

Legislation WATCH

THE No.1 RESOURCE FOR WORKPLACE LAW AND HEALTH AND SAFETY



Working at Height

It's a fact that working at height accidents are still a major cause of workplace deaths and injuries in the UK.

See pages 4-6

Workplace Facilities

At-a-glance guide to H&S essentials

Pages 8-12

Weather Hazards

How to protect your employees and premises

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Dear readers,

Even though Working at Height injuries are decreasing year after year, they are still a major cause of workplace deaths and serious injuries.

Our article on pages 4-6 highlights this on-going safety issue – plus we've created a FREE Toolbox Talk training presentation to remind your employees and colleagues of the importance of ladder safety, see page 7 for details.

In this edition we've also included a handy guide to cover all the workplace facilities essentials! From the number of toilets you require right through to how many disabled parking spaces you need to allocate. Make sure you're covering the basics on pages 8-12.

Don't forget to go online if you've missed an edition of our magazine, they're all completely FREE to download at www.legislationwatch.co.uk.

Cheryl

Cheryl Peacock, Editor
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Legal Update



December 2011

The Agency Workers Regulations (Northern Ireland) 2011 come into force on 5th December. The Regulations are intended to give effect to the Temporary Agency Workers Directive 2008/104/EC, which was published on 5th December 2008, and EU Member States had until 5th December 2011 to implement its provisions. The rest of the UK brought in the Regulations on 1st October 2011. The objective of the Regulations is to give agency workers the entitlement to the same basic employment and working conditions as a company's permanent employees. The new Regulations do not affect the current protection afforded to agency workers and do not change the employment status of agency workers.

January 2012

The Fire Safety (Protection of Tenants) Bill is scheduled to have its second reading in the House of Commons. The Bill was presented to Parliament through the ballot procedure on 30th June 2010 and requires that fire alarms fitted in rental properties should be hard-wired, rather than powered by batteries. The Bill's intention is to address the issue of batteries running out or being

taken out and not replaced, which is often linked to tragic fire events.

A number of new health and safety-related Bills are scheduled to be put before Parliament in the spring of 2012. These include:

- Self-Employment (Risk Assessment Exemption) Bill – to exempt self-employed persons engaged in low hazard work from the requirement to conduct a written risk assessment.
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulation Bill – to reduce duties on employers to report injuries under RIDDOR 1995.
- Low Hazard Workplaces (Risk Assessment Exemption) Bill – to exempt 'low hazard workplace' employers and those working from home from the requirement to produce a written risk assessment.
- Health and Safety Consultants (Qualification) Bill – to introduce qualification requirements for health and safety consultants and provide accreditation.
- Health and Safety at Work (Amendment) Bill – to amend the Health and Safety at Work Act 1974 in respect of systems of risk assessment.

The Bill is expected to introduce separate requirements for play, leisure and work-based activities, and simplified risk assessments for schools.

April 2012

From April 2012, the HSE will begin implementing its Cost Recovery Scheme, known as 'fee for intervention' (FFI), meaning businesses found to have broken health and safety laws will pay the costs incurred by the HSE in helping them to put matters right. For the first time, the changes place a duty on the HSE to recover the costs of their interventions in certain circumstances.

Costs would be recovered if a material breach – a failure to adhere to health and safety law identified by an inspector as requiring formal action – is discovered during an inspection or investigation. Fees would apply up to the point where the HSE's intervention in supporting businesses in putting matters right has concluded.

Under the proposals, the HSE will recover costs at current estimates of £133 per hour. Costs of any specialist support needed by HSE would also be passed on.

Update: Working at height

Although the number of accidents whilst working at height has fallen year on year, they are still a major cause of workplace deaths and injuries in the UK, explains Jagdeep Tiwana, Bond Pearce LLP.

Of the 42 fatal incidents in construction in 2009/10, 60% (25) were caused by falls from height, and two fatalities were caused by falls below two metres. 63% of all reported incidents are caused by 'low falls' (i.e. below two metres).

Working at height is defined as any work carried out at any place where a person can fall and injure themselves, which can include:

- Working above ground level using a platform or scaffold;
- Working on a roof where there is risk of falling through a fragile surface;
- Working at ground level where there is risk of falling in a hole on the ground;
- Working on the back of a lorry unloading goods;
- Climbing fixed structures; and using a ladder.

Use of Ladders

A third of all reported fall-from-height incidents involve ladders and stepladders, accounting for approximately 14 deaths and 1,200 major injuries to workers each year. Because many of these injuries are caused by inappropriate or incorrect use of the equipment the HSE advises that a ladder should:

- Be prevented from moving before it is stepped on;
- Be long enough to do the job safely;
- Have a handhold available to allow the worker to maintain three points of contact where possible;
- Be used without overreaching;
- Be inspected and checked regularly where necessary.

Further information

www.hse.gov.uk/falls/index.htm

INDG 401 (rev 1) – The Work at Height Regulations 2005 (as amended) A Brief Guide:

www.hse.gov.uk/pubns/indg401.pdf



CASE STUDY 1

A roof worker has been fined £3,500 with £2,742 costs after a man fell to his death in Leicester. Landlord Trevor Hall, 65, died on 8th March 2010 after falling around 3.5 metres through a fragile roof light at premises he owned.

