

Employees (and anyone else) – It's your responsibility!

Running an organisation can be a rewarding experience. Yet, the sheer volume of legislation that regulates the way you treat one of your greatest assets, your employees, can ironically turn out to be one of your greatest weaknesses. Workplace safety, compulsory insurance, employment rights and corporate governance legislation are without doubt areas that require active management. In this article, I wish briefly to draw the various legal responsibilities to your attention.

Starting with Health and Safety at Work, if you have 5 or more employees you must by law draw up a Health & Safety statement, bring it to the attention of all staff, appoint someone to supervise and manage it, undertake risk assessments – and, of course, comply with legislation. This legislation is designed to protect your workforce (and anyone else) affected by the activities of your organisation.

We only need to look at the scale of work-place related risks to see why Employers' Liability is increasingly an onerous responsibility to manage. During 2003/4 for example:

- An estimated 2.2 million people were suffering from an illness which they believed was caused by or made worse by their work
- An estimated 5,000 – 10,000 people died from cancer due to past exposures at work.
- An average of 250 Health & Safety Executive Enforcement Actions were issued each week
- The most common cause of mental ill health reported to the Health and Occupation Reporting (THOR) network was believed to be linked to pressure at work with professional and managerial groups possessing the highest rates of work-related stress.

The Health & Safety Executive publishes new and revised guidance on a regular basis and, for the average sized company, keeping up with the latest developments can seem daunting to say the least. In some cases, organisations may adopt a head in the sand approach and simply hope for the best on the basis of "it won't happen to me". Firms, however, face far greater challenges from the legal environment as people seem much more likely to blame an organisation for personal misfortune and, coupled with increased awareness and routes to litigation, this all adds up to significant personal and corporate risk.

A recent survey concluded that 73% of UK sole-traders were unaware of the update in Employers' Liability legislation. As we all know, however, ignorance of the law is not a defence and the following may prove useful:

- There is a legal obligation to effect an Employers' Liability policy if you employ at least one person (including part-time and temporary workers).
- Self-employed persons working for you on a regular basis may need to be covered by your Employers' Liability policy although you may not need to insure those genuinely working for more than one customer.
- Limited companies are legally obliged to effect Employers' Liability insurance although, since February 2005, limited companies with only one employee and where that employee also owns 50% or more of the issued share capital in the company, have been exempt from compulsory Employers' Liability insurance.

- Companies that “hire” unpaid students, those on work experience or participants in a youth/adult-training/volunteer scheme need to be included under Employers’ Liability insurance as these people are likely to be classed as employees.
- If you employ close relations (spouse, child, parent, grandparent, stepchild, grandchild, sibling or half-sibling) you do not have to affect Employers’ Liability insurance (unless you are a limited company).
- If you do not hold Employers’ Liability insurance, and you should, you can currently be fined up to £2,500 for any day you are without insurance and failure to display the certificate can lead to a £1,000 fine.
- Employers’ Liability insurance certificates must be kept for 40 years after their expiry date.
- A minimum of £5m cover must be in force although most insurers provide cover to at least £10m. The cover does not have to be with the same insurer – you can split it between different insurers.
- Regardless of the compulsory minimum requirements, firms need to consider the catastrophe exposure potential based on the number of employees at any one location. This practical assessment will determine whether excess of loss Employers’ Liability insurance may be required.

Moving on to another area of concern - the growth of Employment Rights Legislation and the associated rise in average awards – (particularly for discriminatory awards which can be unlimited), has left the average business more vulnerable than ever as the likelihood of being involved in an employment dispute now exceeds that of a fire, flood or theft.

The extent of employee rights now covers many more areas than was once ever thought possible and the list is growing. This list is not exhaustive and rights apply to prospective applicants as well as existing and past workers:

- Minimum Wage
- Part Time workers
- Working Time
- Maternity/Paternity
- Sex Discrimination (including sexual orientation)
- Race Discrimination
- Disability Discrimination
- Religious Discrimination
- Age Discrimination (Subject to approval, is scheduled to come into effect 1/10/2006)

No one can deny that employees require protection against unfair treatment, harassment or bullying. Your best intentions, however, are no longer good enough, as the legislation requires each firm to adhere strictly to best practice and procedures or they will automatically be deemed to have acted unfairly. This means that current and evolving legislation presents a significant threat to any organisation that does not manage its human resource matters effectively. The consequences of mismanaging what on the face of it starts of as an innocuous employment matter may end up as potentially crippling operations through an Employment Tribunal award, that can also include damages for injury to feelings.

Even though smaller organisations may be less equipped to cope with the demands placed upon them, legislation means that we all have to take employee responsibilities seriously. Solutions include conducting your own or third party risk-management specialist reviews of your practices and procedures (including documentation reviews) or, as is a growing trend, to purchase an insurance-backed solution that provides a range of expert consultancy services where, should you need to defend claims, the same consultants can represent you and indemnify you against the cost of awards using a comprehensive insurance indemnity programme.

Finally, I want to touch on the important topic of corporate governance as there can be few organisations that are not also aware of the UK and EU legislation aimed at regulating and holding to account the actions of those that run an organisation. Regardless of the type of activities undertaken, the typical owner, manager or executive may quite innocently and, with no dishonest intent or criminal motive, breach their duties with potentially disastrous results.

Facing up to the legal responsibilities of management is an occupational hazard for senior management of any organisation and the threat of action exists whether the company is public or private, run for profit or not, irrespective of the type or size – and contrary to popular belief:-

- **You don't have to be in the wrong to be sued**
- **Personal liability is potentially unlimited**
- **Personal assets are at risk that could seriously affect your ability to provide adequate inheritance provisions**
- **Liabilities arise from an increasing number of sources** – financial reporting, corporate procedure and structure, employment practices
- **The costs of legal action can extend far beyond the legal costs involved** – damages, loss of managerial time, loss of credibility, reputation, prosperity
- **Circumstances that give rise to a claim are increasing in number** – bad advice, conflicts of interest, mis-statement, errors of judgement

It has long been considered an honour to work or act for a charitable organisation or association - an opportunity to give something back to the community. Such commitment, however, involves a level of responsibility which should not be underestimated. A vast range of commercial work is undertaken by charities and associations (research and development, property management, sports organisations such as football clubs and golf clubs, welfare services, care in the community, design consultants, training, advising etc). It is therefore important that the management of an organisation risk-manage its affairs and seriously consider effecting comprehensive directors' and officers' insurance protection. The fact that a potential exposure to a problem can impact on personal reputation and prosperity has meant a dramatic increase in those refusing to accept or retain a management position if such protection is not in place. As every company has an obligation to reduce the likelihood that operations will cause harm or spawn lawsuits, the question of protection should be in the agenda of every board.

Having considered the sheer scale of corporate responsibility aimed at regulating the way your organisation operates, you may feel overwhelmed by the potential liabilities facing your firm. However, for the reason that no one can be an expert in every field, a range of cost-effective out-sourced solutions exist and these can assist you in managing various responsibilities.

However, it is important to mention that anyone that advises an organisation to effect any insurance backed solution must be authorised and regulated by the Financial Services Authority.