



COVERNOTES

Issue 13 2008

IS YOUR COMPANY DRIVING ON THIN ICE?

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008, creating a new offence called corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland.

There are no new duties or obligations under the Act, nor is the new offence part of health and safety law. It is, however, specifically linked to existing health and safety requirements.

An organisation will be guilty of an offence if the way its activities are managed or organised by senior managers result in a person's death and amount to a gross breach of a relevant duty of care owed by the organisation to the deceased.

The Act reinforces the obligation on a company to comply with existing health and safety legislation and makes it easier to prosecute companies causing death through negligence. As such, it is essential that your company's health and safety management policies and procedures are up to date and enforced throughout the workplace. Directors and senior managers must be aware of their responsibilities and receive training as appropriate.

One area that some employers have neglected in the past is that of occupational road risk. Numerous reports show that driving is the most hazardous part of many people's work, the Department for Transport estimating that

around 200 road deaths and serious injuries each week involve someone at work. Yet still many businesses have failed to take the issue of road safety seriously.

A growing area of concern is the rising number of employees using their own cars for business travel, such vehicles often being described as 'grey fleets' because of the lack of information known about them. Grey fleets often sit outside normal company car reporting and policing channels, with some employers failing to check even basic details. This growing trend has created a large number of unchecked and unmanaged drivers who are a potential health and safety time bomb for employers under the new legislation.

According to a report by fleet management company Arval UK, smaller businesses are most at risk because they often don't have the resources for full time vehicle management.

The new Act will force businesses to review the risk of work-related driving activities and ensure that they have in place a comprehensive written 'Driving At Work' policy covering both company and non-company vehicles. This policy should be communicated to all employees.

If you would like assistance reviewing your company's health and safety arrangements, please contact us.

Employers fail to check even basic details...

Unchecked and unmanaged drivers are a health and safety time bomb...



Arval's research has revealed a number of disturbing statistics that could potentially compromise the health and safety of employees:

- 83% of businesses have no procedures in place to check that non-company cars are regularly maintained.
- 74% do not ask employees for a valid MOT certificate for their vehicles.
- 35% do not check the driving licences of non-company car drivers.
- 53% have no policy for checking that the vehicle is insured for business use.
- 56% have no policy for reporting accidents in non-company vehicles.



CLEAN UP YOUR ACT

The extent of pollution cover under traditional Property Damage and Public Liability policies can cause significant uncertainty and debate, particularly when an incident occurs.

PUBLIC LIABILITY (PL) POLICIES

Whilst cover varies between insurers, a standard PL policy typically limits pollution cover to sudden, identified, unintended and unexpected incidents ('sudden and accidental pollution'). Disputes have centred on whether the pollution has a sudden and accidental cause or whether it has occurred gradually. There appear to be no hard and fast rules, disputed cases often being settled through litigation.

It is generally accepted that PL policies will not pay claims for third party property damage, bodily injury, nuisance, trespass and obstruction arising from gradual pollution incidents. Further, since a typical PL policy excludes damage to own property, it will not usually cover the costs incurred by the insured when they are forced to clean-up pollution on their own property (first party clean-up costs) following a pollution incident, whether it is gradual or sudden and accidental.

PROPERTY DAMAGE POLICIES

As first party clean-up costs are a key consideration, many businesses may assume that their property damage policies provide a good level of pollution cover. In reality, these policies are often limited in scope, mainly because any pollution condition must result from an insured peril (e.g. fire or flood) to be covered. Most pollution conditions which lead to regulatory action by the Local Authority or Environment Agency have not resulted from an insured peril - they are simply discovered on the insured's property, adjacent land or in nearby watercourses.

There appear to be no hard and fast rules...

ENVIRONMENTAL LAW

Changing environmental legislation also raises questions over the effectiveness of traditional property and liability policies. The EU Environmental Liability Directive introduces other risks that may not be covered, the concept of biodiversity being of particular concern. If a standard PL policy will not pay a claim for damage to adjacent public property which results in an action by regulators, it is unlikely to cover liability for damage to biodiversity.

THE SOLUTION?