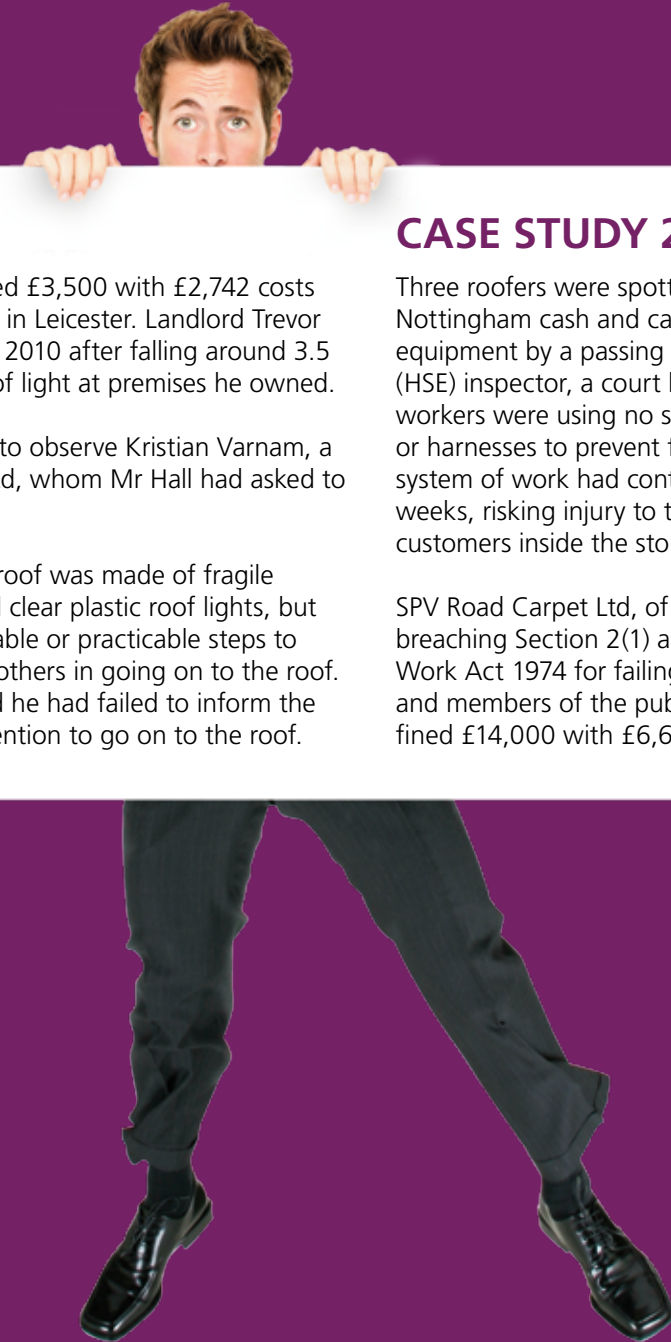
He had gone onto the roof to observe Kristian Varnam, a director of Roofwise (UK) Ltd, whom Mr Hall had asked to provide a quote for repairs.

An investigation found the roof was made of fragile asbestos cement sheets and clear plastic roof lights, but Mr Varnam took no reasonable or practicable steps to ensure his safety or that of others in going on to the roof. The investigation also found he had failed to inform the building's tenants of his intention to go on to the roof.

CASE STUDY 2

Three roofers were spotted working on top of a Nottingham cash and carry store without any safety equipment by a passing Health and Safety Executive (HSE) inspector, a court heard. The inspector noticed the workers were using no safety equipment, edge protection or harnesses to prevent falls. It was discovered this unsafe system of work had continued over a period of three weeks, risking injury to the roofers and to employees and customers inside the store.

SPV Road Carpet Ltd, of Aldridge, Walsall pleaded guilty to breaching Section 2(1) and 3(1) of the Health and Safety at Work Act 1974 for failing to protect their own employees and members of the public in the store at the time. It was fined £14,000 with £6,659 costs.



Legislation

- Health and Safety at Work Act 1974.
- Lifting Operations and Lifting Equipment Regulations 1998.
- Management of Health and Safety at Work Regulations 1999.
- Work at Height Regulations 2005 (as amended).

The Work at Height (WAH) Regulations require employers to ensure that:

- All work at height is properly planned and organised;
- The work is carried out safely; and
- Employees undertaking the work are trained and competent.

The WAH Regulations not only cover work at height but also falling objects, fragile roofs and equipment. This means that employers must consider every aspect of their business that involves working at height, whether it is something as complicated as undertaking building work or as straightforward as changing a light bulb.



Visible Traceable Safety Records



Scafftag Scafftag®
Clearly better for business

Prevent working at height hazards with the industry-leading scaffold tagging system

www.legislationwatch.co.uk/prod18

Scafftag Laddertag®
Clearly better for business

Help eliminate accidents and improve your inspection management processes

www.legislationwatch.co.uk/prod19



Scafftag Ladder Safety
Clearly better for business
Management Guide

A simple solution to managing your ladders on-site

www.legislationwatch.co.uk/prod20

Scafftag Ladder
Clearly better for business

Handy on-site guide to ladder components and inspection checks

www.legislationwatch.co.uk/prod21



Talk

Toolbox Talks are a quick and useful way of giving employees up-to-date health and safety information on a particular subject. A toolbox talk can be delivered by a health and safety expert or even a line manager or foreman. They should last no longer than 10-15 minutes and can comfortably take place in the office, staff room or canteen. Talks should be conducted regularly (weekly/monthly) or after an incident.

Leaning Ladder & Stepladder Safety

We've created a useful presentation to help your employees use ladders and stepladders safely.

Our FREE download includes:

- ✓ Legislation Overview
- ✓ Accident Statistics
- ✓ Hazards and Pre-Use Checks
- ✓ Positioning
- ✓ Safe Use



Download your **FREE** Toolbox Talk Training Slides

How to

1. Go to: www.legislationwatch.co.uk/toolbox
2. Save the file to your PC
(to ensure you see the trainers notes)
3. Amend the slides to suit your organisation
4. Arrange your training session!

