

# Energy management

All businesses use energy in one form or another, such as electricity, gas, coal and oil. Most energy in the UK is from non-renewable fossil fuels which are finite and limited. However, good energy management can have a substantial positive impact on energy sustainability and financially for businesses. Mubin Chowdhury, Health, Safety and Environment expert at Croner, looks at some of the steps businesses can take to reduce energy usage.

## Simple steps first

As a minimum, it is important to implement simple energy saving steps, with information available from Croner<sup>i</sup>, NetRegs<sup>ii</sup>, The Carbon Trust<sup>iii</sup> and others. It is important to have a clear, well-led policy on energy use and efficiency, which is communicated to and understood by all stakeholders.

### Monitoring energy

Analyse energy bills, regularly read meters, identify energy use by different activities and processes and relate energy use to weather and production levels. Is there adequate and detailed data available from invoices? Is the metering system suitable or is further sub-metering/automatic metering required?

### Review energy use in buildings

With buildings responsible for almost 50% of the UK's energy consumption and carbon emissions<sup>iv</sup>, review all aspects of energy use within buildings.

Temperature control is essential. For example, if the temperature is reduced by 1°C, heating bills may be reduced by 10%. Of course this must be balanced with the requirement to provide and maintain a reasonable level of thermal comfort (of which air temperature is a factor) for the welfare of the majority of employees in the building. So aim to position and set thermostats correctly, eg between 16 and 19°C. As an associated step, ensure tamper-proof thermostats are fitted. Consider replacing air-conditioning with mechanical (eg fans) and natural ventilation, as air conditioned buildings can use twice as much energy. Insulate or draught-proof windows, doors, lofts, boilers and pipes, concentrating on the hottest ones and the ones in the coldest areas. For long-term savings, replace old heating systems with more energy-efficient models. Regular maintenance of boilers can ensure energy efficiency and that air emissions are controlled.

In offices, switch off equipment when not in use, eg monitors during lunch breaks. Check energy consumption levels and ratings for equipment before purchase. Always consider buying the most energy-efficient option, as energy consumption can vary based on equipment age, maintenance, model and manufacturer.

Switch off lights overnight and other times when not needed. Clean light fittings regularly to maximise the available light. Also maximise natural light by keeping windows and glazing clean. This goes hand in hand with legal duties set in the Workplace (Health Safety and Welfare) Regulations, which require sufficient cleanliness in the workplace, including fittings. Lay out the office to ensure best use of both natural and artificial lighting. Use energy-efficient light bulbs and/or modern slim line fluorescent tubes for less energy use and increased

longevity. Fit motion or occupancy detectors, such as passive infra-red detectors that automatically turn on lights in infrequently used rooms, such as toilets or photocopy rooms.

Adapt behaviour with seasonal changes. For example, during winter, close curtains and blinds as soon as the sun goes down to reduce heat loss as the temperature drops. Turn off the heating in unused rooms and outside working hours. Close windows, outside doors and blinds when the heating is on to retain heat. Equally, if it is too warm, turn down the heating instead of opening windows. Avoid having cooling and heating systems on at the same time.

Wherever possible, switch equipment off instead of using standby mode when not in use. Do not leave equipment, such as copiers or printers, on overnight. NetRegs statistics mention that an overnight printer may be using energy sufficient to print around 5000 A4 sheets. Turn off monitors instead of using screensavers, as screensavers only protect the screen and do not save energy. Develop and communicate guidelines to staff so everyone knows how to use office equipment more efficiently. Water from kitchen taps can be used instead of water coolers. Use energy from renewable sources where possible. Avoid using electric heaters. Reduce the temperature of stored water, but to no lower than 60°C as this can increase the risk of Legionnaire's disease.

## Certified route

For companies/organisations that already have good energy management and seek confirmation and further improvements, a certificated route is provided through BS EN 16001:2009<sup>v</sup>.

The standard requires organisations to carry out an initial review, to identify areas of energy use and opportunities for improvement. This resulting information provides the basis for setting the energy management work programme, objectives and targets. Then organisations need to:

- establish an appropriate energy policy
- identify the energy aspects arising from the organisation's activities
- identify applicable legal requirements and other requirements to which the organisation subscribes
- identify priorities and set appropriate energy objectives and targets
- establish a relevant structure and programme(s) to implement the policy and achieve objectives and meet targets
- facilitate planning, control, monitoring, preventive and corrective actions, auditing and review activities to ensure both that the policy is complied with and that the energy management system remains appropriate.

