



SAFETY UPDATE BRIEFING – FEBRUARY 2010

INTRODUCTION

This newsletter accompanies the news that the UK is technically no longer in recession, although it seems recovery will be slow. In this issue we look forward to what the coming months and years might hold and report on some significant developments in the Health & Safety field.

Environment Agency gets new powers and penalties

Some time ago [See our September 2008 issue], we reported on the Regulatory Enforcement and Sanctions Act 2008. The Act gave inspectors new and extended powers provided their enforcement body opted-into the scheme.

The Health and Safety Executive decided at the time that it was not in their interests to give up their existing powers for the new scheme, and Local Authorities enforcing H&S laws alongside them were also consequently not allowed to opt into this scheme but others have taken a different view.

The Environment Agency have chosen to opt-into the scheme and as a result Environment Agency inspectors will have new and extended powers to issue notices and serve instant fines and penalties.

Those facing Environment Agency inspectors should rightly be wary of the potential for inspectors using these new powers.

This means that Environment Agency inspectors will have powers including the following:

- Serving a fixed penalty notice
- Serving an “Discretionary notice”, requiring improvement to be made within a timescale, but linked with a fine as well.
- Serving a “Stop” notice, again alongside a fine. The notice can only be overridden by them issuing a “Completion Certificate”.
- Negotiating an “Enforcement Undertaking” with a business. This would again include a fine but also commit the business to a course of action.

The level of fine for fixed penalties has not been set and may vary for the alleged offence. A maximum of £5,000 was suggested in 2008 for fixed penalty notices but the upper value for “Discretionary Notices” may be much higher, as these are intended for “serious” non-compliance.



Fit Notes, not Sick Notes

For some time the Government has been promising to introduce a system where GP's write "Fit Notes", rather than "Sick Notes". The scheme is due to come into force in 6th April 2010.

As might be expected however, things are not as simple as they seem.

The resultant system will NOT require a doctor to sign off the patient as "Fit for work", but will instead the doctor will sign a certificate saying that the patient is either:

- Is UNFIT for work
- MAY (or may not) be fit for work, taking into account the doctor's advice

To this the doctor will be able to append a note setting out his advice.

The note will also offer some "tick-boxes" for the doctor to use which will include the following options:

- A phased return to work
- Amended Duties
- Altered hours of work
- "Workplace Adaptations"

In the end, the ultimate decider as to whether a person is fit for return to work in some form is the employer, and doctors will not have powers to dictate or mandate what arrangements are made or whether the employee is actually regarded as fit for work.

The system is portrayed as one which will help people get back to work and one which will reduce absence. This dream has yet to be realised.

In practice, the additional intervention by doctors and government seems to merely throw more difficulties into an already confused pool.

Those writing "Fit Notes" will have little idea of their patient's working environment and will not have spoken to their employer. Employers, on the other hand, will be faced with a "Fit Note" which might recommend wholly unrealistic actions, but which might appear in evidence in a Tribunal in any dispute.

This emphasises the need for employers to obtain and retain the best professional employment advice they can find and to follow the guidance their experts recommend. PRM does of course offer our clients a H/R service to meet these needs.

A sample of the new "Fit Note" is included overleaf.



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Statement of fitness for work For social security or Statutory Sick Pay

Patient's name

I assessed your case on:

and, because of the following condition(s):

I advise you that: you are not fit for work.
 you may be fit for work taking account of the following advice:

If available, and with your employer's agreement, you may benefit from:

a phased return to work amended duties
 altered hours workplace adaptations

Comments, including functional effects of your condition(s):

Sample

This will be the case for
or from to

I will/will not need to assess your fitness for work again at the end of this period.
(Please delete as applicable)

Doctor's signature

Date of statement

Doctor's address

Med3 04/10



Prosecuting Directors

The Director of a West Midlands metal finishing company was prosecuted under S.37 of the Health and Safety at Work etc. Act 1974 on 4th February 2010. He pleaded guilty, attracting the maximum reduction in his sentence, and was personally fined £2,000 with £1,000 costs.