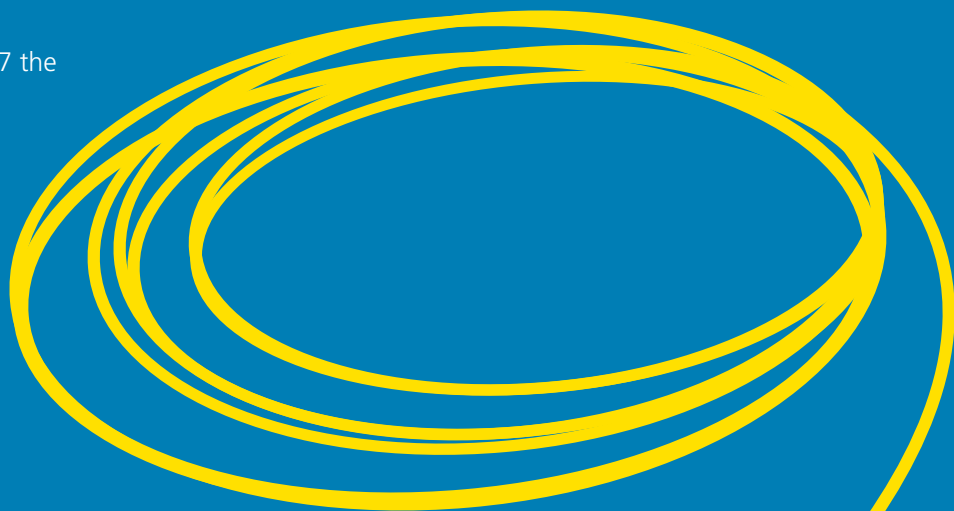


At-a-glance guide to workplace health and safety

The latest figures published by the HSE show that the number of people injured and made unwell at work has continued to fall, but there has been an increase in the number of fatalities at work.

The statistics show that in Britain between April 2010 and March 2011:

- **24,726** major injuries were reported, such as amputations, fractures and burns, to employees – a rate of 99 injuries per 100,000 workers – compared with 26,268 in 2009/10.
- **90,653** other injuries serious enough to keep people off work for four or more days were reported – a rate of 363.1 injuries per 100,000 workers – down from 96,427 the previous year.
- An estimated **1.2 million** people said they were suffering from an illness caused or made worse by their work, down from 1.3 million in 2009/10. Of these, 500,000 were new illnesses occurring in-year.
- **171** workers were fatally injured – up from 147 the previous year.



Welfare Facilities

The minimum number of facilities that organisations in the UK should provide is governed by the Workplace (Health, Safety and Welfare) Regulations 1992, says Hayley O'Donovan of PHS Washrooms. This is supported by a Code of Practice that gives precise details regarding the numbers of toilets and hand basins and so on based on the numbers and sexes of employees.

The Regulations try to ensure that, where the facilities are used by women, there is greater access to more toilet facilities than where toilets are used by men only.

Number of toilets and washbasins for mixed use (or women only)		
No. of people at work	No. of toilets	No. of wash basins
1-5	1	1
6-25	2	2
26-50	3	3
51-75	4	4
76-100	5	5

Toilets used by men only		
No. of men at work	No. of toilets	No. of urinals
1-15	1	1
16-30	2	1
31-45	2	2
46-60	3	2
61-75	3	3
76-90	4	3
91-100	4	4



Temperature

There is currently no maximum temperature for a workplace.



Guidance	Temperature range
Workplace (Health, Safety and Welfare) Regulations 1992	During working hours, the temperature in all workplaces inside buildings shall be 'reasonable'
ACoP – Workplace health, safety and welfare. A short guide for managers	In the typical workplace, the temperature should be at least 16°C unless much of the work involves severe physical effort, in which case the temperature should be at least 13°C.
CIBSE Guide A – Environmental Design	For air-conditioned buildings in the UK, a dry resultant temperature of between 21°C and 23°C during winter and between 22°C and 24°C in summer for continuous sedentary occupancy. It is recognised that room temperatures in buildings without artificial cooling will exceed the summer values for some of the time but should not exceed 25°C for more than 5% of the annual occupied period (typically 125 hours).

Source: Heating and Ventilating Contractors' Association: www.hvca.org.uk



Parking

The British Parking Association (BPA), Disabled Motoring UK (DMUK) and BCSC undertook major research in partnership with DfT in 2009, which indicated that the 6% one-size-fits-all approach to disabled parking provision leads to oversupply in some situations and undersupply in others.

It is expected that Inclusive Mobility will be superseded in 2012 with more flexibility in the guidance.

The BPA recommends the following allocation:	
1-50	2 + 3% of total car park
51-200	3 + 3% of total car park
201-500	4 + 3a% of total car park
501-1,000	5 + 3% of total car park
1,000+	6 + 3% of total car park



Easyline Edge Airflow Line Marking System

Produces sharp, clear lines in car parks, warehouses and factory floors
Go to www.legislationwatch.co.uk/prod/prod203



Noise Action Levels

The Control of Noise at Work Regulations 2005 require employers to carry out noise assessments. The Regulations identify action levels at which various actions need to be taken by the employer. This includes reference to daily personal noise exposure, which is defined as the personal exposure to noise at work (over an eight-hour day), taking account of the average levels of noise in working areas and the time spent in them, but not including the wearing of any ear defenders or protectors.

First action level	A daily personal noise exposure of 80dB(A) and a peak value of 112 pascals.
Second action level	A daily personal noise exposure of 85dB(A) and 140 pascals.
Limit value	A peak sound pressure of 87dB(A) and 200 pascals. The limit value will take into account the reduction afforded by hearing protection.

Working Time Limits

The Working Time Regulations 1998 came into force on 1st October 1998. The Regulations limit working hours and provide for rest breaks and minimum paid holiday rights.

Hearing Protection Signs

Provide a clear safety message around your site
Go to www.legislationwatch.co.uk/prod204



Hearing protection must be worn

Worker	Time
Adults	Adult workers cannot work more than an average of 48 hours per week over a 17-week period.
Young workers	May not work over eight hours per day or 40 hours per week (these hours cannot be averaged).
Child workers (compulsory school age)	<p>During term time, a child may not work more than 12 hours per week, including a maximum of two hours on a school day or Sunday and a maximum of five hours on a Saturday for 13-14 year olds, or eight hours on a Saturday for 15-16 year olds.</p> <p>Child workers may not work for more than one hour before school.</p> <p>During school holidays, a 13-14 year old may work a maximum of 25 hours per week, including up to five hours on a weekday or a Saturday and up to two hours on a Sunday.</p> <p>During school holidays, a 15-16 year old may work up to a maximum of 35 hours per week, including up to eight hours on a weekday or a Saturday and up to two hours on a Sunday.</p>

Portable Appliance Testing (PAT)

The HSE defines a portable appliance as equipment that has a lead (cable) and plug and that is 'normally moved around' or 'can easily be moved' or equipment that 'could be moved'.