## To sum up...

Any business can save money, reduce and minimise environmental impacts and associated climate change, proactively fulfil duties set under relevant legislation, enhance its reputation with both internal and external stakeholders and demonstrate leadership by effective energy management.

<sup>i</sup> Croner offers many environmental services, including information, environment auditing, ISO 14001 environment management systems and bespoke consultancy. Call 0844 561 8143 for more details. <sup>ii</sup> [www.netregs.gov.uk](http://www.netregs.gov.uk)  
<sup>iii</sup> [www.carbontrust.co.uk](http://www.carbontrust.co.uk) <sup>iv</sup> Department for Communities and Local Government statistics <sup>v</sup> BS EN 16001:2009 Energy management systems — Requirements with guidance for use

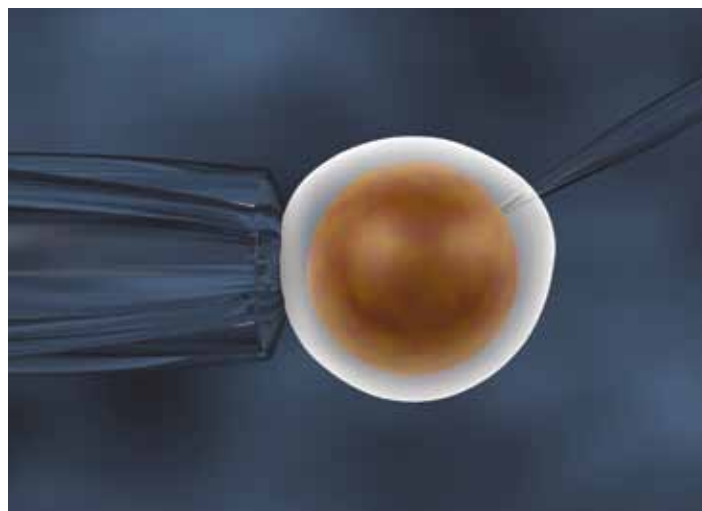
# Pregnant pause...

According to the latest figures released by the Human Fertility and Embryology Authority, more women in the UK are undergoing In Vitro Fertilisation (IVF) Treatment, with a reported 5.8% increase between 2006 and 2007. What does this mean for employers and what are the risks of unlawful discrimination?

In the recent case of *Sahota v Home Office and Pipkin*, the EAT held that the protection for a woman undergoing IVF is very specific. An employee will be able to pursue a claim for discrimination if, during the "protected period" she is treated less favourably by her employer. The "protected period" for an employee undergoing IVF begins when the fertilised eggs are implanted into the uterus. Furthermore, if an implantation fails, she is protected for a further two weeks following the pregnancy. Additionally, she will be protected for the limited period of time between the ova being collected, fertilised and the immediate implantation.

So what is the position outside of the "protected period" where an employee requests time off work to undergo IVF treatment? Currently, there is no statutory right for women to take time off work for IVF treatment, and employers are entitled to treat requests for time off as they would treat requests for any other medical appointments. There is no legal right to be paid for time off to attend medical appointments. However, many employers elect to pay employees for time off for medical appointments or allow them to take annual leave or to make the time up at some other time. However, where a request is refused, this may lead to a claim for sex discrimination. This may occur where a similar request by a male employee would not have been turned down or where the reason for refusing the request has a disproportionate impact on women and cannot be objectively justified. In these situations, the female employee would have to point to a male comparator.

Similarly, there is no statutory right for an employee undergoing IVF to request the right to work flexibly for treatment purposes. However, it may be good practice, where possible, to allow employees to temporarily work flexibly while undergoing IVF. Such an agreement should be confirmed in writing to avoid any later confusion.



Employers are advised to implement a clear policy for IVF treatment. The policy should set out what the employee's rights are during treatment. Furthermore, IVF treatment is expensive and can be stressful for the person concerned, so any time-off requests should be handled with sensitivity. It is also essential that the employee's line manager or HR department do not disclose to any person that the employee is undergoing IVF treatment. This is sensitive personal information and should be lawfully processed in accordance with the principles of the Data Protection Act 1998.



