

Tips and Advice

Environment, Equal Opportunities and Health and Safety

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Case law - don't hide your waste

All mixed up. Unlicensed waste mixed in with a larger consignment and delivered to a landfill site put a company in breach of environmental law and landed it in court. The company admitted the breach and was fined £2,000 with £1,253 costs by Richmond Magistrates' Court. The offence? Failing to take all reasonable measures to prevent a contravention of the **Environmental Protection Act 1990 (EPA)**. During August 2003 the company's waste was taken to the landfill site where staff discovered paint cans that still contained liquid paint. However, a transfer note recording the movement of waste did not state that part of the waste was liquid paint, which is classified as "hazardous waste" under the EPA. This must be disposed of at specially licensed sites. The company explained the lapse had occurred when they were using contract painters. In their favour (it helped keep the fine to a minimum) the company did have an environmental policy and appropriate facilities for waste disposal.

Tip. As a recent case shows, be safe and classify all chemical containers as hazardous waste. Don't be tempted to clean them out, as allowing the chemicals into your waste water could get you into even more trouble.

Don't put chemical containers into general waste as any residual material, e.g. paint, will be "hazardous waste" and invalidate your waste transfer note. This will minimise the risk of prosecution.

Age discrimination and job titles

Q. A colleague has advised us that age discrimination legislation means that we can no longer use the word "senior" in our job titles because it's potentially discriminatory against junior staff. Is this view correct?

A. As with any new legislation, there's currently a lot of scaremongering going on over what can and can't be done. But whilst nothing will be guaranteed until case law is generated, it's likely that using "senior" won't be a problem. This is as long as you only use it to describe roles which are part of a logical career progression. For example, a "senior account executive" is a higher job grade than an "account executive". In other words, use it to designate posts based on the recognised competence for that role etc. and not age.

You can still use "senior" in your job titles provided it's only to describe the competence required for roles which are part of a logical career progression, e.g. "senior account executive".

A grave situation

Knowing what you're doing. You'd think that grave digging would be a fairly low risk job. Apparently not! A Dutch gravedigger nearly joined the person for whom he was digging the grave. What happened? A trailer containing the earth he'd removed tipped over and fell back into the grave, knocking him over and covering him completely. Luckily, a workmate was able to move the trailer and uncover him to allow him to breathe.

His indignity didn't end there. The gravedigger was lucky. If he'd been on his own, or his workmate hadn't been able to move the trailer he could have died. So what can you learn from this grave incident? One thing is that digging large holes isn't quite as simple and risk free as you might have thought. In fact, there are numerous risks, including ground collapse, underground cables and manual handling issues to name but a few.


Tip. To prevent the ground collapsing, check the quality of the ground, i.e. is it wet or sandy? If it's wet the potential for a collapse is greater. If it's dry, solid and full of flints etc. the chances are less. Regardless of the quality of the ground, we'd recommend a better safe than sorry approach every time. If your hole is deeper than 800mm shutter (cover to prevent collapse) the walls of the excavation with timber to act as a retaining wall (see **The next step**). Most importantly, clear any removed soil well away from the edge of your excavation, as piles of earth will add to the pressures on the exposed walls increasing the chance of collapse.

Q&A - fluorescent tubes

Q. A colleague has told us that we can't put fluorescent tubes in with our glass waste. No one has ever mentioned it before as it's only the odd one, so what should we do?

A. Fluorescent tubes contain mercury compounds and hence have to be disposed of as hazardous waste. They must also be kept intact to prevent any of the mercury escaping. As whoever takes away your waste hasn't mentioned it, we can only assume they haven't noticed them.

Tip. When you remove a tube, put the dead one in the new one's cardboard sleeve. Contact whoever takes away your waste and inform them you have the tubes. They should then be able to take them away for you but if not, to arrange for someone else to.

 *Don't put fluorescent tubes in the bin; they are hazardous waste and need to be disposed of accordingly.*

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Are WEEE there yet?

The **Waste Electrical and Electronic Equipment (WEEE) Regulations** are a companion directive to the **Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) Regulations 2005** (see page 5). The WEEE Regulations set out aims to make the producers of new electrical and electronic equipment take back and recycle equipment that they have supplied. Stringent targets for the recycling and recovery of such equipment will be set. However, these regulations are now two years overdue and at present there's no confirmed date for their implementation. What's new?

Further delays? Another public consultation was launched on July 25, 2006, and the Department of Trade and Industry (DTI) is seeking the views of businesses, manufacturers, retailers, producers and enforcement authorities on the draft regulations. In reality, very few business want WEEE to become law.