The Company had two cooling towers which had no maintenance system for controlling Legionnaire's Disease. Two surveys and quotations had been received in January 2008, but were not acted upon, despite warnings about the high levels of contamination. The HSE served a prohibition notice on using the cooling towers in September 2008 and in addition had served an improvement notice requiring improved maintenance, although the Company consequently ceased trading in October 2008. It was reported that a clean-up had taken place prior to the final closure.

The HSE said they took the decision to prosecute the Director personally because the failure to act on the quotations and warnings given back in January 2008 was his alone. It might also be observed that in the absence of any extant business to prosecute, the Director remained the only surviving entity capable of being penalised.

Legionnaire's Disease is a serious condition which has led to multiple fatalities in the UK and elsewhere. The modest fine imposed may reflect in part the background portrayed – that of a small

firm struggling to survive and deferring costs before finally closing. Whilst one might sympathise with the Director's position, the consequence of his inaction could have been a number of deaths and it emphasises that essential safety improvements cannot be delayed, despite their financial impact.

Another Director was prosecuted in Bradford this month following events in an electrical waste recycling plant in Huddersfield. The company had been recycling florescent tubes and other electrical items. The breakage of florescent tubes releases mercury and normally a filter is installed to prevent evaporated mercury entering the environment. In this case the filters had been missing for a year between 2007 and 2008 and workers had raised levels of mercury. There was also poorly controlled exposure to lead dusts from crushing television and monitor tubes, with a lack of personal protective equipment and washing facilities.

The company was issued with a prohibition notice and five improvement notices at the time, and was subsequently also prosecuted and fined for 5 legal breaches. It pleaded guilty, thereby attracting reduced fines from the court, but these still amounted to £145,000 plus £35,000 costs. The Director was personally prosecuted under S 37 of the Health and Safety at Work etc. Act 1974 and pleaded guilty. He was fined £5,000.



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Safety Accreditation systems

We have reported before on Safety Accreditation schemes. These take various forms but frequently require safety documentation submitting with a fee for “accreditation”. Some clients require such accreditation and will only allow “accredited” contractors to work on their sites. Since all of these accreditation schemes are different, contractors can often face a bewildering requirement to submit to accreditation and pay for a large variety of schemes, few of which recognise each other or use similar standards.

As a result of this problem, and in response to criticism from a number of sources, a body called the Safety Schemes in Procurement forum (SSIP) has been established.

The aim of SSIP is to work towards a mutual recognition of the various schemes, so that being accredited by one, automatically counts as accreditation by other schemes in the forum. Members of the forum include:

- CHAS
- Exor
- ConstructionLine
- NHBC

There are other schemes which are NOT party to this arrangement, and in particular the “Safecontractor” scheme operated by the Connaught Group is not a member, neither is Achilles. Other safety schemes such as the SPA Safety Passport scheme and the CITB’s CSCS card scheme follow a different path linked to training and are not part of the exercise.

SSIP members do have mutual recognition agreements, and it is useful to know that membership of one scheme allows for joint membership of other SSIP schemes in some form or another. Generally there are additional “registration” fees and limits to the mutual recognition, for example the CHAS accreditation is solely H&S based, whereas the Exor H&S accreditation is part of a wider financial audit, so CHAS applicants qualify for a reduction in overall fees whereas CHAS accept Exor accreditation in full, and merely require a registration fee.

Whilst SSIP represents some easing for contractors, its application is far from universal. Clients needing to investigate being accredited by these schemes are advised to contact **PRM** as we will be able to assist you in gaining accreditation.

This newsletter can be freely distributed to friends and colleagues. If you have queries about any of the matters mentioned in this newsletter, or require more information, please contact us for advice

Don't forget: We're here to help you with any question on the burdens of **Health & Safety**.

We're here when you need us. Just call:

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for **Health & Safety** advice.