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Michael Kemp reporting affairs as he finds them



Harsh police probes in duty of care breaches

Risk protection 'vital' to avoid liability blitz

POLICE are stepping-up pressure on companies to fully meet driver and vehicle duty of care commitments, or risk prosecution.

Occupational road risk protection is the only business solution. And effectively police action is now making that a 'corporate must'.

Leaping ahead of revised H&S rules for directors and new Corporate Manslaughter legislation, police have injected more bite into their Road Death Investigation Manual of procedures to determine corporate liability.

An update states: "As a general rule police will investigate all at-work road deaths. Also HSE should be contacted when there is sufficient indication that:-

"Failures in safety management by an employer significantly contributed to the incident.

"An employer has not adequately ensured the competence of the driver and deficiencies in training resulted in an incident.

"There is a serious continuing risk (e.g. one that could result in a similar incident in similar circumstances) which cannot be addressed by police using road traffic legislation, or by another appropriate enforcing authority."

Drive & Survive, company car driver assessment and training specialist well connected to police thinking, warns:

"This is no empty threat. If police find sufficient grounds for investigation they will knock on a fleet manager's door and it will be considered a criminal investigation from the outset with a caution.

"There will be a taped interview in a police station. Employer documentation and computer servers will be removed for thorough interrogation, a process that might take several weeks. It will be disruptive, embarrassing, de-motivating and unlikely to escape media notice.

"Do everything in your power to avoid that, for your sake and your business."

City lawyer Mike Appleby, leading specialist in health and safety at Fisher Scoggins, adds: "Even if police do not prosecute they can pass their investigation to the HSE who can prosecute individuals as well as companies under H&S laws.

"Recently a council manager, who cancelled a maintenance contract leading to a Legionnaires' disease outbreak, was fined £15,000 (half her annual wage) for a health and safety breach. The judge said that but for her 'limited means' he would have fined her more."

*FSG's RiskMaster employee Permit to Drive programme provides business with the most legally complete protection against prosecution following a road death or serious accident involving a working driver. RiskMaster cuts running costs by £300 p/car p/year average.

'Police go after people'

A VIEW that the Corporate Manslaughter Bill contains little for management to fear is in one expert lawyer's opinion "too simplistic".

Mike Appleby, who represented Balfour Beatty when it was acquitted of corporate manslaughter over the Hatfield train crash, says: "Police are used to investigating people not companies. For a company to be convicted under the proposed new law there has to be gross failure by senior management. As to who is a senior manager may well be given wide interpretation.

"It is likely that when police are investigating a management chain they will interview managers under caution at a police station if they suspect wrongdoing by them.

"Clause 17 of the Bill says there will be no prosecutions of individuals for secondary liability, like aiding and abetting corporate manslaughter. But the Bill does not abolish charging individuals under current laws.

"Logically, if police have to prove failure by senior management to convict a company, what is to stop them also going for individuals?"

"Under the Bill it will still be possible to have criminal trials where companies and senior managers are charged with a mix of manslaughter and H&S offences," says Mr Appleby at City lawyers Fisher Scoggins.

Employers' amazing licence risk

ONE million UK business drivers have never been asked to produce their licence for checking by their employer.

Yet one in six company car drivers last year received penalty points for speeding. But would their fleet managers or company directors be aware of that?

Regular licence checks in a policy compelling employees to inform their employers of a change in their licence status "is the only way", states Drive & Survive. FSG agrees. It checks licences for many firms.

Employers have an obligation to ensure that their drivers are legal to drive.

RiskMaster does that.

An EU Directive is set to rule that drivers caught speeding in any EU country will get penalty points in their own EU country. DVLA will be informed.

Yet that will be impossible for an employer to discover other than by regular employee licence checks.