Tip. The closing date for responses is October 17, 2006, so don't expect anything to happen before then, and it's highly likely that it will be 2008 before the regulations are adopted. What should you do? We wouldn't advise you to hold onto your old electrical equipment thinking you're going to be able to send it back to the manufacturer as this is likely to be quite a way off.

Not having the correct tools

One of our subscribers contacted us after they saw something they couldn't quite believe. A repairman was attempting to cut a pane of glass using a wallpaper scoring tool and a pair of pliers. It gets better! He was doing this on a public footpath, using the kerb as an edge. Oh and just for good measure - he wasn't wearing any gloves. In his defence, our subscriber did say that he cleared up the numerous shards of glass he'd created before he left.

ES *Make sure your staff have the correct tools and gloves etc. for the job. If they haven't, you risk them taking things into their own hands, potentially injuring themselves or others.*

Gay staff and workplace harassment

Legal Protection. As you're aware, gay and lesbian employees enjoy legal protection from workplace discrimination, victimisation and harassment as a result of the **Employment Equality (Sexual Orientation) Regulations 2003**. But despite these Regulations, a new survey suggests that such employees still feel that they must keep their sexuality under tight wraps from colleagues.

Survey findings. This survey found that; (1) 50% feel unable to reveal their sexuality at work, (2) 10% of gay men had been harassed at work due to their sexual preferences and; (3) 12.5% of lesbians had also experienced harassment.

Scale of the problem. Around 3m UK adults are classified as lesbian or gay. So if the survey findings are an accurate reflection of this group's experiences, a considerable number of men and women could be experiencing harassment at work due to their sexual orientation.

Protect yourself. The best way of protecting yourself is to have a sexual orientation policy in place. Apart from banning discriminatory behaviour, e.g. paying a smaller bonus to a gay man, it should forbid any behaviour which could be construed as harassment, e.g. name-calling and jokes. Make any breach a disciplinary offence.

☞ Research has found that 50% of gay/lesbian staff feel unable to be open about their sexuality at work and 10% of gay men have been harassed. Avoid any claim by having a clear policy on harassment.

Mobile phone use whilst driving

Tougher penalties. The government has just announced that the predicted changes will be made to the **Road Safety Act 2006** to increase the penalty for using a hand held phone or similar device. The changes will take effect from February 27, 2007. The penalty will rise from £30 to £60 and in addition to the fine, drivers will also have three penalty points added to their driving licence.

It doesn't apply to just phones. As we predicted in T&A Health & Safety, yr. 5, iss. 8, pg. 3 (January 11, 2007) (see **The next step**), a driver could receive this penalty if they are using other hand held devices, such as a PDA, a BlackBerry, a satellite navigation system etc. The nature of the device is pretty irrelevant. The offence is based upon the fact that the driver isn't paying due care and attention to driving and is causing a risk to other drivers.

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£400k fine for breach of permit

Poor maintenance standards. Cemex UK Ltd (C) have been fined £400,000 and ordered to pay £12,429 by the Environment Agency (EA). The prosecution was brought under the **Pollution Prevention and Control (PPC) Regulations 2000** because they'd allowed a door on one of their silos to fall into disrepair, which then enabled a high level of fine and coarse cement clinker dust to escape the site and reach the atmosphere. The dust travelled in the prevailing winds to a nearby town. It then settled on cars, leaving them covered in a sticky deposit which couldn't be removed easily. Funnily enough, the residents of the town were none too impressed and ten of them made formal complaints to the EA.

Ignoring warnings. Being prosecuted shouldn't have come as a surprise, as the company had been warned by the EA about their "sloppy attitude" to maintenance and been told to carry out more inspections of their premises, keep records of the inspections and take action to ensure their compliance with the PPC Permit - but they'd blatantly ignored this warning. A PPC Permit is a very explicit document, i.e. "you will do this, in this way, to these limits" etc., and failing to follow it to the letter could result in enforcement action being taken.

Tip. Carry out regular checks on your site to ensure poor maintenance standards are not allowing dusts, liquids, fumes etc. to lead to possible nuisance issues. Also, keep records of the inspections and note times and dates of any remedial action.

Don't ignore warnings from an Environment Agency inspector, as doing so could lead to a prosecution. Complete regular inspections of your site to ensure dusts, fumes etc. aren't escaping.

Gender equality duty. From April 2007, the new **Equality Act 2006** will come into force. Its aim is to place the legal responsibility onto public authorities to show that they treat men and women fairly and equally, rather than relying on the present system of individuals having to make complaints about sex discrimination.