## HSE safety notice on stone slabs

The Health and Safety Executive (HSE) has issued a safety notice on the handling and storage of large sheet stone slabs, following a number of deaths related to the materials.

HSE statistics indicate that six people have been killed in five years due to being struck by falling stone slabs during storage and handling operations. Because of their size and configuration, such slabs are potentially unstable when stored on edge and the HSE's safety notice points out that handling and storing large sheet stone slabs "carries a high risk of serious personal injury unless undertaken in a safe manner".

The safety body says that, depending on the type of rock, slabs can fail during handling in unpredictable ways. For example, natural stone can be fissured and may crack or shatter unexpectedly during handling.

The notice urges employers, the self-employed and any person engaged in the handling of stone slabs to review arrangements to ensure that:

- no person is within the hazard zone into which a slab might fall while it is being handled
- safe systems of work have been drawn up to ensure that slab handling has been planned by a competent person, is adequately supervised and is carried out in a safe manner
- slabs always remain restrained during loading/unloading operations
- rack type storage systems are designed so as to prevent slabs either toppling over or slipping out from the base
- employees are given appropriate information, instruction and training on the dangers of handling large stone slabs and the need to follow safe working practices, including the use of appropriate lifting equipment and personal protective equipment
- appropriate lifting equipment and personal protective equipment is provided, maintained, used and inspected.

# The fit note scheme

Sickness absence remains a source of great irritation and real cost to many employers. A recent CBI survey suggested that an estimated 172 million working days were lost to sickness absence in 2007, with an annual cost to the UK economy of £13.2 million.

In order to help more employees get the support that they need to return to work, the Government has introduced a new "fit note" scheme. This replaces the previous "sick note" scheme from 6 April 2010.

The problem with the previous system was that doctors could only advise patients on whether their health condition meant they should or should not return to work. Their employers did not have the opportunity to consider how they could help them to achieve an earlier return to work.

The aim of this revised Statement of Fitness for Work (as the "fit note" is known officially) is to enable doctors to provide the employer and the employee with simple, clear and practical advice about the employee's fitness for work. The statement will allow the doctor to consider not only whether the patient is unfit for work, but also whether the patient may be able to do work based on the assessment of the employee's health condition.

## The main features of the "fit note"

There is no box for "fit for work"; rather the doctor may advise that the employee is either:

- "unfit for work" or
- "may be fit for work, taking into account the following advice".

The "advice" from the doctor in the statement may suggest that the employer discuss one or more of the following with the employee:

- a phased return to work (eg a gradual increase in the intensity of the work duties)
- altered hours (although not necessarily a reduction in working hours)

- amended duties (to take into account the patient's condition)
- workplace adaptations (eg changes to workstation or parking arrangements).

The doctor will add information on the functional effects of the employee's condition and what could help a return to work. If the doctor believes that an assessment by an occupational health professional is required, this will be stated here. The doctor will also state the period that the advice covers, including precise dates during which it applies.

A doctor may therefore give a "may be fit for work" statement if he or she believes that the patient's health condition may allow a return to work with suitable support from the employer.

There is no option on the form for a doctor to advise that someone is fully fit for work, but the doctor may still advise that the employee is too ill to work.

## Dealing with a "may be fit to work" statement

- The employer should consider the GP's advice on the statement, how it affects the job and the workplace, the functional comments, any of the return to work boxes and any other suggested action that could assist the employee's return to work.
- Discuss the options with the employee.
- If a return to work is agreed to be possible, the date of this return and any necessary amendments can be agreed, with a further date agreed for a review.
- If a return to work is not agreed, the employer will agree a next review date with the employee.

## Reduction in sign-off period

The maximum sign-off period for sick employees is reduced from six months to three months. This is intended to support the individual's return to work at the earliest opportunity

## What stays the same?

The following features remain from the previous scheme.

- In the event of an employer not being able to facilitate a change or adjustment, the advice given on the statement will be evidence that the employee has a health condition (injury or illness) which prevents him or her from carrying out the current role.
- The statement is still not required until after the seventh calendar day of sickness.
- There is no change to the requirements for the payment of Statutory Sick Pay or employers' obligations under the Disability Discrimination Act (DDA) 1995.

