manslaughter will carry a great deal more stigma and no doubt adverse press and public relations.

The reality is that a jury hearing a corporate manslaughter case will still have to find that there has been a gross breach of duty by the company or a senior manager or gross negligence manslaughter as it is defined, for failing to embed a health and safety culture within its management process. The jury will hear evidence of how the company health and safety culture measures up against The Health and Safety at Work Act 1974 and its subsequent management regulations, codes of practice and guidelines.

The Act does refer to the liability of managers as well as company directors but in both cases neither will be at risk of imprisonment; it is the company that will be subjected to the prosecution. There is still potential under the old common law of manslaughter for individuals to be prosecuted, but since the unsuccessful prosecution of managers connected to the Hatfield rail crash, it is very unlikely that this will occur in the future.

So what should a company do to protect themselves from the risk of prosecution, firstly they must follow the guidelines of the Health and Safety Executive in assessing the risk, this in my view requires the company to carry out a formal risk assessment, which must be recorded in writing. Thereafter measures must be put in place to manage and minimise the risk, this will inevitably require a management change whereby responsibility for health

White Paper **Corporate Manslaughter implications for Work Related Road Safety**

and safety will have to be demonstrated from the managing director down, this is a prerequisite of avoiding a prosecution. Finally an audit trail must be capable of scrutiny to demonstrate that the company is actually implementing health and safety rather than paying lip-service to it.

But will a companies existing risk management strategies guarantee protection, the simple answer is possibly provided the management culture can be demonstrated. If a company has merely adopted a quick fix or scatter gun approach by purchasing solutions such as driving licence checking, driver assessment or driver training, without the initial risk assessment process, cultural change and audit trail I believe that they will still be vulnerable not only from prosecution but also from a civil claim for damages.

Addressing the issue of work related road safety is neither financially or time demanding, it merely requires the company to face up to its corporate responsibility and follow the Health and Safety Executives work management regulations and the guidelines.

Is it likely that from April there will be a flood of corporate manslaughter prosecutions, this I believe is unlikely, having said this however I do believe that for employers of work related drivers involved in fatal accidents, this will become the prosecution of choice, with the prospect of the managing director standing in the witness box alongside the driver. More realistically, the Act should convince all employers that they should do something about road risk, there are proven cost benefits in doing so in reduction of insurance excesses and premiums, the human cost of downtime through injury and wasted administration time, what better reason does a business need?

The main provisions of the Act

- The offence
 - Will focus on senior management failures either individually or collectively
 - Will require the organisation to owe a duty of care to the victim which is obvious in a driving scenario
 - Will require evidence that the management failure amounts to a gross breach of duty to take reasonable care
- When will a duty be owed?
 - As an employer to employees, i.e. fleet operator to its drivers
 - As an employer to the victims of their employees, i.e. passengers, other drivers or pedestrians
 - As occupiers of land such for example an employees place of work or somewhere the public has access
 - When supplying goods or when engaged in a commercial activity
- Management Failure Criteria
 - The test is the way in which a particular activity is being managed or in reality mismanaged
 - Responsibility will fall on senior directors and managers

White Paper **Corporate Manslaughter implications for Work Related Road Safety**

- If middle manager was undertaking a senior role then their actions will be relevant
- Responsibility of individuals who have a `significant role` -where management responsibilities bear on the organisation as a whole or a substantial part of it, this will include health and safety or fleet managers

The Author

David Faithful is a solicitor with national law firm Lyons Davidson, consultant to fleet risk management company Essential Risk Consultancy and co-developer of the on-line fleet risk management solution Road Risk Answers.

He is a member of the advisory board of the road safety charity RoadSafe and a steering group member of the joint RoadSafe/Department for Transport `Driving for Better Business` initiative.

He was the author of the legislation section of the Croner publication `Management of work related road safety`.

A member of a number of national bodies concerned with road safety and Insurance law, he lectures extensively on legal and risk management issues relating to work related vehicle use and is the leading voice on the legal aspects of telematics `black box` technology.

Contact

Tel

0121 683 8415 Office DDI

01676 532956 Home

07967 499713 Mobile

E-mail

dfaitful@lyonsdavidson.com

faithful67@btinternet.com