Testing of portable electrical equipment should be carried out at appropriate regular intervals in order to ensure safety in use, advises Paul Caddick, PHS Compliance.

Definitions

- S = Stationary equipment, e.g. vending machine.
- IT = IT equipment, e.g. computer.
- M = Moveable equipment, e.g. extension lead.
- P = Portable equipment, e.g. fan.
- H = Handheld equipment, e.g. drill.

Construction sites 110V equipment	All equipment: every 3 months
Industrial including commercial kitchens	S, IT and M: every 12 months. P and H: every 6 months
Equipment used by the public	S and IT: every 12 months M, P and H Class 1: every 6 months M, P and H Class 2: every 12 months
Schools	All Class 1 equipment: every 12 months All Class 2 equipment: every 48 months
Hotels	S and IT: every 48 months M and P: every 24 months H: every 12 months
Offices and shops	S and IT: every 48 months M and P: every 24 months H: every 12 months



Portable Appliance Tester

For fast and simple testing of equipment
Go to www.legislationwatch.co.uk/prod205

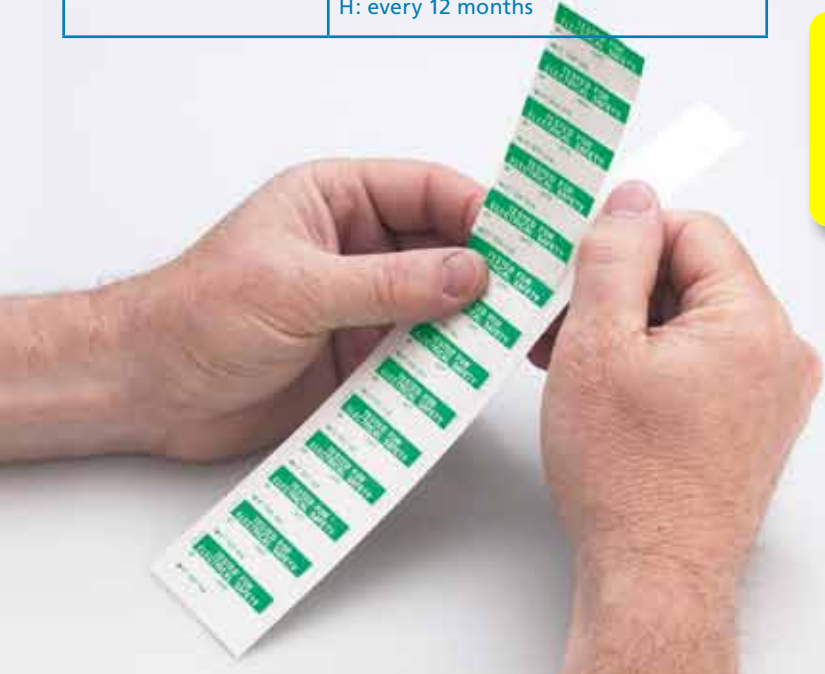
Write-On Labels

Keep up to date with your electrical safety checks
Go to www.legislationwatch.co.uk/prod206

Further information

Workplace Law Handbook 2012: Health and safety, premises and environment

www.workplacelaw.net/bookshop/handbooks/id/1131



BS5306-3:2009

Fire Extinguisher Installation & Maintenance

“ BS5306-3:2009 is the Code of Practice relating to the Installation and Maintenance of fire extinguishers. It recommends that extinguishers should be subjected to an initial service (commissioning) on site and immediately prior to installation. Although not a requirement by Law, it is insisted on by most insurance companies and is recommended best practice. ”



Fire Extinguisher Installation service

Our hassle-free service ensures your extinguishers are installed and commissioned in line with BS5306-3:2009.

- 24 hour response to arrange installation date
- Fully qualified and insured technicians
- Receive a full site survey prior to installation and commissioning
- Old extinguishers disposed of in-line with environmental policies
- Annual servicing and maintenance contracts available

Call out charge
only £50

Installation charge
only £22

Call 0800 585501

for more information or to place your order



Protecting people and premises against weather hazards

The Forum of Private Businesses (FPB) says small and medium sized businesses can be particularly vulnerable to the impact of freak weather and should check their premises are winter-proof, insurance is up to date, and contingency plans are well-thought-out in case staff can't get in to work.

The FPB's Head of Campaigns, Jane Bennett, said:

"Disruptive snowfall hampers deliveries, triggers heating and power failures, and can sometimes mean employees can't get to work. Something as simple as making sure water pipes are lagged could save a business thousands in lost revenue if it has to close because of flooding."

She added:

"A high percentage of businesses affected by a major incident such as a flood or a fire either never re-open or go bust soon after the event.

"This is often not due to the immediate loss of goods and premises, which is usually covered by insurance payouts. It's because the company's inability to resume trading within a short space of time means clients and customers go elsewhere, leading to unsustainable losses and potentially undoing years of hard work spent building the business up."



Slips & Trips

According to the HSE, slip and trip accidents increase during the winter months. This is because there is less daylight, leaves fall on to paths and become wet and slippery, and cold weather spells cause ice and snow to build up on paths.



Flood Proof

A new support network for those affected by and at risk of flooding has been created on Facebook. Flood Group UK is a new page aimed at helping businesses, homeowners and communities at risk of flooding to support each other. The group has been launched by government organisations and flood forums from across the UK.

Flood Group UK enables communities to share information, experiences and advice about flooding. It also contains a flood directory with information on how to find out if you are at risk of flooding, how to sign up for free flood warnings and what simple steps you can take to protect your property.

This initiative is overseen by the Environment Agency and is supported by the Scottish Environment Protection Agency (SEPA), the Rivers Agency of Northern Ireland, the National Flood Forum, the Scottish Flood Forum and the Cocker mouth Flood Action Group.

Heather Shepherd, Flood Community and Recovery Support Specialist from the National Flood Forum, said:

"Sharing ideas, experiences and information amongst communities that have either suffered flooding, or are at risk of flooding, can help enormously."



Lighting

Check there is enough lighting around your workplace for you and your workers to be able to see and avoid hazards that might be on the ground. Check inside and outside of the workplace and if you can't see hazards on the ground you will need to improve the lighting (e.g. new lights or changing the type of bulb).



