

Beware bogus enforcement letters

The Health and Safety Executive (HSE) Construction Division has been made aware of a bogus letter, claiming to be from the HSE, which has been sent to construction companies in East Anglia and the Home Counties. The letter concerns directors' duties under the Corporate Manslaughter and Corporate Homicide Act 2007. Headed with an old HSE logo, the document is unsigned and contains no HSE address details.

"Whilst HSE does make contact by letter with individuals and/or companies in the course of its business, we would not send out information in this manner," the Construction Division confirmed.

Furthermore, organisational procedures require HSE staff to remain professional at all times and require them to be able to provide clear contact details, including contact numbers and line manager details on request.

Safety scams

Safety scams crop up from time to time. Most scams share a similar approach by intentionally misleading the target company into believing that they are some kind of governmental or enforcing party similar to the HSE by using official sounding titles, such as the Health and Safety Enforcement Agency, National Safety Organisation, Health and Safety Registration Enforcement Division or Health and Safety Compliance Agency. Often they will request and, in some cases, demand money for "health and safety registration" or legislative compliance packs.

These scams are quite similar to the ubiquitous data protection scams and are often operated by the same people. In June 2007, four people from the Leeds/Bradford areas were given prison sentences for running a combined health and safety/data protection scam using the name of the HSE and Information Commission, demanding money from businesses for registration under H&S legislation.

Common contact from fake safety organisations has been in the form of cold calling a company by telephone, asking to speak with the Health and Safety or Facilities Manager, whereupon they ask for either some kind of registration fee and/or request money (usually around £200–250) for a compliance pack. Sometimes the caller will threaten the business with fines, prosecution or closure if it fails to register. The other main form of communication is by letter, normally on official-looking stationery. The letter will again ask for registration fees or money for a compliance pack.

Protecting your business

No official health and safety organisation will cold call companies to demand money, least of all the HSE. It is important to listen to your suspicions and do not be afraid to query requests for money or services,

especially from companies purporting to be Government organisations. Official bodies should not be offended if you ask them to confirm their credentials.

To find further information on an organisation, it is worth checking the Internet and/or telephone listings — if there are no details about it, then it is likely that it is a scam. If you have serious doubts about an organisation, you can contact your local Trading Standards Office or the HSE Infoline on 0845 345 0055. Croner Consulting clients with access to the Health and Safety Helpline can also, initially, contact our advisors to discuss any concerns they may have.



Focus on Facebook

With an estimated 360 million Facebook users worldwide, it appears that social networking sites are becoming ever more popular.



The potential problems they can cause for businesses, however, mean they are not so popular with employers. How can employers tackle these issues?

Some employees are spending excessive amounts of time during their working hours accessing social networking sites. This can be very costly for employers in terms of productivity, and could potentially amount to a disciplinary offence. It is, therefore, important for employers to have a clearly-worded policy informing employees what is and is not acceptable use of the Internet and social networking sites. Additionally, employees must be informed that their Internet usage may be monitored. Employers can decide whether or not to impose a complete Internet ban for non work-related purposes or to restrict access to break times only. Such policies must be enforced uniformly.

Another common problem is where one employee writes negative posts about another employee or the employer's business, which results in allegations of bullying or perceived damage to the employer's business or its reputation. However, in the majority of cases, posts are left by employees outside of working hours and are only viewable by their group of friends. This can make it difficult for an employer to take disciplinary action against the employee. A number of high-profile businesses have dismissed employees for leaving inappropriate comments on Internet sites, which has resulted in a finding of unfair dismissal by the tribunal. Employers need to show that they have acted fairly and reasonably, and that any decision to dismiss was not simply a knee-jerk reaction.

Employers are entitled to address such issues through informal discussions with the employee and can suggest that inappropriate posts be removed. However, enforcing this could prove difficult.

Some businesses have decided to take steps to embrace social networking sites and use them as a useful business resource. Many small businesses use them to promote and generate interest in their business. However, this can create a number of legal issues that

must be considered, such as data protection issues and copyright infringement. Similarly, it may be that competitors may have access to commercially sensitive information, such as client contact details.