What will this involve? Public authorities will need to set goals on gender equality and how they intend to achieve it. This won't just affect areas such as equal pay, but will involve responding to the different gender needs of employees, such as the need to work flexibly.

Fire - it doesn't discriminate

It's not just about compliance. Have you been plagued by salesmen and inundated with junk mail because of the changes to fire legislation? More training needed, your old fire risk assessment isn't going to stand up to scrutiny, and of course you need more extinguishers? Don't get us wrong; many of the products out there are worth the money, but some of us have started losing sight of why we need to put fire prevention precautions in place. Although it is to achieve legal compliance, the real reason is to prevent a fire.

A case in point! Unfortunately, fires are still happening, and not just in high-risk businesses. On October 25, 2006 a fire station in Arundel actually burnt to the ground. This proves beyond doubt, that a fire can happen anywhere. Although the exact cause of the fire is still unknown, it's been reported that it probably started as a result of an electrical fault.

Tip 1. Don't ignore any potential signs, i.e. frequent power trips. Get an electrician to give your system a thorough check.

Tip 2. Don't overload power points. If you're not sure of the capacity, again, get the system checked.

Tip 3. Make sure your electrical equipment isn't allowed to overheat. In particular check air vents aren't blocked either with paper or dust etc.

☞ *Don't get bogged down with the changes to fire legislation and miss the point. Take the approach - fire prevention first - legal compliance second. Make sure your risk assessment identifies the risks from electrical equipment and ensures they're managed properly.*

Costs of sexual harassment

£124,000 for sexual harassment. A waitress was awarded £124,000 after being harassed by a male chef at a private members' club in Mayfair. Apart from creating a bullying environment for all his staff, the waitress was singled out and subjected to repeated quizzing about her sex life and unwanted touching. She became ill with stress and left her job due to his behaviour.

Act quickly. Whilst no comment was made about the employer's knowledge of these events, the level of fine suggests that it may have known, but turned a blind eye due to the reputation of the chef. Avoid finding yourself in the same position by dealing with any complaints quickly. Also ensure that your policies on harassment and the behaviour that qualifies is spelt out and brought to the attention of all staff. Protecting key staff who are harassers will be no defence to a finding of liability and a large payout, as this case shows.

☞ *A club had to pay £124,000 to a waitress who was subjected to sexual harassment by a chef. You cannot turn a blind eye if the harasser is a key member of staff.*

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Going green works

Turn off campaign. One of our subscribers agreed to keep us posted on how their green improvements affected their business. And they've just informed us of a recent success. They downloaded and printed posters from the Carbon Trust to encourage their staff to turn off their PCs at night or when they would be away from their desk for a long period. They also instructed the night security guard to turn any PCs off. In addition he left a note on the monitor just as a reminder.

A nice surprise. When the electricity bill arrived it showed a saving of approximately 20% on a normal month. Also, within two weeks of the guards turning off PCs and leaving notes, all systems were turned off.

☛ *A campaign to encourage PC users to turn off their systems at night helped a subscriber to cut their electricity bill by 20%. Use posters and notes on screens to remind your staff to "Turn me off".*

How far to go with pregnant staff?

Demotion. Of course you know that when a member of staff notifies you of their pregnancy, you're supposed to carry out a pregnancy risk assessment. The findings might not require you to do much, especially in an office environment. But what about where the risks are higher?

Brighton Belle. In *New Southern Railway v Quinn*, Q was demoted from the duty station manager's post at railway station to a lower paid role when she announced her pregnancy. The employer justified the demotion on the basis that it was taking steps to avoid physical risks (i.e. of assault) associated with the manager's job. Q didn't like it and complained to an employment tribunal which found in her favour, describing the employer's reasoning as a sham.

Appeal finding. On appeal to the Employment Appeal Tribunal (EAT), the employer argued that the obligation to "avoid" risks is an absolute one, so if there's any risk of harm at all they were under an absolute obligation to avoid it. The EAT disagreed saying that the word "avoid" means to reduce to a low risk or reduce the risk as far as possible - not to eliminate it altogether. So here, the employer had not acted on health and safety grounds but merely seized the opportunity to demote.

☛ *If an employee tells you she's pregnant, don't use it as an excuse to demote her for the sake of it. Act on the findings of a risk assessment remembering you only have to reduce the risk as far as possible.*

I didn't mean to say that

Reportable accident. You filed an accident report under the **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR)**. Your company has now received a request from the injured person asking to change the account of what happened, as it's "incorrect". However, you have also heard a rumour that this employee is going to take your company to court on a "no win, no fee" basis to try and get compensation. Will you implicate your company if you agree to change the accident report?

