

MacWilliam Associates

Established 1993

Health & Safety – Fire Safety – Food Safety – HR



www.macwilliam.co.uk

CIEH Accredited Centre

01953 603445

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A wash out of a late Summer is over lets hope for better days in the early Autumn, there is still no word back from the coalition government on my request for an extra Bank Holiday. In England we have eight days compared with ten in France and twelve in Italy (according to visit Europe) However there will be an extra day given to all workers in 2012 to celebrate the Queen's Diamond Jubilee - this looks likely to take place during the late May holiday to make it a four day week end.

Pakistan Flood Appeal

The Disaster Emergency Committee (DEC) has launched an appeal to help those affected by the floods in Pakistan. If you would like to send money to help those lives devastated by the disastrous floods where 1'600 people have been killed and twenty million affected the details are listed here http://www.direct.gov.uk/en/NI1/Newsroom/DG_189880

This month newsletter topics include -

- Latest news update on cases of safety malpractice
- A cause for concern on food safety training
- A report on the rise in workplace bullying
- Constructive Dismissal - a guide to avoiding the pitfalls

I have added an attention grabbing HSE poster with this edition that may be printed and displayed

If you have any questions or queries on topics discussed in this edition please do let me know

Keep safe!

Tim MacWilliam

Siesta Time?



In an effort to raise their energy levels, more than half (51%) of Britons would favour a daily siesta - a culture followed by the Spanish for centuries, research has shown.

The survey by Travelodge showed an overwhelming 70% of employees said they would like to take a 30-minute nap in the afternoon to boost their productivity. They believe a daily siesta would improve their concentration levels as well as help them to stay more alert.

Also, about 54% of 6,000 people polled said they want their employers to arrange for a rest area, where they can have an afternoon nap. Although a person should ideally get eight hours sleep a night, the average British worker manages to get only six hours and 21 minutes, the study pointed out. The main reasons for people not getting enough sleep at night include - worrying about their job (36%), performance at work (27%) and financial concerns (12%).

The siesta is one of the most well-known aspects of Spanish life. It is a period in late afternoon when people take a brief sleep after their midday meal.

"Sorry we can't serve you now Sir, our staff are having a nap"

Driving and Vehicle Safety



Remember if your employees use vehicles as part of their work then a risk assessment has to be carried out including checks of the vehicle and the health of the driver. You should also take into consideration a no smoking sign and the employees personal safety

Meanwhile The driving test is changing so from the 4th October there will be a section of "Independent driving" whereby the candidate will follow a series of directions and not as first thought left alone in the car without the examiner on board.

Some newspaper reports have suggested that the new test will lead to a fall in the pass rate.

More details can be found here http://www.direct.gov.uk/en/NI1/Newsroom/DG_188282

Autumn Safety Reminders



It's the time of year when the wrong kind of leaves fall onto the railway, cause slipping hazards and the nights begin to draw in

If you require a new health and safety poster they are available from HSE book shops 01787 881165. However if you already have the old style poster in place there is no obligation to change it until April 2014

If you need to report a serious accident or incident to the HSE this can be done directly at www.riddor.gov although you may wish to print off a copy for your own use reference or send a copy to management or head office. If you would like further written information on exactly what is reportable under RIDDOR please let me know

A new way to ensure trust in a Safety Consultant



A number of safety organisations have been taking part in discussions chaired by Geoffrey Podger, Chief Executive of the HSE, in order to establish a new registration scheme for health and safety consultants. The move follows observations from the House of Commons Work and Pensions Select Committee which noted that while anyone can establish themselves as a freelance consultant, some are providing their clients with overly complicated or excessively risk-averse advice. The current review of health and safety being undertaken by Lord Young is also expected to examine the need to regulate health and safety consultancy. An early announcement about the scheme is likely to be made next month. Proposals will then be made on the basis of a feasibility study undertaken by IOSH and the CIEH

Initially, the scheme will target mainstream health and safety consultants working in higher risk settings, such as manufacturing and construction, and those dealing with traditional issues such as risk assessment, management systems and risk control. It will not encompass occupational health or hygiene consultants or those who offer safety consultancy on specialist topics.