Recognition of these cover limitations has led to the development of a range of specialist environmental insurance products specifically designed to endeavour to address the current and expected gaps in cover, both simply and cost effectively.

Contact us to find out more about the range of insurance solutions available.

BARTOLINE



Even where the pollution cause is sudden and accidental, the picture may not be clear following a recent UK court case. In 2003, Bartoline Ltd, a company manufacturing and packing solvents and adhesives, suffered a fire at their UK site. In putting out the blaze, a significant volume of contaminated fire-fighting foam washed into adjacent watercourses. The Environment Agency undertook immediate remedial work and issued an invoice to Bartoline for the cost of this, as well as a remediation notice requiring clean-up of their own and adjoining sites.

Bartoline claimed under their PL policy, believing that the damage to adjacent property would be covered. The insurer disputed the claim, arguing that the PL policy was intended to cover 'liability for damages' by individuals, who must be in some way compensated for their loss.

This contrasts with statutory liabilities, where the insured is indebted to a regulatory authority or required to act following receipt of a formal notice. This is still a legal liability, but under a set of laws for which PL insurance is allegedly not intended to respond.

The court agreed with the insurer's argument, meaning that Bartoline were uninsured. The appeal was due to be heard in October 2007 but the case was settled out of court shortly before.



Remember: Don't put your business at risk. Make sure that your vehicle details are on the Motor Insurance Database (MID). Aim to get new vehicle and vehicle change details onto the MID on the same day that a change in vehicle or insurance takes place. More information about the MID and your legal duties can be found at www.miid.org.uk



The Myth: All office equipment must be tested by a qualified electrician every year.

The Reality: No. The law requires employers to assess risks and take appropriate action. HSE's advice is that for most office electrical equipment, visual checks for obvious signs of damage and perhaps simple tests by a competent member of staff are quite sufficient.

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PAIN FREE MATERNITY LEAVE



Employee maternity (and paternity) leave can have a significant effect on workflows, regardless of the size of a business. There were 722,549 births in the UK in 2005 and 748,563 in 2006, an increase of 3.6%*. This was the fourth increase in a row and linked to the 13.3 million women's jobs** in the employment arena, it accounts for a significant number of weeks' absence for maternity leave.

Maternity leave can last for up to a year and it is no longer acceptable for an employer to simply expect other team members to work harder to cover for absent colleagues, increasing the risk of prolonged absences through work-related stress. However, few companies have spare capacity and resources have often been trimmed to the bone to maximise profitability.

A new and unique stand-alone insurance product called the tlc Business Maternity Insurance policy can now be purchased by companies on an annual basis. It helps protect against the costs of temporary replacement staff for up to 39 weeks during an employee's statutory maternity leave period. The benefit level is selected at the outset and will pay temporary staffing costs. The benefit chosen often exceeds the wages paid to the employee to compensate the company for agency fees. A modest flat benefit is also payable in respect of paternity leave.

With this policy, the employee can take the maternity leave, the work continues to be done by the temporary replacement and work-related stress is avoided.

Contact us for more information about this.

* Source: Office for National Statistics - Vital Statistics Outputs Branch.

** Source: National Statistics website: www.statistics.gov.uk
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TAKING CONTROL OF YOUR GOODS

IMPORTS

"My suppliers insure the goods"

If you think your supplier is insuring the goods free of charge, you're mistaken. They are paying to insure and are passing on this undisclosed cost to you - in their invoice! As regards the cover, where purchases require the supplier to insure the goods on your behalf, minimum obligations may see goods insured to UK port/airport only, not to your premises (e.g. CIF). Sellers are not obliged to provide comprehensive insurance, possibly leading to uninsured losses.

⋮ Sellers are not obliged to provide comprehensive insurance...

Then there's the financial security of the insurer. Not all countries demand the same level of financial security from their insurers as the UK, which could result in unpaid claims.

What about service? Who will advise and help you pursue a claim? Will a delay in settlement affect your cash flow? What if you have to deal with an overseas insurer? Just when your business is suffering the disruption of goods not arriving or being damaged, you may have to deal with another time zone, culture and language. A significant benefit of you insuring via a specialist broker is that you are the client and your broker acts for you.

