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MANUFACTURINGNI

Webinar



Navigating Fatal Workplace Accidents

Legal Obligations and Best Practices

Kirsten Magee, Partner, Litigation @ **Mills Selig**

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Overview

Fatal accidents in the workplace

- Key issues in the immediate aftermath
- HSE (NI) investigation
- PSNI investigation
- Coronial Inquest
- Civil proceedings
- Q&A

Key issues in the immediate aftermath



- Who to alert
 - Emergency Services
 - Health and Safety Executive NI (HSE NI)
 - Legal Advice / Solicitor
- First Aid

Key issues in the immediate aftermath



- Commence Internal Investigation
- Manage Press
- Family Liaison
- Pastoral Care

HSE NI – Investigation

- HSE NI's Role
- Interviews
- Plant / Equipment
- Information Requests

HSE NI – Enforcement

- Prohibition Notices / Improvement Notices
- Prosecutions
- Penalties

Penalties for Health and Safety Offences #1

Failing to comply with an Improvement or Prohibition notice, or a court remedy order (issued under the HSW (NI) Order Articles 23, 24 and 39 respectively):

Lower court maximum

£20,000 and/or 6 months' imprisonment

Higher court maximum

Unlimited fine and/or 2 years' imprisonment

Penalties for Health and Safety Offences #2

Breach of Articles 4–7 of the HSW (NI) Order, which set out the general duties of employers, self-employed persons, manufacturers and suppliers to safeguard the health and safety of workers and members of the public who may be affected by work activities:

Lower court maximum

£20,000

Higher court maximum

Unlimited fine

Penalties for Health and Safety Offences #3

Other breaches of the HSW (NI) Order, and breaches of 'relevant statutory provisions' under the Order, which include all health and safety regulations.

Lower court maximum

£5,000

Higher court maximum

Unlimited fine

Case Study

Case Study #1 – Northern Irish Manufacturer

- Local manufacturer fined £16,000 for failing to ensure the safety of employees whilst performing maintenance tasks at an unguarded conveyor
- Company pleaded guilty to a single health and safety offence (breach of Article 4(1) of the Health and Safety at Work (Northern Ireland) Order 1978)
- Employee suffered serious arm injuries whilst performing maintenance tasks at a plant conveyor. After identifying a blockage of sand at the tail pulley of the conveyor, safety guards were removed to clear the material. The conveyor belt was allowed to run while sand was manually shovelled back onto it
- In attempting to clear a further blockage of sand in this area while the machine was still running, the employee was drawn into the tail pulley of the conveyor, trapped, and suffered serious injuries
- The investigation established that the company had no documented isolation and lockout procedure, nor equipment made available to employees to effectively lock out each energy isolation point. Furthermore, there was no specific risk assessment in place which detailed adequate control measures for running a conveyor with the safety guards removed

Case Study

Case Study #1 – Comparison

- Fines in England and Wales are considerably higher
- A plastics manufacturer in Kent was recently fined £400,000 after an employee was seriously injured by a forklift truck
- The driver of the forklift truck failed to see the worker, who sustained multiple leg fractures and a dislocated ankle, requiring him to have a metal plate fitted in his left leg
- A Health and Safety Executive (HSE) investigation found the company had no documented safe system of work and that nobody was following the measures the firm thought were in place.
- Poor vehicle and pedestrian segregation in the workplace is a common cause of fatal incidents and injuries
- Employers need to ensure that they have suitable measures in place to segregate pedestrians and vehicles. This includes: the provision of safe systems of work, appropriate training procedures and systems for ensuring compliance with those measures

PSNI Investigation

- Case Overlap with HSE NI
- Investigate obo Coroner
- Corporate Manslaughter

Corporate Manslaughter and Corporate Homicide Act 2007

(1) An organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised –

- (a) causes a person's death, and
- (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased

Corporate Manslaughter – continued



(3) An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach referred to in subsection (1).

Corporate Manslaughter – continued

(4) For the purposes of this Act

- (b) a breach of a duty of care by an organisation is a “gross” breach if the conduct alleged to amount to a breach of that duty falls far below what can reasonably be expected of the organisation in the circumstances;
- (c) “senior management”, in relation to an organisation, means the persons who play significant roles in—
 - (i) the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
 - (ii) the actual managing or organising of the whole or a substantial part of those activities.

Corporate Manslaughter – continued



Sentencing Guidelines

- How foreseeable was serious injury?
- How far short did the Defendant fall?
- Was this an isolated incident?
- How far up the organisation did the breach go?

Mitigating Factors

Coronial Inquests

- Nature and Scope
- PIPs
- Procedure
- Findings / Referrals

Civil Proceedings

- Liability
 - Negligence
 - Breach of statutory duty
- Expert evidence
- Quantum
 - General damages
 - Future loss

Case Study



Case Study #2 – Czech Plant Manufacturer

- Pneumatic Roller manufacturer
- Coronial Inquest
- Civil claim

Key Takeaways

- Health & Safety must be at the forefront of everything you do
- Well organised, accessible records are key
- Regular policy reviews/ internal controls to ensure compliance
- Significant financial consequences
- Direct, personal consequences for senior management
- Early advice is crucial

Q&A



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Thank you



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