

Care Homes Briefing

#

Solicitors

Number 72

Health & Safety: Increasing Impact

The Health & Safety Legislation imposes significant obligations on care home/hospital operators to take steps to protect their staff, residents and visitors to their Homes/Hospitals. The Health & Safety Executive (HSE) seem to have been increasingly active in healthcare over recent years.

With effect from 16 January 2009 the impact of the legislation will significantly increase with the increase from that date in the maximum fine that can be imposed by a Magistrates Court, raising this from £5,000 to £20,000. From that date Magistrates can also impose sentences of imprisonment of up to two years.

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force in April 2008. Government sentencing guidelines are expected later this year, and if these are based on the recommendations of the Sentencing Advisory Panel then fines for corporate manslaughter may be around 5% of average annual turnover. Where a health and safety offence is committed leading to death the suggested fine is 2.5% of average turnover.

Andrew Parsons
© RadcliffesLeBrasseur
January 2009

The increased fines and prospect of imprisonment should be enough to ensure that health and safety matters are high on the agenda for all care homes/hospitals.

Where an untoward incident arises it is therefore important to bear in mind:

- Investigation reports should be carefully drafted and refrain from “admitting liability”. Otherwise you may find that your untoward incident reports create in effect the prosecution agenda.
- Any interview with HSE inspectors should be treated very seriously, even if referred to by them as “informal”. Interviewees are entitled to legal representation at the interview.
- Early involvement of lawyers, in serious cases, even before an untoward incident report has been commissioned may enable privilege to attach to your report so that this does not have to be disclosed.

The importance of health and safety cannot be underestimated. Further guidance for those responsible for these issues is available from the Institute of Directors.¹

For more information on Care Home Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email: andrew.parsons@rlb-law.com.

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: marketing@rlb-law.com or telephone 020 7227 7476.

info@rlb-law.com
www.rlb-law.com

5 Great College Street
Westminster
London SW1P 3SJ
Tel +44 (0)20 7222 7040
Fax +44 (0)20 7222 6208
LDE 113

6-7 Park Place
Leeds LS1 2RU
Tel +44 (0)113 234 1220
Fax +44 (0)113 234 1573
DX 14086 Leeds Park Square

25 Park Place
Cardiff CF10 3BA
Tel +44 (0)29 2034 3035
Fax +44 (0)29 2034 3045
DX 33063 Cardiff 1

New Disciplinary and Grievance Procedures

On 6th April 2008 the mandatory “three step” procedure for dealing with disciplinary and grievance issues in the work place will end. The “three step” procedure will be replaced by a new ACAS Code of Practice. Employers will be expected to follow the new Code of Practice and all organisations will need to know about these important changes.

If you would like a training seminar for your management staff, please email: lara.keenan@rlb-law.com