Some employers are now using social networking sites as an opportunity to look up details on a job applicant. However, such informal vetting could expose employers to allegations of unfair selection and unlawful discrimination. Statistics suggest that more 20–29-year-olds use Facebook than any other age group. Could employers, therefore, be accused of indirect age discrimination if older candidates choose not to join in the Facebook phenomenon? Additionally, such sites may give employers access to information that would normally be excluded from application forms in order to avoid allegations of discrimination.

Whatever the issue, social networking sites are here to stay and employers are advised to take a proactive stance in dealing with possible employment issues by implementing a clearly-worded policy.

Landlord fined for asbestos exposure

A Bristol-based company has been fined for putting its workers at risk of asbestos-related diseases while working on a property in the city. The case focused on refurbishment work carried out at Lawrence Hill Industrial Park in Bristol during February and March 2009.

The court heard that Health and Safety Executive (HSE) inspectors visited industrial units where the defendant had organised refurbishment work, involving the removal of a large quantity of asbestos insulation board, without taking statutory safety precautions. This led to the exposure of workers to the asbestos and also the contamination of the units being renovated.

The company pleaded guilty to breaches under regulation 14 of the Construction (Design and Management) Regulations 2007 (CDM) in failing to appoint a CDM co-ordinator or principal contractor for notifiable construction work, and regulation 4(10) of the Control of Asbestos Regulations 2006 in failing to review or implement a plan to manage materials containing asbestos.

The company was fined £18,000 for breaching the regulations and ordered to pay £6679 in costs. Speaking after the hearing, HSE Inspector Sue Adsett said: "The decision not to have large quantities of asbestos insulation board removed by licensed contractors before the general refurbishment work began put the workers at risk and contaminated the site."

According to HSE estimates, around 500,000 buildings built before 2000 could contain asbestos.



Time to train

With effect from April 2010, employees with more than 26 weeks' continuous service with a large business (defined as employing 250 or more employees) will have the legal right to request time away from their core duties to undertake any training that will "help them to be more productive and effective at work, and that helps their employer to improve productivity and business performance".

It is anticipated that the right will be extended to employees of smaller businesses from April 2011.

The procedure for requesting time off to train or study is similar to the flexible working procedure. Employers are only obliged to consider one request from an employee in any 12-month period. The process is triggered when an employee submits a valid request for time off to train or study. For an application to be valid, it must be in writing and contain the following information.

- A statement that the application is being made under s.63D of the Employment Rights Act 1996
- The subject matter of the proposed training
- Where and when training will take place
- The provider/supervisor of such training
- How the employee feels the training will improve his or her effectiveness
- It must be dated, and confirm dates and method of any previous application.

There is no limit on the amount of time that can be requested in any one application. Furthermore, there is no obligation for this time off to be paid. However, employers may recognise the potential value to the business and may wish to pay; alternatively, they could agree with the employee that time be made up.

Within 28 days of receiving an application, the employer must accept the request or arrange a meeting to discuss the request. If the request does not include all of the required information, it would be advisable for the employer to explain to the

employee why it is not valid and allow him or her to amend and resubmit the application.

The employee has the right to be accompanied to the meeting by a colleague who is also employed by the employer. The employer can ask for further information to assist when considering a request. If the employee refuses to provide this, the employer can notify the employee in writing that it considers the request to be withdrawn.

Within 14 days of the meeting, the employer must confirm its decision in writing. If approval of a request involves a change in terms and conditions, whether permanent or temporary, that must be agreed and confirmed in writing.

Requests can only be refused for one of the following business reasons.

- Proposed study/training would not improve the employees effectiveness in the business
- Proposed study/training would not improve the performance of the business
- Burden of additional costs is too great
- Proposed study/training would have a detrimental effect on ability to meet customer demand
- Inability to reorganise work among existing staff
- Inability to recruit additional staff
- Insufficient work during the period(s) the employee proposes to work
- Planned structural changes during the proposed study/training period.