## Some conclusions

The advice on the statement is not binding on the employer, but he or she should be aware that it may state that the employee on sickness absence is "disabled" for the purposes of the DDA; any suggested changes may constitute, therefore, "a reasonable adjustment" under the 1995 Act. An employer's failure to consider this statutory obligation could have severe legal consequences.

It remains to be seen whether the new scheme is a cure for the sickness absence problem. Nevertheless, employers should review their current policies to ensure that they reflect the "fit note" scheme.

## Top business issues

Every month we bring you the top issues from callers to our telephone advice lines. These were the top issues in March.

Tax & VAT	Employment	Legal	Health & Safety
1. HMRC new information powers (s.36 FA2008) and interaction with formal enquiries.	1. Conduct.	1. General contractual issues.	1. Risk assessment.
2. Capital gains tax — sale of business/shares and company buy back of shares — entrepreneurs' relief.	2. Absence/sickness.	2. Company matters.	2. Accident recording and reporting.
3. Capital allowances — repairs and renewals capital v revenue argument.	3. Disciplinary procedure.	3. Landlord and tenant issues.	3. H&S policy implementation.

Event diary

Legislation



For more information or to book please contact:

Employment on  
**01455 897193**

or Health & Safety on  
**01455 897192**

Fax: **01455 897026**

All our courses can be designed to meet your specific requirements and are available on an in-house basis.

## Event diary — Open Course Schedule 2010

Health & Safety			
Course title	Duration	Date	Location
Health & Safety in the Workplace Level 2	1 day	4 May	Beechlawn Hotel, Belfast
Risk Assessment	1 day	12 May	Mercure London City Bankside
Health & Safety in the Workplace Level 2	2 days	17–18 May	Beardmore Hotel, Glasgow
Manual Handling Training for the Trainer	2 days	25–26 May	Great Hallingbury Manor, Hertfordshire
Health & Safety in the Workplace Level 2	2 days	2–3 June	Gonville Hotel, Cambridge
Health & Safety in the Workplace Level 2	2 days	9–10 June	Copthorne Hotel, Manchester
Health & Safety in the Workplace Level 2	2 days	22–23 June	Croner Consulting, Leicestershire
Manual Handling Training for the Trainer	2 days	29–30 June	Holiday Inn, Swindon

Employment			
Course title	Duration	Date	Location
Essential Employment Law	1 day	6 May	Croner Consulting, Leicestershire
Managing Investigations	1 day	11 May	Mercure London City Bankside
Performance Appraisal	½ day	13 May	The Dunsilly Hotel, Antrim
Role of the Supervisor	1 day	18 May	Bedford Lodge Hotel, Newmarket
Introduction to Personnel	1 day	20 May	Holiday Inn Heathrow Ariel Hotel, Heathrow
Managing Investigations	1 day	27 May	The Marriott Hotel, Portsmouth
Dealing with Discipline	1 day	3 June	Mercure London City Bankside
Essential Employment Law	1 day	10 June	Holiday Inn, Warrington

**IOSH Managing Safely** Croner Consulting also offers a 4-day IOSH Managing Safely course.

14–17 June 2010 Croner Consulting at Hinckley. The 4-day course costs £600.00 plus VAT, and fills up quickly, so please book soon to ensure your place! **For further details on this IOSH course, please contact Emma Newman on Tel: 01455 897192**

## Legislation

Area	Legislation	Details	Date
Medical information	Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010	Legislation to change the format and content of medical statements to enable a doctor to say that a patient “may be fit for some work now” to facilitate the patient’s return to work.	6 April 2010
Discrimination	Equality Bill	The aims of the Bill are to consolidate existing discrimination law, introduce positive action on recruitment for under-represented groups, make it unlawful to prevent employees from discussing their pay, extend discrimination by association to all aspects of discrimination, enable the Secretary of State to order employers with 250 or more employees to publish information on pay (subject to further consultation and not to come into force before 2013), introduce wider powers for employment tribunals to make recommendations in discrimination claims, create a single equality duty on public sector employers to include duties in relation to gender reassignment, age, sexual orientation and religion or belief, and extend age discrimination law to the provision of goods and services.	2010
Additional Paternity Leave	The Additional Paternity Leave Regulations 2010	Additional Paternity Leave will be available for fathers at 20 weeks after the birth of the child for a maximum of 26 weeks, if the mother returns to work. The remainder of the mother’s statutory maternity pay will be paid to the father.	6 April 2010, with effect for parents of babies due on or after 3 April 2011

# Corporate manslaughter update

First corporate manslaughter prosecution adjourned.