You can change it. Don't worry, when you submitted your accident report and investigation findings through the RIDDOR system, you'll have done so with all the information you had available at the time, so believed it to be true. Once this report is submitted your company will get a typed copy and be asked to sign and return it to the RIDDOR contact centre to say it is a true and accurate account. If there are any inaccuracies that have come to light, you can change it in pen before you sign to say it's true, and return the altered version. If, however, you have already passed this stage, you can still contact RIDDOR by telephone (0845 3009923) or e-mail (riddor@natbrit.com) and ask them to amend the report. The original information is not deleted; anything that's altered or added is simply added to the end of the report.

Tip. If you find yourself in a situation and would like to make it clear it's the employee changing their story, you can ask the revised report to state: "The injured person has withdrawn their initial statement of events and wishes to make a new one. Their revised version is as follows...".

☞ If new evidence comes to light after you've submitted your accident report to the RIDDOR reporting centre, don't worry as you can still change it later.

Bonfires and the law

Whilst there's no specific legislation that deals with bonfires, it's what you burn and the results of burning it that could well land you in trouble. Under the **Environmental Protection Act 1990** (EPA) a statutory nuisance includes, "*Smoke, fumes or gases emitted from premises so as to be prejudicial to health or nuisance*". If a bonfire consisting of industrial/commercial waste is emitting black smoke it is dealt with under the **Clean Air Act 1993**. There is also the **Highways Act 1980** to consider in that anyone lighting a fire and allowing smoke to drift across a road faces a fine if it endangers traffic.

Tip. If your bonfire is likely to emit dense smoke then consider other options to dispose of your waste. Failure to do so may prompt legal action.

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Rigger boots

Turned away. One of our subscribers has informed us that they turned up on site wearing Rigger-style safety boots, and were told they weren't allowed. Why? The boots are manufactured to relevant standards and are CE marked for personal protective equipment. They've been the boot of choice for many construction workers for years. On most site environments, particularly when working with concrete, they offer better protection than other style boots, especially those with laces.

Accident review. The problem is that Network Rail, amongst others, have looked at the accidents they've had and identified several which have resulted in twisted and broken ankles. This industry has always suffered from accidents such as this, and has now taken a pro-active step to reduce a known risk by ensuring only boots with greater ankle support are worn.

Tip. Check with the site manager, or even better, the construction phase safety plan, which you should be provided with prior to starting work. Be warned though that the site manager may assume they're OK until the safety manager turns up and does an audit against the safety plan. It's then that he will identify the rule and make the site manager enforce it. The safety plan should clearly identify restrictions such as this. If you can show you checked before you arrived, the contractor will be unable to change the rules.

☞ *Rigger boots are being banned on some sites as they don't provide sufficient ankle protection. Check the safety plan before you arrive to ensure there are no unexpected restrictions.*

Recording work-related road accidents

Police accident records change. According to the *Royal Society for the Prevention of Accidents* (RoSPA), the forms used by police forces to record road traffic accidents have changed. This is to allow the investigating officer to record if the journey was work-related or not. Whilst this already happens in some police forces, it will be introduced on a national basis during 2005.

Implications. The main reason for this development is that there are currently no accurate records of how many road accidents are work-related. RoSPA estimates that between 800 and 1,000 of the annual deaths involve someone who's at work. For this reason, keep an eye on the amount of hours which your drivers are working, as well as the condition of their cars (if privately owned).

Is nicotine addiction a disability?

In and out the door. You may recall the case of the very short-term employee hitting the headlines just before Christmas. It went something like this. Miss B arrived at the offices of her new employer bright and early one morning. As she was being shown around (it was her first day), her new employer asked if she smoked. A few minutes later, Miss B's employment was terminated. Her employer has a policy of only employing non-smokers (they claim they're healthier workers) and as such felt that she could no longer be employed.

Legal claim? Miss B felt aggrieved and started making all sorts of noises to the press about taking legal action, relying on, amongst other things, the Disability Discrimination and Human Rights Acts. Does she have a claim? As a short-service (!) employee, she has no grounds to claim unfair dismissal. Remember, an employee needs twelve months under their belt to make such a claim. She might, however, have a claim for damages. By law she's entitled to at least one week's notice - if the employer didn't pay this, she could sue. The only other option is to claim that she's been discriminated against.

Disability discrimination? More bad news for Miss B. Addictions to substances like nicotine are regarded as self-inflicted and specifically excluded from the definition of disability. As for the human rights angle, even if she were able to establish that her right to respect for private and family life had been breached, this would be outweighed by concerns for the health of other employees.