Ice, Frost & Snow

- Identify the outdoor areas used by pedestrians most likely to be affected by ice; for example, building entrances, car parks, pedestrian walkways, shortcuts, sloped areas and areas constantly in the shade or wet.
- Put a procedure in place to prevent an icy surface forming and/or keep pedestrians off the slippery surface.
- Use de-icing salt on areas prone to be slippery in frosty, icy conditions.
- Gritting should be carried out when frost, ice or snow is forecast or when walkways are likely to be damp or wet and the floor temperatures are at, or below, freezing. The best times are early in evening before the frost settles and/or early in the morning before employees arrive.

And finally, if warning signs are used, remember to remove them once the hazard has passed or they will eventually be ignored.



Rainwater

- When fitting external paved areas ensure that the material used will be slip resistant when wet.
- Discourage people from taking shortcuts over grass or dirt which are likely to become slippery when wet.
- On new sites, before laying paths, think about how pedestrians are likely to move around the site. Putting the path in the right place from the start may save you money in the long term.
- Many slip accidents happen at building entrances as people entering the building walk in rainwater. Fitting canopies of a good size over building entrances and in the right position can help to prevent this.
- If a canopy is not a possibility, consider installing large, absorbent mats or even changing the entrance flooring to one that is non-slip.



Wet & Decaying Leaves

Fallen leaves that become wet or have started to decay can create slip risks by hiding any hazard that may be on the path or create a slip risk. Put in place a procedure for removing leaves at regular intervals; you might even consider removing the offending bushes or trees altogether.

Further information

- www.facebook.com/floodgroupuk
- www.hse.gov.uk/logistics/slips-trips.htm
- www.metoffice.gov.uk/index.html

Employee Health & Safety

The Health and Safety at Work Act 1974 (HSWA) requires employers to take all reasonably practicable steps to ensure the health, safety and welfare of employees at work, says Sally Cummings of law firm, Kennedys.

A number of different health and safety regulations impose more specific duties that may require employers to take into account the effects of weather in order to comply with them.

Legislation

- Health and Safety at Work Act 1974
- Personal Protective Equipment at Work Regulations 1992
- Workplace (Health, Safety and Welfare) Regulations 1992
- Management of Health and Safety at Work Regulations 1999

Simple steps to protect **your people and premises....**

Snow & Ice

De-ice car parks and walkways before frost and ice settles



www.legislationwatch.co.uk/winter

Flooding

Sand Bags offer a simple solution to help protect your property



www.legislationwatch.co.uk/prod207

Decaying Leaves

Sweep up wet and decaying leaves at regular intervals



www.legislationwatch.co.uk/prod208

Wet Steps & Ramps

Use Anti-Slip Tape on areas prone to cause accidents when wet



www.legislationwatch.co.uk/prod209

Building Entrances

Install absorbent matting to prevent slips at building entrances



www.legislationwatch.co.uk/prod210

Slippery Floors

Use floor stands to warn pedestrians of slippery surfaces



www.legislationwatch.co.uk/prod2011

Safety equipment checks



Employers must ensure that all work equipment they provide conforms with the essential requirements of the European Community Law relating to its design and construction, and that it is maintained to this standard.

Personal Protective Equipment facts:

- Personal Protective Equipment (PPE) is worn or held by persons at work to protect them from risks to their health and safety.
- The Personal Protective Equipment at Work Regulations 1992 apply in most instances; there are six other sets of Regulations which include their own particular PPE requirements.
- Employers must decide if PPE is necessary and, if so, must select suitable PPE, provide it free of charge, and maintain it and replace it as necessary.
- In addition, employers must provide accommodation for PPE, information, instruction and training about it and how to use it, and a system for employees to report defects and losses.

- Those **supplying** equipment must meet the Supply of Machinery (Safety) Regulations 2008 (as amended).
- Intermediate **suppliers** must supply safe machinery in accordance with the requirements of Section 6 of the Health and Safety at Work Act 1974.
- **Employers and users** of machinery have responsibilities under the Provision and Use of Work Equipment Regulations 1998 (PUWER), as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002.



Case Study

A man whose right eye was damaged after he was provided with unsuitable safety glasses at work has been awarded £5,000 in compensation.

Paul Thomas, 34, sustained the injury whilst fitting sound-proof doors for Clark Door of Carlisle at the BBC buildings in Glasgow.

Mr Thomas, a GMB union member, was drilling into concrete above his head, when dust fell into his eyes through ventilation holes in the goggles, causing alkali burns. His eyes swelled and he had to take four months off work. Clark Door admitted liability, and settled out of court.

Beware of fakes

The British Safety Industry Federation (BSIF) has warned businesses to be on the alert for fake safety products on the market.

It warns that illegal safety equipment can be hard to distinguish and in many instances goes unnoticed until an accident occurs. Examples include non-conforming high visibility vests, safety helmets and prescription safety glasses.

The BSIF liaises closely with its members, including test houses, to look out for and react to fake and illegal Personal Protective Equipment (PPE). The Federation also works closely with Trading Standards and Local Government Regulation, the national coordinating body, the HSE and BIS.

David Lummis, Chief Executive Officer at the BSIF, said it had been

brought to the attention of the BSIF that "prescription safety glasses were being sold as CE approved safety equipment, when in fact certification had not yet been granted. The BSIF became involved in this enquiry which led to the product being withdrawn from the marketplace until it had gained the required certification and the supplier / manufacturer was asked to write letters to its purchasers to apologise."

The BSIF introduced the Registered Safety Supplier Scheme in 2009, which lists businesses that have identified themselves as having made a formal declaration that they are selling only products that are genuine and legal. This declaration is, as a condition of the scheme, audited through special provisions set out within the company's ISO 9001 Certification.

Continued overleaf...

Further information

- www.bsif.co.uk
- www.hse.gov.uk/work-equipment-machinery/report-defective-product.htm



BEWARE OF FAKES!