The proposed scheme, which will be voluntary and accessible on-line, will aim to enhance employers' confidence by highlighting individuals who are competent at providing appropriate safety advice. A more detailed announcement about the scheme will be made when admission criteria and operational details have been ascertained. Entrance to the register will primarily be restricted to chartered members of IOSH and CIEH and to fellows of IIRSM



Food businesses are cutting back on food safety and hygiene training, according to a survey conducted by the Chartered Institute of Environmental Health (CIEH). The survey, which took place in the second week of August was sent out to 5000 food safety trainers and training centres.

Around 50 percent of trainers thought the uptake of food safety training by food businesses was being negatively affected by the present economic climate. 70 percent identified 'cost cutting' as the main reason why businesses were not investing in training.

Commenting, David Kidney, CIEH Head of Policy, said:

"This survey is cause for concern and if this trend continues public health could be put at risk - potentially triggering a food poisoning time bomb.

"Proper instruction or training of food handlers in food hygiene is a legal obligation and businesses must ensure that their staff have the skills to ensure the health and wellbeing of the customers they serve.

"The economic downturn has meant many businesses have had to rein in spending, which is understandable, but quality training needs to be seen as an investment which protects your staff, your business and your company's reputation. A food poisoning outbreak can be the death knell for a food business and can have a myriad of consequences from reputational damage to business failure.

"In extreme cases failure to comply with food safety legislation can even result in a prison sentence and/or being prohibited from running a food business in future. In over a quarter of the prosecutions which have led to the business manager being prohibited since January 2009, failure to comply with the legislation on instruction and/or training was one of the offences.

"The growth of cheap online food safety training and training solutions is also on the rise according to our survey, but businesses need to be aware that the information they are receiving may not necessarily be accurate and up-to-date. Anyone can set up a food safety training business online and sell a course to public.

"Make sure the course you choose is fit for your purpose and that you are not wasting your precious resources on cowboy companies."

As a CIEH approved centre we agree with these sentiments

News in brief

Three horrific incidents have been reported this week with prosecutions only taking place years after the incidents took place both with substantial fines

Roof Injury

1. A farming partnership has been fined £13,500 following an incident where a 13-year-old boy fell through the roof of a farm building and sustained serious injuries from which he later died.

The incident happened on 21 August 2006. The stepson of the farm's junior partner, was watching the gutter in the valley between the cattle shed and feed passage roofs being cleared.

He was raised up to roof level in the bucket of a tractor by his stepfather and the boy walked onto the roof. As he walked across the roof he stepped onto a skylight which collapsed. He fell through the skylight, around four-four and a half metres (approximately 13 feet) to the ground and suffered serious injuries from which he later died.

A Health and Safety Executive (HSE) investigation into the incident revealed that there was no proper edge protection on the roof and no measures in place to prevent falls through the corrugated asbestos cement sheeting which made up the roof.

Brain Damage

A haulage company was today fined £5,000 after one of its employees suffered brain damage when he was struck on the head by a 290 kilogram panel saw.

An employee was delivering panel saws in Glasgow, in 2007 when one fell off the vehicle, hitting him on the head. Mr Holmes was left with permanent brain damage by the incident.

A Health and Safety Executive (HSE) investigation found that Mr Holmes' employers, did not have a reliable system of communication in place to make sure their drivers were informed about the securing and stability of loads.

Mr Holmes had not been told anything about how the panel saws were secured in the lorry. When he removed the straps securing the saws, the load became unstable, causing the incident.

At Glasgow Sheriff Court today Joda Freight Limited pleaded guilty to breaching Section 2 of the Health and Safety at Work etc Act 1974.

Following the case, HSE Inspector Jean Edgar said:

"This was a horrific incident and will have terrible consequences for Mr Holmes and his family for many years to come.