There is currently a huge level of interest in both the health and safety profession and the wider business world over the prosecution of Cotswold Geotechnical Holdings, the first to be made under the Corporate Manslaughter and Corporate Homicide Act 2007.

Although, at the time of writing, the trial has been adjourned for 18 weeks, it will be telling in how the case is prosecuted and defended and, if the prosecution is successful, how sentencing will be applied in terms of the level of fines and other sanctions, such as publicity orders. The trial is expected to recommence in July.

## New sentencing guidelines

Two key pieces of guidance have been published as the courts prepare to deal with cases brought for breaches of the Corporate Manslaughter and Corporate Homicide Act 2007.

The Sentencing Guidelines Council (SGC) has published definitive guidelines on corporate manslaughter and health and safety offences causing death, intended to set out principles to guide courts in dealing with companies and organisations that cause death through a gross breach of care or where breach of health and safety requirements are a significant cause of the death.

In addition, the Ministry of Justice has published

a circular on the arrangements for implementing s.10 of the Corporate Manslaughter and Corporate Homicide Act 2007, which covers publicity orders.

Most of the Act's provisions came into effect on 6 April 2008, but as publicity orders are an entirely new disposal, commencement was delayed until supporting guidelines were available for the courts in England and Wales. Therefore, as from 15 February 2010, organisations found guilty under the Corporate Manslaughter and Homicide laws will potentially be liable to publicity orders.

In a statement on its definitive guidelines document, the SGC said: "The advice is clear — punitive and significant fines should be imposed both to deter and to reflect public concern at avoidable loss of life."

The SGC added: "Fines for companies and organisations found guilty of corporate manslaughter may be millions of pounds and should seldom be below £500,000. For other health and safety offences that cause death, fines from £100,000 up to hundreds of thousands of pounds should be imposed."

## IOSH response

However, the Institution of Occupational Safety and Health (IOSH), which was consulted on the new guidelines, believes an opportunity has been

missed to ensure punishments have equal economic impact across organisations of different sizes and to emphasise the need for cultural change in many convicted organisations.

A spokesperson at IOSH said: "We believe using percentage of annual turnover (or equivalent) in setting fines would have helped ensure convicted organisations of different sizes felt the financial impact more equally."

He added: "Remedial orders should also address the vital need for deep-seated cultural issues to be tackled where these have contributed to the offence."

IOSH says remedial orders could include measures such as compulsory training in health and safety management for directors and senior managers, appropriate use of behavioural safety programmes, the introduction of third-party audit and access to competent health and safety advice.

IOSH is also calling for absolute minimum fine levels for corporate manslaughter convictions and aggravating factors to include failure to heed professional health and safety advice and to co-operate with authorities or remedy deficiencies.

The safety body says that having a good health and safety record should be no mitigation in corporate manslaughter.



## Slips, trips and falls campaign

The Health and Safety Executive (HSE) has launched a hard-hitting campaign on slips, trips and falls in the workplace, in the third stage of its "Shattered Lives" initiative.

HSE figures show that slips and trips are the most common cause of major workplace injury in Britain. More workplace deaths are triggered by falls from height than any other cause, according to official statistics.

The HSE estimates that the combined financial costs incurred by society as a whole is around £800 million a year, at a time when both businesses and individuals are struggling financially following the recent recession.

Last year, in addition to 40 fatalities, there were over 15,000 major injuries to workers, as well as over 30,000 workers having to take over three days off work.

The latest phase of the HSE's Shattered Lives

campaign is being targeted at those sectors where there is a high number of slips, trips and falls accidents each year, specifically:

- health and social care
- education
- food manufacturing
- food retail
- catering and hospitality
- building and plant maintenance
- construction.