Fully Compliant PPE from SETON



Hi-Vis Waistcoats

From £4.80
EN 471 Compliant
CE Marked
 Go to www.legislationwatch.co.uk/prod212



Chukka Boots

From £17.95
EN 20345 Compliant
CE Marked
 Go to www.legislationwatch.co.uk/prod213



Evo2® Hard Hats

From £5.40
EN 397 Compliant
 Go to www.legislationwatch.co.uk/prod214



Stealth Safety Spectacles

From £3.60
EN 166 Compliant
 Go to www.legislationwatch.co.uk/prod215



Cut-Resistant Reflex K Gloves

From £14.40
EN 420 Compliant
CE Marked
 Go to www.legislationwatch.co.uk/prod216



FFP1 Standard Dust Masks

From £29.95 per 20pk
EN 149 Compliant
 Go to www.legislationwatch.co.uk/prod217



Duraflex® 2 Point Fall Arrest Harness

From £104.95
EN 361 Compliant
 Go to www.legislationwatch.co.uk/prod218



Further Information

A recent two-week road safety campaign across Wales found 1,000 motorists using a mobile phone whilst driving.

During the campaign, officers detected a total of 1,000 mobile phone driving offences. In the Dyfed Powys force area, 429 notices were given, while in North Wales a total of 168 offenders were caught. South Wales Police issued 274 fixed penalty notices and in Gwent a total of 129 were issued.

Mobile phones

The Road Vehicles (Construction and Use) (Amendment (No.4) Regulations 2003 (the Regulations) render it unlawful for individuals to drive a motor vehicle on the road if using a handheld mobile telephone.

The Regulations state clearly that no person shall 'cause or permit' any other person to drive a motor vehicle on the road whilst that person is using a handheld mobile phone or device.

However, with the development of Smartphones, there are now more dangers than simply talking on the phone while driving. A recent survey by road safety charity, Brake, and Direct Line revealed that nearly three in ten drivers (28%) text at the wheel and one in 13 (8%) do this at least once a week. One in 11 drivers (9%) surfs the web, emails, uses apps or social networking sites when driving.

Texting has been found to make drivers 23 times more likely to cause a crash,

and using a phone to email or surf the web also causes serious distractions. According to the legal experts at BPE Solicitors, employers have a duty to provide a safe working environment under the Health and Safety at Work Act 1974, and should be aware that both employer and employee can be prosecuted for careless or dangerous driving if evidence shows that the person in control of the vehicle was distracted and not showing due care and attention.

Staff should be told, by way of a contractual document, where relevant, or a non-contractual policy, that they are strictly prohibited from using handheld mobile phones whilst driving and that to do so is likely to result in disciplinary action.



CDM update

The Health and Safety Executive (HSE) has recently released figures on the number of workplace fatalities within the construction industry. Disturbingly, there has been an increase of eight from last year (50 in total), the first rise in over five years.

This is of particular concern as it has come in the face of a concerted effort by the HSE to improve the image of health and safety in construction.

Since the conception of the Construction (Design and Management) Regulations 2007 (CDM) the HSE has increased its activity on construction sites, despite the well-publicised cutbacks in its resources. Over the past three years, prosecutions under CDM have risen by over 5% despite an overall drop from 853 prosecutions in 2008 to 735 in 2010.

Interestingly the average fine issued to organisations that fall foul of CDM has also elevated, from £1,800 in 2008 to over £7,000 (to date) in 2011.

Only time will tell if the rise in construction fatalities is just a blip, but the message from the HSE is clear. Tough penalties will be enforced on those organisations that are putting lives at risk by failing to manage their CDM duties responsibly!

Legislation

The Construction (Design and Management) Regulations (CDM) 2007 came into force on 6th April 2007 and completely replaced the previous CDM 1994 Regulations and the Construction Health, Safety and Welfare Regulations 1996.

Further information

Managing health and safety in construction:
<http://www.hse.gov.uk/pubns/books/l144.htm>

Case Study

Two partners in a company that erected unsafe scaffolding, which crashed to the ground in strong winds, were fined £8,000 and £5,000 respectively. Both were ordered to pay costs of £2,040 in the case brought by the Health and Safety Executive (HSE) at Exeter Magistrates.

Scaffolding Systems South West Ltd, of Warwick Road, Heavitree, Exeter, pleaded guilty to breaching Regulation 28(2) of the Construction (Design and Management) Regulations 2007 after a large section of scaffolding erected by the firm at a builders' merchants on 25th March 2009 fell away from the building, seriously damaging a number of parked cars.



Asbestos hazards

Exposure to asbestos is hazardous to health, says Mick Dawson of Dawson Asbestos Consulting Ltd, with the three main conditions – asbestosis, lung cancer and Mesothelioma – all potentially fatal.

Current HSE estimates put the death rate in the UK from asbestos-induced diseases at almost 4,000 a year, a figure not likely to decrease until 2020 or later.

Although the use of asbestos in buildings and construction materials is now prohibited, it is still widely found in existing properties, which is why building owners and those in control of non-domestic premises have a duty to manage the asbestos-containing materials (ACM) within their buildings.

Formulating an asbestos management plan involves identifying whether buildings have ACM, assessing the risk from each occurrence, and having a process to manage the ACM.

Also, any work that is likely to disturb ACM is regulated by the need for additional risk assessments prior to work taking place, control measures to prevent the spread of asbestos, and evidence of training and competency.

Depending on the risk, work on some ACM may be restricted to HSE-licensed companies, which must follow a notification procedure and carry out the work inside segregated work areas, using specially trained operatives who undergo medical surveillance. However, a recent EU ruling means the HSE will be consulting stakeholders regarding a new classification of non-licensed work.

Recent EU ruling (non-licensed work)

In February 2011 the EU ruled, by way of a 'reasoned opinion,' that the HSE had not fully transposed the EU Directive with regards to the full definition of 'sporadic and low intensity,' which effectively allowed more types of asbestos work to be exempt from notification and medical surveillance obligations than was intended.

The HSE consulted on a new category of notifiable non-licensed work (NNLW) towards the end of 2011 – with the amendments to the Code of Practice expected in April 2012. The proposed changes are that employers carrying out this type of low risk, short duration maintenance and repair work will be required to:

- Notify the work to the relevant Enforcing Authority;
- Obtain medical examinations for workers; and
- Maintain a register for each worker of the type and duration of work done.