EXPORTS

"I leave it to my buyers to insure the goods"

Make life easy for your buyer. If you include marine insurance in your sales package, your customers will thank you. If your competitors offer this service and you don't, you may lose business. Further, if you arrange the insurance, it can be tailored to your needs and those specific to your customers.

If the goods arrive damaged, who will your customer complain to? You! Your customers may have basic insurance but why should they risk increased premiums when they can pursue a claim against you? They may push you to supply a replacement at cost, meaning that you've worked twice for one profit, that your first shipment is uninsured and you've made a loss on the whole transaction.

CARRIERS

"If there is loss or damage, the carrier will pay in full."

This is unlikely. Most carriers operate under conditions which restrict their liability and impose time limits for notifying and quantifying claims. The majority of carriers in the UK operate under RHA conditions which restrict liability to £1.30 per kilo. A similar situation applies with international transits, where an International Convention applies.

"My carrier insures the goods for me."

Only if they have the facility to do so and only if you have specifically requested insurance. Can you be sure that adequate insurance is in place at a reasonable premium? Do you receive a policy or a summary only? Most importantly, carriers may no longer be required to be FSA regulated.

Contact us to find out more about the range of comprehensive goods insurance products on offer.



Did you know: Leaving your computer monitor on overnight uses the same amount of energy as printing 800 sheets of A4 paper on a laser printer?

BOLD AS BRASS



Increased demand for metal from the Far East, together with speculative investment in base metals by financial investors, has led to record international lead and copper prices, with the prices of others such as aluminium, nickel and zinc following suit. These increased prices have resulted in more incidents of metal theft in the UK.

Spurred on by potentially large rewards, thieves are becoming increasingly bold and their targets more unusual. Many of the thefts are carried out in broad daylight with thieves posing as innocent workmen. Lead, copper and stainless steel roof coverings, iron gates, bronze statues, lead and copper rainwater pipes and even brass door knobs have all been stolen in recent months.

There are a number of measures that you can take to deter metal thieves, including:

- Remove any easy access to building roofs e.g. water butts, waste bins and trees. Cut back tall trees and vegetation that could provide a screen for criminal activities. Remember to get the necessary approval for any tree cutting before work starts.
- Store ladders and any easy means of transporting stolen goods (e.g. wheelie bins and wheelbarrows) in a secure place.
- Check roofs regularly. Theft of roofing materials can let rainwater into the building, causing further damage.
- Improve the physical security of your premises. Be sure to agree in advance any changes to your intruder alarm protection with your insurer.
- If you have stocks of metals, review the existing security arrangements. Many businesses take measures to protect their computer equipment against theft but overlook protection for metals in the workshop or stockyard.
- Review perimeter security. Keep any gates locked and restrict vehicular access to the site. Consider retractable bollards over the gated entrance for use out of working hours.
- Consider installing security lighting around the building and site, particularly at roof level if there is a metal roof covering.
- Consider installing CCTV and display prominent warning notices around the site.



Increased prices have resulted in more metal thefts...

Wherever metals are present, there is an increased risk of theft. Even a small loss can have a significant impact on your business as it takes time to repair damage and source replacement stock or equipment. Further, a business insurance policy does not usually cover as standard theft of either property in the open or of parts of the building.

As long as the value of scrap metal is inflated, metal theft will continue to be a high risk. We therefore recommend that you re-evaluate your premises' existing security arrangements.

If you would like further advice on this subject, please contact us.



When did you last have your premises' electrical wiring inspected? Under the Electricity at Work Regulations 1989, electrical installations should be tested often enough that there is little chance of deterioration leading to danger. Inspections and testing should be carried out by a person who has the competence to do so. With electrical faults to blame for a significant proportion of all fires, it is not unusual for an insurer to insist that a building's electrical wiring be examined and certified as part of the renewal process.

This newsletter contains a general overview of the UK insurance market based on our understanding as insurance brokers and risk consultants. It is not intended that it be used, and should not be used, to replace specific advice relating to individual situations. In particular, we do not offer either legal or accounting advice.

Whilst we endeavour to provide accurate and up to date information, we cannot guarantee this and you should not rely on the information contained in this newsletter without seeking further more detailed advice to suit your particular needs.

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