If the employer rejects a request, within 14 days of receiving written confirmation, the employee can appeal. An appeal meeting should be scheduled within 14 days. Time limits can be extended by agreement and must be confirmed in writing.

Many employers already see the benefit of training and will consider requests on an informal basis. Moving forward, failure to follow the formal procedure could result in a tribunal claim, where the employer could be ordered to pay compensation of up to 8 weeks' pay (capped at £380 per week). A further award of up to two weeks' pay could be ordered if the employee was denied his or her statutory right to be accompanied. Additionally, the tribunal can order the employer to reconsider the request following the procedure correctly.

It will be unlawful for an employer to submit an employee to a detriment by virtue of having submitted a request in relation to study or training. Furthermore, dismissing an employee because he or she proposed to or has exercised his or her right to make a request in relation to study or training will be automatically unfair.

The right to request time off to train does not extend to agency workers, members of the armed forces, young people of compulsory school age or who already have a statutory right to paid time off to undertake study or training, or to young people covered by the provisions of Part 1 of the Education and Skills Act 2008.

Employers who already have a training policy in place will need to revisit this to ensure it complies with the statutory procedure.

Top business issues

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

Tax & VAT	Employment	Legal	Health & Safety
1. Late tax return filing penalties — mitigation.	1. Conduct matters.	1. Contractual issues.	1. Risk assessment.
2. Late tax payment issues — use of the HMRC Business Payment Support Service, interest, surcharges and penalties.	2. Sickness absence — both long- and short-term absence.	2. Company law.	2. Accident recording and reporting.
3. Entrepreneurs' relief — sale of furnished holiday lettings — proposed transitional provisions.	3. Disciplinary matters.	3. Property matters, including leases.	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
IOSH Managing Safely	4 days	1–4 March	Croner Consulting, Leicestershire
Manual Handling Training for the Trainer	2 days	10–11 March	Beardmore Hotel Glasgow
Health & Safety in the Workplace Level 2	2 days	17–18 March	Holiday Inn Reading West
Health & Safety in the Workplace Level 3	3 days	23–25 March	Mercure London City Bankside
Level 1 Award in Food Safety (catering)	1 day	30 March	Croner Consulting, Leicestershire
Manual Handling Training for the Trainer	2 days	6–7 April	Croner Consulting, Hinckley
Health & Safety in the Workplace Level 2	2 days	13–14 April	Aztec Hotel & Spa, Bristol
Health & Safety in the Workplace Level 2	2 days	20–21 April	York Pavillion
Health & Safety in the Workplace Level 2	2 days	28–29 April	Mercure London City Bankside

Croner Consulting offers a four-day IOSH Managing Safely course.

1–4 March Croner Consulting at Hinckley	Cost: £600 + VAT
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Employment			
Course title	Duration	Date	Location
Essential Employment Law	1 day	4 March	Ramarda Swansea, Cardiff
The Differences in Legislation Between NI & ROI	½ day	25 March	The Dunsilly Hotel, Antrim
Essential Employment Law	1 day	30 March	Holiday Inn, Heathrow
Managing Investigations	1 day	1 April	The Liner Hotel, Liverpool
Dealing With Discipline	1 day	8 April	Greenwoods Hotel Spa & Retreat, Essex
Dealing With Discipline	1 day	15 April	Croner Consulting, Leicestershire
Essential Employment Law	1 day	22 April	Mercure London City Bankside
Performance Appraisal	1 day	29 April	Mercure London City Bankside

Croner Consulting offers a three-day Introducing Health & Safety Level 3 course.

23–25 March Mercure London City Bankside Hotel	Cost: £500 + VAT
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Legislation

Area	Legislation	Details	Date
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	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. Legislation to be passed by April 2010, with effect for parents of babies due on or after 3 April 2011.	April 2010
Agency Workers	Agency Workers Regulations 2010	Temporary agency workers will be entitled to equal treatment after 12 calendar weeks in the same job, but this will not apply to occupational pension schemes or occupational sick pay.	1 October 2011

REACH update — Part 2



Introduction

Concluding our two-part REACH article, here we examine enforcement and EU regulations on Classification, Labelling and Packaging.