"Haulage companies must make sure information is properly communicated between drivers in how a load is secured and strapped. Verbal messages through a third party may not be enough.

Construction Fall

A worker's 21 metre fall from a hospital building which left him with serious injuries has cost two construction companies £125,000.

The Health and Safety Executive (HSE) prosecuted Laing O'Rourke Construction Limited and Expanded Structures Limited after the incident at the Royal Victoria Infirmary (RVI) involving worker Steven McColgan.

On 20 October 2006, a thirty seven year old employee, from Edinburgh, was working on the adult wing of the Newcastle-upon-Tyne-based RVI when he fell.

The man plunged to the ground after he stood on part of an unsupported working platform and it broke away, Newcastle Crown Court heard.

He suffered serious multiple injuries to his head and body in the fall and his injuries continue to be life-changing. The HSE investigation revealed that sections of the false work, acting as a temporary structure supporting the working platform, were removed before work on the concrete slab was complete.

Both companies, pleaded guilty to breaching Section 3(1) of the Health and Safety at Work etc Act 1974.

Also on a totally different note

Company Flushes Out Toilet Pervert

A trainee quantity surveyor has admitted to hiding a mobile phone in the women's toilets to film colleagues using the facilities, prosecutors have said.

The twenty year old, placed the hidden camera phone in a suspended ceiling above a toilet cubicle and recorded a number of images of women using the toilet earlier this year.

One woman looked up, discovered the device and took it to her boss. It was traced back to Drummond, who is said to be a trainee quantity surveyor from Yeovil in Somerset.

The man pleaded guilty to seven counts of voyeurism recording a private act at South Somerset Magistrates' Court on Monday, a spokesman for the Crown Prosecution Service said.

He was found to have recorded seven clips between February 15 and March 3 and was charged under the Sexual Offences Act, the spokesman said.

Drummond is understood to have kept the material to himself and not distributed it to anyone else. He has expressed regret and remorse about what he did, his lawyer reportedly said.

He will be sentenced at the same court on September 16.

Workplace Bullying

Its back to school this week for thousands of children but its not just the school playground where bullying occurs

The number of people suffering forms of bullying such as teasing, intimidation and physical abuse at work has doubled in the last decade, according to new figures from the union Unison.

The latest research by Unison, the largest public sector union, suggests that more than a third of workers have experienced bullying in the last six months, while one in 10 employees experience workplace bullying and harassment, according to the conciliation service ACAS. With more than 13 million working days a year lost in the UK because of work-related stress, anxiety and depression, according to recent research from the National Institute of Clinical Excellence.

"The fact that bullying has doubled in the past decade is shocking," said Dave Prentis, the general secretary of Unison.

"If you're bullied you have difficulty concentrating, difficulty making decisions, become socially withdrawn," psychologist Carey Cooper explained.

There are laws to protect employees from discrimination covering race, gender and religion. But Hugh Robertson from the union group the TUC is just one of the campaigners who don't think they're enough. "There is a need for a quite robust legal framework," he said. "We'd like to see a specific duty on employers to deal with bullying, and that at the moment doesn't exist."

The government department which deals with this said in a statement: "Bullying and harassment is never acceptable in the workplace and a change in work culture rather than legislation is key."

Fraser Younson, head of employment at the law firm Berwin Leighton Paisner, said: "In the last year or so, as running businesses has become more difficult, the way managers interface with their staff has become more demanding. Managers are chasing things up, being more critical. If they are not trained to deal with increased levels of stress, then we are seeing them do this in a way that makes staff feel bullied."

"The recession has become a playground for many bullies who know they can get away with it. Under pressure, budgets have got to be met. Managers are bullying people as a way of forcing them out and getting costs down." Said Lyn Witheridge, who ran the Andrea Adams Trust bullying helpline until last year when the service was shut down due to the overwhelming amount of calls they received.

