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.

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

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1 www.iod.com/hsguide.
New Disciplinary and Grievance Procedures

On 6th April 2008 the mandatory “three step” procedure for dealing with disciplinary and grievance issues in the workplace 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