

EMPLOYMENT – HEALTH AND SAFETY

VICARIOUS LIABILITY - *Employer will be liable for the acts committed by the employee in the course of his employment. *Tort law in relation to personal injury and property damage. *Liability for independent contractors is more complex - *Biffa Waste Services Ltd v Maschinenfabrik GmbH* *Modern test, see *Lister v Hesley Hall Ltd* *Fennelly v Connex South Eastern Ltd*. There is responsibility unless employee is on a frolic of his own.

HARASSMENT AND BULLYING *Protection from Harassment Act 1997 (civil liability for tort s.1) *S.26 Equality Act 2010: harassment prohibited generally.

HEALTH AND SAFETY AT WORK ACT 1974

*Result of Robens Committee: Believed that there was too much law; Overlapping jurisdiction of enforcement authorities; Legal obligations under one Act, with enforcement by a single body. As such Health and Safety Executive (HSE) was formed.

*Applicability: Unlike the old law the Act applies to people and not premises. Covers all employees, except domestic workers. Covers trainees on government sponsored scheme. Covers non-employees affected by activities carried out in workplace.

*Liability under the Act: Act unlike regulations made under Act does not give rise to civil liability. However, Act creates criminal sanctions. 1,000 prosecutions per year, since focus of HSE is co-operation, rather than compulsion.

*The HSE is responsible along with enforcement officers, for enforcement and prosecutions under the Act.

POWERS OF INSPECTORS include: At reasonable or dangerous time the power to enter premises; To take a PC with them if have a reasonable cause to apprehend any serious obstruction of duty; To make such examination and investigation as may be necessary.

*Improvement notices: S.21: inspection of opinion that person contravening statutory provision, or has done so and likely to be repeated, then can give an **Improvement Notice** to remedy contravention – cannot be less than 21 days.

*More serious is prohibition notices: S.22: where there is a breach of a statutory provision if these activities carried on or are likely to be carried on as to involve a risk of serious personal injury. *Can take effect immediately or after a certain period. *Can be issued against persons to make them wear safety equipment.

*Withdrawal of notice: A notice may be withdrawn at any time before expiry of 21 days or a deferred prohibition notice.

*Appeal Procedure: Must be made to the ET, who can affirm notice, affirm with modifications, or cancel notice.

*Effect on notice: Improvement notice suspended or withdrawn; Prohibition notice only suspended if ET directs and only for a limited time.

***Appeal can be brought on 4 grounds: 1.Breach of a statutory duty; 2.Time limit imposed for remedying the defect; 3.Absence of risk of any danger; and 4.Financial inability of the employer to comply with the order.**

1.Breach of Statutory Duty

**Sutton & Co Ltd v Davies* – improvement notice – liability was absolute here – whether or not there has been a breach of a statutory provision. Does not matter that there has been no accidents.

**Brewer & Sons v Dunston* – prohibition notice -is whether there is a risk of serious personal injury.

2.Time Limit

*Ask the ET to give the employer a longer period of time to comply with the notice. The ET will also take into account reputation of company.

3.Absence of risk of any danger - *South Surbiton Co-operative Society v Wilcox* (even though the risk was minimal it was an absolute liability, so had to fix the tile)/*CF Associate Dairies Ltd v Hartley*

4.Financial inability of the employer to comply with the order

*Unlikely to succeed.

**TC Harrison Ltd (Newcastle-upon-Lyme) Ltd v Ramsey*

*Financial difficulties are no defence – otherwise a firm could have an advantage over competitors, keeping down prices and undercutting them, but not following requirements.

ENFORCEMENT

***COSTS:** At discretion of the ET, can be made against the unsuccessful party. * Factors to consider: efforts to remedy breach; strength of appeal; was breach trivial (*South Surbiton Co-Operative Society*)

***Failure to comply with order** - Criminal offence – no defence that employer took reasonable practicable steps to comply with order.

***Further appeals:** To the Division Court and not the ET, this is because a breach of an order is a criminal offence. *ET only applies to civil matters.

Failure to comply with order - Rather than punishing the employer for breach, a court may order the employer to take such steps as to remedy the breach. *Failure = **contempt of court**. *Additional time may be requested. *Consequences for breach: Up to 6 months custodial/ £20,000 fine (Magistrates Court)/ Up to 2 yrs/ unlimited fine (Crown Court)

DUTIES OWED BY THE EMPLOYER - Section 2 – duties are owed by all employers and extend to premises over which e'yer has actual control. But see also *General Cleaning Contractors Ltd v Christmas*. Not absolute – reasonably practicable.

*Provide and maintain plant and systems of work; Safety when using, storing, transport items, etc; Training, instruction and supervision of employees; Keep premises in a safe condition; Safe premises with adequate facilities and arrangements for welfare at work.

***Requirement to have a written safety policy:** S.2(3), only applies to employers with 5 or more employees. No guidance as to content – needs to be prepared and revised. Needs to be brought to attention of all e'yees, but no guidance as to how. Should lay out responsibility of all employees, e.g. Board of Directors. Non-English speakers/relig should be informed in a different way. This is an active duty.

***Extent of duty owed to non-employees** - S.3: Covers lawful visitors and those on premises. If there is a potential hazard must provide info: Visitors, Employees, Visitors. * The extent of this duty is conduct undertakings... 'so far as is reasonably practicable' (so) are not exposed to risks to their health and safety.

DUTIES OF EMPLOYEES - S.7 Duties at work: Reasonable care of H&S of himself and others; To co-operate with e'yer re H&S duties. * S.8 Do not interfere with H&S provisions. Covers intentional and reckless interference/misuse.

RIGHTS OF EMPLOYEES (ERA 1996) - S.44 Right not to suffer a detriment in health and safety cases. * S.100 Right not to be dismissed unfairly in certain circumstances involving health and safety cases.

KEY EUROPEAN REGULATIONS: 'Six Pack' Regulations came into force in 1993. Management of Health and Safety at Work Regulations 1999 (as amended); Workplace (Health, Safety and Welfare) Regulations 1992; Provision and Use of Work Regulations 1998; Personal Protective Equipment at Work Regulations 1992; Manual Handling Operations Regulations 1992; Health and Safety (Digital Screen Equipment) Regulations 1992

PENALTY OF BREACH - *Individual or organisations can be charged and convicted. *Where an organisation is in breach, a director, etc, can be charged where they were responsible. **Armour v Skeen*: failure of senior management in H&S policy implementation. **R v Boal*: a underling will not be liable.

***Reverse burden of proof** - Under s.40 the burden of proof is on the accused, if the duty is to do something 'so far as is reasonably practicable' or use 'the best practicable means'. *Balance of probabilities: civil standard. * No need to show that there is a specific breach, but that there was a risk of injury arising from state of affairs. Then burden passes to accused that they have done all which was reasonably practicable to avoid risk.

Corporate Manslaughter and Corporate Homicide Act 2007 - * Rationale for reform: failure of the identification doctrine. *An offence requires: Manages or organises its activities which causes death, in a manner which amounts to a gross breach of duty of care; Way in which senior managers manage or organise substantial activities must be a substantial element of the breach; A breach occurs when it falls below what can reasonably be expected or organisation in the circumstances. We no longer have to pin it on an individual, it will be on the company. This is rare!