Commenting on the latest campaign, the General Secretary of the Trades Union Congress, Brendan Barber, said: "Every one of the 40 deaths caused by slips, trips and falls were preventable. The key is proper risk assessment and control measures as highlighted by the HSE. Unions will warmly welcome this practical hard-hitting campaign and will be raising the issue with employers wherever and whenever they can."



# Legal representation

In the recent case of *R (on the application of G) v the Governors of X School and Y City Council* [2010] EWCA Civ 1, the claimant was a teacher at school X. It was alleged that he kissed a work experience pupil and sent her inappropriate text messages. Disciplinary procedures were initiated and he was warned that the case could be referred to the Secretary of State on the grounds that he may be considered unsuitable to work with children.

The claimant was not in a union, so he instructed solicitors who asked to be present at the disciplinary hearing on the basis that this was "an extraordinary case, which could result in a lifetime disadvantage" and it would be a breach of the claimant's human rights if he was denied representation.

This was inconsistent with the school's disciplinary procedure and the request was refused. The hearing went ahead and the decision was taken to dismiss him for gross misconduct. The case was subsequently reported to the Secretary of State. The claimant appealed but was unsuccessful.

The claimant made an application to the High Court for a judicial review of the refusal to allow legal representation. The claimant argued that the disciplinary hearings, a referral to the Secretary of State, and the decision to bar him were all part of a single procedure. Therefore, the proceedings were in respect of a criminal charge and he was entitled to legal representation under Article 6 of the European Convention on Human Rights — the right to a fair trial.

The school argued that its proceedings were separate from the Secretary of State's consideration of barring and that they did not relate to a criminal charge.

The High Court ruled that internal disciplinary proceedings did not amount to a criminal charge. However, the school was required to have regard to Article 6 because its internal proceedings were part of the same process as the Secretary of State's procedures for making a finding of unsuitability to work with children. Therefore, the claimant should have been entitled to legal representation.



The school appealed to the Court of Appeal. It rejected the appeal and concluded that the school's decision would have a "profound influence" on the outcome of any decision made by the Secretary of State. It also confirmed that Article 6 would cover the right to legal representation on the basis that the claimant was, in effect, facing a criminal charge.

## Ask an expert

Each month, one of our employment experts will be answering a question in this section. If you have an employment question that you would like our experts to answer, please e-mail it to [cronerinfo@croner.co.uk](mailto:cronerinfo@croner.co.uk).

**Q: Our company has outgrown our head office site and is looking to relocate to brand new premises approximately 10 miles away.**

**We have communicated our proposal to staff and ensured that they have been aware of our plans from the outset.**

**Please can you advise on the key aspects of law and best practice we need to be aware of in relation to the relocation and consultation with staff? We would also appreciate your ideas on how to manage the relocation project.**

**Would we need to issue new contracts to staff if their place of work changes as they have no mobility clause? Would this constitute a change in terms and conditions and would we need to follow consultation procedures?**

**A:** In the absence of a reasonable mobility clause, a major relocation is ultimately a redundancy situation because

the work that the employees are employed to carry out, at that location, is expected to cease.

This will require consultation to be undertaken and this may need to be on a collective level depending on proposed number of dismissals (a minimum of 30 days' consultation if the move will affect between 20–99 staff, or a minimum of 90 days if 100 or more are affected).

On the basis that you would be likely to offer your employees the same roles in the new office, you will be offering alternative employment. Therefore, if they are in agreement with the move, you could approach this project with a view to consult over the proposed relocation and agree changes to terms and conditions.

However, if the move would be unreasonable for any member of your workforce and they object to it, you should consider completing the redundancy process and terminating their employment.

I would suggest that the company consider a working party at the early stages of the exercise and a carefully drafted questionnaire to determine what problems, if any, personnel would have getting to the new site. It would be worth considering whether you wish to offer travel assistance to encourage agreement, either on a short-term or permanent basis.

## Contact us

If you have any questions about the topics covered in Solutions please call **0800 634 1700**, or e-mail [cronerinfo@croner.co.uk](mailto:cronerinfo@croner.co.uk).

Alternatively, call the number on your advice line card to speak to a consultant, or if you are not currently a client, call **0800 634 1700** for further information on how Croner can help your business.

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