CAUTION ASBESTOS

CAUTION ASBESTOS

Case Study

Marks and Spencer plc and three of its contractors have been fined for putting members of the public, staff and construction workers at risk of exposure to asbestos-containing materials during the refurbishment of two stores.

The sentencing hearing resulted in Marks and Spencer plc being fined £1m and being ordered to pay costs of £600,000. PA Realisations Ltd was fined £200, and Styles & Wood Limited was fined £100,000 and ordered to pay costs of £40,000. The fines and costs were all for breaches that took place at the Marks and Spencer plc store in Broad Street, Reading.

Legislation

- Health and Safety at Work Act 1974.
- Management of Health and Safety at Work Regulations 1999.
- Hazardous Waste Regulations 2005.
- The Control of Asbestos Regulations 2006.

Further information

HSE – Asbestos: www.hse.gov.uk/asbestos

ATAC – Asbestos Testing and Consulting: www.atac.org.uk

HSE – Approved Code of Practice, L127: The management of asbestos in non-domestic premises: www.hse.gov.uk/pubns/priced/l127.pdf

One-day Asbestos Guidance Legal Update: www.workplacelaw.net/training/course/id/61

www.legislationwatch.co.uk/prod219



CAUTION ASBESTOS

CAUTION ASBESTOS

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Sickness Absence

Recent figures from the Federation of Small Businesses (FSB) show that sickness absence costs small businesses on average £1,500 per year.

For the first time, the most common cause of long-term sickness absence for both manual and non-manual employees is stress, according to the annual Absence Management survey by the Chartered Institute of Personnel and Development (CIPD) and Simplyhealth.

CIPD Adviser, Dr Jill Miller, said that the figures highlighted the heightened pressure many people feel under in the workplace as a result of the prolonged economic downturn.

The HSE has developed the 'Management Standards' approach to help reduce the levels of work-related stress.

These help simplify risk assessment for work-related stress by:

- identifying the main risk factors;
- helping employers focus on the underlying causes and their prevention;
- providing a step-by-step approach to carrying out a risk assessment;
- encouraging employers, employees and their representatives to work in partnership to address potential sources of work-related stress throughout the organisation;
- providing a yardstick by which organisations can gauge their performance in managing the key causes of stress.

Visit www.hse.gov.uk/stress/standards/index.htm for more information.

Download our FREE Toolbox Talk

on 'Working with DSE'

www.legislationwatch.co.uk/toolbox



The British Chiropractic Association (BCA) has offered some useful advice on dealing with the other main cause of sickness absence – musculoskeletal disorder, particularly back pain from work.

- Relax when sitting into your chair, making sure you have your bottom against the seat back with your shoulder blades touching the back rest of the chair.
- Make sure your feet touch the floor or use a foot rest.
- There should be space between the front of your seat and back of your calves.
- Your hips should be higher than your knees (tilt the seat).
- Your arms should be flat and your elbows level with the desk or table you are using.
- Use a seat with arm rests.
- Take regular breaks. Never sit at the computer for more than 40 minutes; less if possible.
- When you take a break, walk around and stretch a little; do something completely different.
- Remove any obstacles from under your desk to ensure you have enough leg room.



Q&As

Legal and health and safety questions answered by the experts at Workplace Law

Q. An employee fell down a flight of stairs at premises used by our training provider. She has broken her shoulder as a result. The stairwell area is considered a common part of the building and as such is under control of the building management company. Who reports to RIDDOR? And who has the liability of the common parts of the building if the person who had a fall wishes to make a claim?

A. It is clearly the building management company that has duties under Section 4 of the Health and Safety at Work Act 1974.

Q. We changed facilities to meet environmental needs by removing the hand towels and installing hand dryers in our toilets. The Management of Workplace Regulations ACoP (Approved Code of Practice) Regulation 21 indicates that facilities need to be suitable for drying 'face, hands and forearms', which our hand dryers do not. Can you clarify what exactly is required? The areas covered are office environments where the work is not particularly strenuous.

A. In relation to an office environment, suitable and sufficient sanitary conveniences and washing facilities should be provided at readily accessible places. They and the rooms containing them should be kept clean and be adequately ventilated and lit. Washing facilities should have running hot and cold or warm water, soap and clean towels or other means of cleaning or drying. The system that you have provided is perfectly adequate for your building.



Q. Our building had an asbestos check back in 2004. How often should we have these checks carried out?

A. The duty to manage asbestos is contained in Regulation 4 of the Control of Asbestos Regulations 2006. Key requirements of the duty-holder include taking reasonable steps to identify where Asbestos Containing Materials (ACMs) are on the premises, and recording their location and the condition of the ACMs in an appropriate management plan. The Regulations also require you check on the condition of ACMs on an annual basis to ensure that there have been no changes or deterioration in their condition. As you last had a formal review carried out in 2004, it would be advisable to have a new survey carried out and take the opportunity to ensure that you have an up to date Asbestos Management Plan for the property.



