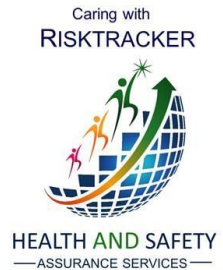


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## **RISKTRACKER and the Law**

### **Helping protect your business**

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Every business must comply with health and safety (H&S) law. The Sentencing Council has introduced two sets of guidelines which if not encompassed within the business process will increase costs and possibly at the extreme potentially jeopardise survival.

#### **Sentencing Council guideline on breaches of Health & Safety**

The first, which concerns criminal breaches of H&S, has now been in operation for just over a year during which 27 business people have been given prison sentences, 18 firms have been given fines each of over £1m and at least three small firms, two due to inspection failures, have gone into liquidation as a result of fines that have to be paid promptly within a month. The law considers the public does not want businesses that cause harm and therefore a penalty that jeopardises a firm's survival is acceptable.

Within the guideline are statements about mitigating circumstances and it is vital that a business includes within its systems data which will meet these.

The knock-on affects to civil law with claims for damages, which must by law be covered by insurance, are becoming more bullish as firms fail to meet the mitigating circumstance. Unlike "innocent until proven guilty" the defendant has the onus of proving their innocence and under the Law Reform (Contributory Negligence) Act 1945 takes on 100% liability and the insurer will need help from the client to find means of sharing the liability.

#### **Sentencing Council guideline on calculating lump sum damages payments.**

The second Sentencing Council guideline came into force in March this year and concerns how lump sum payments for damages are calculated. The result being that such awards will be much greater than ever in the past and so will affect business insurance liability cover.

#### **RISKTRACKER - helping to create a defence**

There is no such thing as an "accident free zone" and an incident, inspection or just a complaint could put you in the spotlight of an HSE investigation. Whether you are a sole-trader or large national company you will feel the effects of these changes with increases in annual insurance premiums and the likelihood of audits and more thorough checks before an insurer will provide cover. At HSAS we have been monitoring the situation and created the *RISKTRACKER* system.

It takes just 15 minutes or so every week to note into the log the hazards that have been observed, not just near misses, and record the preventative work and the cost. Included are pre-loaded phrases to help focus on the important aspects of describing a hazard and the risk which are then used by the computer to calculate a risk barometer to illustrate the seriousness of the hazard. The system will automatically remember the people, the subject and areas of work involved that you have previously entered so a mouse click and details are ready for repeated use.

All these enable analyses and reports to be generated to assist in meeting your legal obligations for good safety leadership and feedback for regular reviews of risk assessments, staff training and planned inspections. Moreover, it can form the basis of evidence to meet the requirements of mitigating circumstances to help defend both criminal breaches and share the liability of civil damages claims.

By completing *RISKTRACKER* data every week you are demonstrating your continuous awareness of the H&S issues in your business and the products and services you supply. This becomes part of your culture and the 'way you do business' and can be evidence, should you ever need it.