Academics have long warned of the link between economic conditions and bullying, with studies in the 1980s and 1990s predicting that workplace competition and the threat of redundancy were most likely to cause an increase. The decline of trade unions and of collective action has also been cited as a factor.

Experts also believe that press coverage of bullying cases has raised awareness, encouraging more employees to take advantage of what has been described as an "explosion" of individual employment rights over recent years.

What is Workplace Bullying?

- Psychological and social bullying including:
- Verbal abuse or making fun of your work or you (including your family, sex, sexuality, race or culture, education or economic background).
- Psychological harassment.
- Excluding or isolating you from people or situations.
- intimidation.
- Giving you pointless jobs that have nothing to do with your job.
- Giving you impossible jobs that can't be done in the given time or the resources provided.
- Deliberately changing your work roster to make it difficult for you.
- Deliberately holding back information you need for getting your work done properly.

Physical bullying or violence is when you are physically attacked or threatened including:

- Pushing, shoving, tripping, grabbing.
- Punching, kicking, scratching, biting, spitting or any other type of direct physical contact.
- Attacking or threatening with equipment, knives, guns, clubs or any other type of object that can be turned into a weapon.
- Any form of sexual harassment.

Constructive Dismissal

As part of any organisations documents there should be a clear and concise disciplinary procedure which must be followed to the letter when used. One possible pitfall of not having a suitable disciplinary procedure is constructive dismissal. This government guide gives information on exactly what and how constructive dismissal works

Constructive dismissal is when an employee is forced to quit their job against their will because of their employer's conduct. Find out what you can do if you feel that you have to leave your job.

What is constructive dismissal?

Constructive dismissal is a form of dismissal. If an employee resigns from a job because of an employer's behaviour, it may be considered to be constructive dismissal. The employee would need to show that:

1. The employer has committed a serious breach of contract
2. The employee felt forced to leave because of that breach
3. The employee had not done anything to suggest that they had accepted their breach or a change in employment conditions

Possible examples of constructive dismissal

The reason for leaving a job must be serious - there must be a fundamental breach of the employees contract. Examples include:

- A serious breach of the contract (e.g. not being paid or suddenly demoting an employee for no reason)
- Forcing an employee to accept unreasonable changes to the conditions of employment without their agreement (e.g. suddenly telling an employee to work in another town, or making them work night shifts when their contract is only for day work)
- Bullying, harassment or violence against an employee by work colleagues
- Asking an employee work in dangerous conditions

An employer's breach of contract may be one serious incident or the last in a series of less important incidents that are serious when taken together.

Employers Behaviour

Leaving a job should be the employees last resort. They would first, speak to their manager and see if they can resolve the problem that way. If the problem is specifically with the manager, they could talk to: -

- Their Supervisor
- The company's HR (human resources) department
- An employee representative (trade union)
- ACAS or another employment advice service

Grievance Procedures and Mediation

If speaking with the manager or someone else doesn't work, the employee would normally try to sort out the problem via the company's standard grievance procedure. In most cases the employee will be required to have raised the issue through a grievance procedure before taking legal action. Following this and with full agreement mediation with ACAS might follow

Employment Tribunal Claims

If talking or mediation doesn't work and the employee still feels they have to quit, the employee would first get some advice to see if they have a case for unfair or wrongful dismissal following a constructive dismissal. It is often very hard to prove that an employer's behaviour was so bad as to make an employee leave.

If there is a case for constructive dismissal, and the employee believes they can show it was unfair or wrongful, they would normally then leave their job immediately. Otherwise the employer might argue that, by staying, they have accepted the conduct or treatment.

If an employee resigns before the actual breach of contract occurs the employer could then claim there has been no dismissal.

If you would like further information on this matter please e mail tim@macwilliam.co.uk

Information Sources ROSPA; CIEH; RSPH; HSE; IOSH

MacWilliam Associates 16 Holly Court Wymondham Norfolk NR18 0HG 01953 603445 www.macwilliam.co.uk