Enforcement

A special EU body called the Forum looks after enforcement and its harmonisation across all member states, and this is chaired by an official from the UK. Just before Christmas, Forum issued a first report on the enforcement activity and the UK emerged as one of the member countries imposing the heaviest fines.

The UK is also well advanced in setting up comprehensive administration procedures to scrutinise REACH registration activities. Enforcement authorities will, in the near future, have unlimited access to the essential parts of REACH-IT. HM Revenue & Customs (HMRC) will start to play an important role in the near future to ensure that unregistered chemicals cannot enter the country.

In 2009, the emphasis was on manufacturers and importers of substances to ensure proper (pre-) registrations and that the safety data sheets were compliant with the new requirements. In 2010, the manufacturers of preparations (mixtures) can expect increased attention from the authorities.

For businesses wishing to ensure that they would pass an audit by the enforcement authorities and ensure that safety data sheets are fully compliant, Croner offers a pre-audit review and safety data sheet authoring service.

Classification, Labelling & Packaging (CLP)

Another major challenge facing industry in 2010 is the implementation of EU regulations on the Classification, Labelling and Packaging (CLP) of substances and mixtures, which brings new obligations for suppliers of chemicals from 1 December. All chemical substances on the EU market must be classified and labelled according to this new system and, in many cases, the European Chemicals Agency (ECHA) must be notified.

The CLP Regulation (EC) No. 1272/2008 entered into force on 20 January 2009 and introduces the UN Globally Harmonised System (GHS) into the legislative framework of the European Union. From 1 December 2010, all suppliers placing chemical substances on the market have to classify and label their substances in accordance with new criteria. From 1 June 2015, this also applies to preparations (mixtures) produced from the substances. The classification according to the Dangerous Substance Directive (DSD) continues until 1 June 2015.

By no later than 3 January 2011, manufacturers and importers of chemical substances on the market on 1 December 2010 have to notify the classification and labelling to ECHA and adapt their safety data sheets. This applies to all substances, which need to be registered under REACH, and to all other substances meeting the classification criteria, irrespective of the volume manufactured or imported. ECHA expects around 20 million of these notifications around the year-end alone. Many items change (eg *risk phrases* become *hazard statements*; *safety phrases* become *precautionary statements*; and a new set of symbols called pictograms

come into use), and for a certain period both will have to appear on your safety data sheet.

Notifications will be possible via IUCLID, directly in REACH-IT (but not before April 2010), or as a bulk submission (XML-file). They must contain (in total over 200 IUCLID entries).

- The identity and contact details of the notifier
- The identity of the substance
- The classification itself (including the relevant endpoints and, if there is no classification, the reason for it)
- If applicable, the specific concentration limits, M-factors and their justification (in the form of a Chemical safety Report)
- The label elements.

The whole notification process is far more complicated than pre-registrations were, as much more information must be provided and many more substances must be notified. In addition, every current safety data sheet and label must be changed. Given the complexity of the task and the time required, it would appear to be unwise to wait until the end of 2010 to begin the process.

Croner offers expert advice and a free, no-obligation initial assessment of your company's individual needs, so please feel free to contact us for an informal first discussion. We have many useful online databases at our disposal, and offer a rapid and competitively priced safety data sheet authoring service.

If you are interested in our REACH consultancy services, please contact the Health and Safety Helpline on 0844 561 8143.



Violence at work statistics

The Health and Safety Executive (HSE) has published a new report, entitled *Violence in the Workplace*, which interrogates the Home Office's British Crime Survey results and presents findings on work-related violence.

The report, published by the HSE as part of its responsibility for developing and implementing policy on work-related violence, indicates that there were approximately 305,000 threats of violence and 321,000 physical assaults by members of the public on British workers during the 12 months prior to the interviews conducted for the British Crime Survey.

There were 6160 reported injuries, classified under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR), caused by violence at work during the financial year 2008/09.