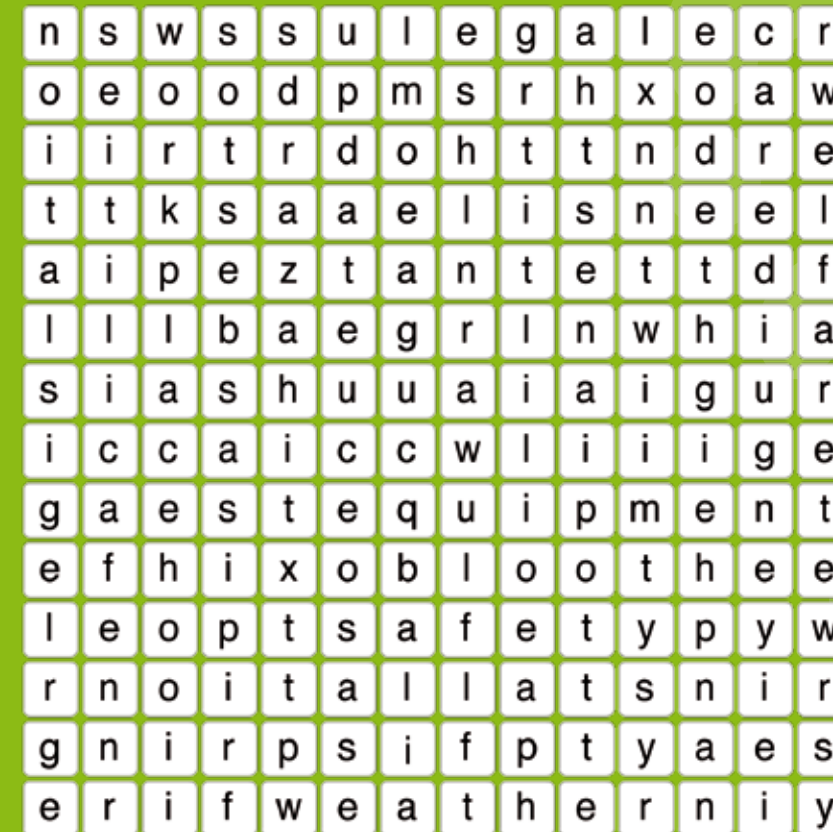
Have you got a Legal or Health & Safety question you'd like answered by the experts? Email cheryl@seton.co.uk and you might see it published in the next issue!

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for entries is 30th June 2012. For T&Cs go to www.legislationwatch.co.uk/competition

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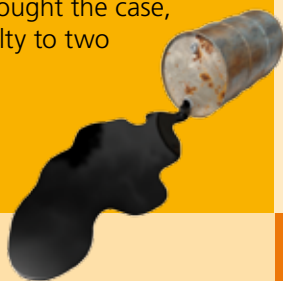
Congratulations to Paul Harrington winner of the Kindle e-Book Reader in Issue 07!

NEWS ROUND UP

Issue 08 2012

Chemical leak

An international chemical firm has been fined £10,000 after an orange gas cloud leaked from its plant in Hebburn, South Tyneside. Industrial Chemicals Ltd was also ordered to pay costs of £5,600 to the Environment Agency, which brought the case, after pleading guilty to two permit breaches.



Unrealistic assessments

The Scottish Courts have rejected a claim for personal injury, saying that it was "clearly not realistic to expect an employer to risk assess every single detail of an employee's work." In the case of Hodgkinson v. Renfrewshire Council, Ms Hodgkinson made a claim for personal injury after being hit in the face when she opened a gate that had a lug attached to ensure that it did not swing beyond the gate post into the street.

Salmon farm death

A salmon farming company has been fined £70,000 after a worker drowned in Loch Heather, on the Isle of Lewis. Peter Kenneth Duce, 61, drowned when the boat he and four colleagues were using to inspect fish cages filled with water and capsized. Risk assessments by West Minch Salmon Ltd for workers travelling to and from the fish cages were not suitable or sufficient and there were no operating instructions for safe use of the boat used for the task.



Inquiry conclusion on rescue delay

The Sheriff for North Strathclyde, Desmond Leslie's investigation into the death of Alison Hume, said her death may have been avoided. It took almost six hours to remove Alison Hume from the mineshaft she had fallen into in Galston, East Ayrshire, in 2008. Mrs Hume died in hospital after suffering a heart attack while being brought to the surface.

Caught on camera

A roofer has been fined after being caught on camera working on an industrial unit roof without any safety equipment. A member of the public reported the man to the HSE after photographing him in June 2010 undertaking cleaning work on the roof, which contained around 80 potentially fragile roof lights, using no safety equipment, edge protection or harnesses to prevent falls.



Safe call

A two-week road safety campaign across Wales found 1,000 motorists using a mobile while driving. During the campaign, officers detected a total of 1,000 mobile phone driving offences. Research indicates that you are four times more likely to crash while driving and using a mobile phone.

Golf club accident

A judge in the Court of Session has awarded damages of almost £400,000 in favour of a golfer who lost his eye after being hit by a 'wayward' shot. Both the golfer who struck the ball and the golf club were held liable, to the extent of 70% and 30% respectively.



Olympic lessons

The HSE has urged the construction industry to learn from the London 2012 construction project and improve the safety record of one of the most dangerous occupations in Britain. The HSE's 'Leadership and worker involvement on the Olympic Park' research praises the Olympic Delivery Authority's "inclusive no scapegoating approach" to managing risk.

School's out

A Government report that found that there is "no convincing evidence" that health and safety laws prevent science experiments or field trips has been welcomed by the Institution of Occupational Safety and Health (IOSH). Practical lessons, field work and field trips are "essential contributors" to good quality science education, according to the committee.



Road risks

The Institution of Occupational Safety and Health (IOSH) has urged the Government to incorporate work-related road traffic accidents (RTA) into official statistics. Statistics show that in the UK one-in-three company drivers has an accident each year, and up to a third of UK RTAs are work-related.

Legionella breach

A Merthyr Tydfil-based recycling company has been fined for failing to take appropriate measures to control the risk of exposure of its workers and the public to the potentially fatal Legionella bacteria. The HSE prosecuted Merthyr Industrial Services (Biomass) Limited as part of the HSE's response to the outbreak of Legionnaires' disease along the Heads of the Valleys corridor in September 2010.

Foot and mouth risk

Two North Yorkshire food and waste businesses have recently been fined a total of £35,000 at Harrogate Magistrates Court, for transporting and dumping food waste, including meat, on land to feed to sheep and cattle. The court heard that the transportation and dumping of the waste had the potential to cause another foot and mouth outbreak in a region still recovering from the outbreak ten years ago.



Toilet fall

The Court of Session awarded an employee who injured her foot after standing on a toilet to open a window £15,900 in damages. After using the toilet, Mrs Wallace couldn't reach the window so she stood on the rim of the bowl and it toppled over sideways.



Fire prosecution

Three Warwickshire Fire Service Managers have made their first court appearances at Warwick Crown Court on charges of manslaughter by gross negligence after four firefighters died in a warehouse fire in Atherstone-on-Stour in November 2007. None of the defendants was required to enter a plea at the hearing.

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