It seems that dismissing a short-service employee for being a smoker is unlikely to result in legal problems. But do honour the notice period.

Free disposal of cars

End of life. If you have any passenger vehicles that have reached the end of their useful life and are fit for the scrap heap, the good news is that rather than have to pay the disposal costs, you could be paid to have them removed. Under the **End of Life Vehicles Directive**, car disposal firms have had to sign agreements with two service providers - Autogreen and Cartakeback, which have set up a network of authorised disposal facilities that meet approved environmental standards. From January 1, 2007 the law states that the last owner is issued with a Certificate of Destruction (CoD) and must be able to return their vehicles free of charge into one of these systems. This includes vehicles put on the market before July 1, 2002.

Note. Drivers could even be offered a fee in exchange for taking the car to an approved facility, whilst those living more than 30 miles from the nearest disposal site will be eligible for free collection of the vehicle.

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Older workers are the answer

Skills shortage. If you're having problems recruiting staff with the right skills you're by no means alone. However, according to new research, the answer lies in retaining older workers.

An age-old problem. This research is called "The changing world of work: an insight into the work trends of 2016". It was carried out by NOP for Manpower employment consultancy and involved 2,122 UK employers. It found the following:

- 52% of employers want to employ workers beyond the age of 65.
- Yet 81% of workers don't want to work after their 65th birthday.
- 70% of employers are willing to offer flexible working.
- 63% of workers will want such flexibility.

More choices. Whilst this research highlights a mismatch between what employers and workers want over the coming years, it does strongly suggest that in a tight labour market, older workers will be key to your future success.

New research shows that 52% of employers will want to employ staff beyond the age of 65 to deal with labour shortages. Look at holding onto staff by offering flexible and part-time hours.

Dealing with diabetics

There are over 1.6million diabetics in the UK, who could enjoy protection under the DDA. So ensure that you play it safe, should a diabetic employee make you aware of their condition (this requirement is important - you're not supposed to possess a crystal ball!).

Tip. If a diabetic has sick leave which is connected to his condition, ensure that it's recorded and kept separate from other sick leave. Also, where necessary, factor in periodic breaks in order to allow a diabetic to adequately manage their condition. This should help reduce the amount of any sick leave taken but will cost you much less than a tribunal claim.

Not an obvious disability

When you consider the type of disability which is afforded protection under the **Disability Discrimination Act 1995** (DDA), you probably think of those which are obvious, such as sight or mobility impairments. You may not consider a health problem such as diabetes to qualify for special protection or to even warrant much consideration from yourself. However, following recent case law, could this be a dangerous and expensive strategy?

Q&A - Food waste

Q. We have a staff canteen which sells a selection of cooked and cold food. In it we have separate bins so that all food waste and normal waste can be kept apart. One of our staff has asked whether they can take the food waste so it can be used to feed some animals on their neighbour's farm. It seems a good idea and will save on waste disposal costs. Can we agree?

A. On the face of it, this appears to be a good idea, but unfortunately it could land you in all sorts of trouble. There are rafts of legislation, some of which are incredibly explicit, which detail what can and can't be fed to animals. This means the only way you'd be able to pass on your waste would be if it was all segregated and checked to comply. These checks basically rule it out, as they're time consuming and require a certain amount of space to carry out any segregation. And as we expect whoever came up with the idea is unlikely to want to sort it, no one else will either. And not to forget, there are also waste laws that need to be complied with. (Just to add the final nail in the coffin of the idea.)

Tip. If you're willing to jump through the legislative hoops, there are numerous guidance documents provided by DEFRA (See **The next step**) to make sure you get it right.

Space requirements

Q. We are currently looking at converting a very small room into an office for two people. What is the minimum area required for an office to be shared by two people?

A. The **Workplace Health Safety and Welfare Regulations** require workrooms, regardless of their usage, to provide the occupants with eleven cubic metres of space per person. This figure is based on an empty room and with a maximum ceiling height of three metres. The figure of eleven metres is achieved by taking the total volume of the room and dividing it by the number of occupants. Eleven cubic metres per person is the minimum requirement and this may be insufficient depending on the layout, content and nature of the work. Workstations should be suitable for the people using them, and they should be able to leave their workstation easily in the event of an emergency. As a general rule a gap of one metre should be maintained for access and egress to the workstation.

Tip. If you are limited on space consider all means possible to use the space available effectively. Operate a clear desk policy to minimise clutter, and reduce the use of paper copies for filing.

☞ The minimum volume of a room should be 22 cubic metres, based on a room with a maximum ceiling height of three metres. Minimise the use of paper copies for filing and keep work areas clear from clutter.