These reports comprised:

- 4 fatal injuries
- 928 major injuries
- 5228 non-major injuries that resulted in absence from work for at least 3 days.

This compares with 6315 RIDDOR-reported injuries caused by violence in 2007/08.

Estimates from a 2006 employee survey suggest that 16% of workers have been subject to abuse or violence in the last 3 months. For 67% of these victims, this happened more than once, and 66% of victims knew the person who was abusive or violent towards them. The same employee survey estimated that 33% of victims of workplace violence or abuse do not report the incident.



Ladele v London Borough of Islington (2009) EWCA Civ 1357

Ms Ladele had worked for the London Borough of Islington (LBI) since 2002 as a Registrar of Births, Deaths and Marriages. In 2005, her employer designated all of its existing registrars as "civil partnership registrars". Ms Ladele refused to perform these ceremonies on the grounds that they were contrary to her Christian beliefs.

The LBI made it clear to Ms Ladele that this refusal was against its "Dignity for All" policy. It went on to find Ms Ladele guilty of gross misconduct. She claimed direct and indirect discrimination and harassment on the grounds of her religion or belief.

Ms Ladele's claim was upheld at the employment tribunal, which found that the LBI had protected the rights of the lesbian and gay community in precedence over Ms Ladele's religious objections. The LBI appealed.

The EAT found the reason for disciplining Ms Ladele was because of her refusal to carry out a legitimate duty rather than because of her religious beliefs. The requirement that all registrars carry out civil partnership ceremonies meant that all employees were treated in the same way and, therefore, there was no direct discrimination. It also found that there had been no unlawful harassment, and that although the LBI might have acted unreasonably, it was not motivated by Ms Ladele's religious beliefs.

In respect of the indirect discrimination claim, the EAT accepted that requiring all registrars to perform civil partnership duties had the effect of placing those with Ms Ladele's religious beliefs at a particular disadvantage when compared with those who did not share those beliefs. However, it also accepted that the LBI had a legitimate aim in providing effective civil

partnership services and that, as a public employer, LBI was committed to promoting equal opportunities and fighting discrimination.

The action taken against Ms Ladele was proportionate — LBI was justified in its requirement that all registrars perform the full range of civil partnership services. Ms Ladele was not entitled to pick and choose which duties she would perform depending on whether they were in accordance with her religious views, particularly as her personal stance involved discrimination on the ground of sexual orientation. Allowing this would undermine the LBI's non-discriminatory objectives.

The Court of Appeal dismissed Ms Ladele's appeal, describing the EAT judgment as "impressive and cogent".

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.

Q: A member of staff is due to retire in the next two months. We have an ideal replacement in-house who wants the job and we would like to promote her into the role, but do we have to advertise internally?

A: You do not necessarily have to advertise the position, but you should check your recruitment policy to ensure you are not going to be in breach of any internal rules or policies. You should also bear in mind that by not advertising vacancies internally, particularly if it is a common practice, you are not giving equal opportunities to your staff, and someone who might otherwise be interested and capable of doing the role could be overlooked for the position. This practice also has the additional risk that it could give rise to discrimination claims. For example, if you always pick out men for vacancies/promotion, then a female worker may try to claim sex discrimination.

In relation to the retiring employee, hopefully you are aware that there is a statutory retirement procedure to follow, also known as the Duty to Consider Procedure. As a result, you should refrain from offering anyone this person's job until you have followed and concluded this duty to consider retirement procedure, including allowing the right to appeal and time for this to be undertaken.

It should be noted that the duty to consider procedure takes a minimum of six months to complete and if you have failed to initiate this procedure then we would not recommend that you retire this employee. However, if this person has indicated his or her intention to retire and you have processed this as a resignation you would be free to continue.

If you appoint to the position before the duty to consider procedure has been concluded or you have formally accepted the resignation, you will expose yourselves to a risk of unfair dismissal and possible age discrimination by the retiring employee.

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.

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.

If you would prefer your monthly copy of Solutions to arrive via your inbox, e-mail us and we will send you an electronic copy every month instead.

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