

# 06/04/08 – the new dawn?

**The Corporate Manslaughter Act has received Royal Assent and will become law on the 6th of April. Under the act organisations will be guilty of the new offence of Corporate Manslaughter, if the way in which any of its activities are managed or organised by its senior managers causes a person's death through a gross breach of a duty of care**



According to the Ministry of Justice the new Act is an opportunity for employers to think again about how risks are managed. The offence does not require organisations to comply with new regulatory standards. But organisations should ensure they are taking proper steps to meet current legal duties. From April, the 2007 Act will mean that those who disregard the safety of others at work, with fatal consequences, are more vulnerable to very serious criminal charges.

Matthew Judge of The Anvil Group says: "The reason for the change is that the existing common law of corporate manslaughter is inadequate. For such prosecutions to succeed, the Crown must identify and prosecute an individual who acted as the 'directing' or 'controlling mind' of the organisation. This makes it virtually impossible to convict large organisations due to distributed company structure."

The maximum penalty for a corporate manslaughter conviction will be an unlimited fine. In addition, where a conviction is made the court will have the power to impose an order requiring immediate action to remedy the breaches that led to the incident. Failure to comply with this remedial order will be punishable by a further fine; it is therefore in the best interests of both the organisation and its employees to take every reasonable precaution to ensure the health, safety and welfare of everyone affected by their activities.

"One of the greatest areas of risk is that of employees and contractors who travel internationally on company

business," reveals Matthew. "Most larger companies have spent time developing a Travel Policy, but traditionally these policies are mainly concerned with how the employee books travel, how much they can spend, who the preferred airlines and hotel chains are and how to implement expense management. What organisations need to consider is when, where and how employees are traveling from a safety and security perspective."

It has become imperative that large corporations' Travel Policy should include health and safety policy to protect the security of the individual employee and the corporation. Responsible corporations will want to know, which countries are safe to travel to and where employees are intending to travel. To demonstrate that a 'duty of care' has been shown, a Travel Risk Management program will need to be introduced that covers policy, training, traveler tracking and support.

This will ensure that organisations Travel Policies are set correctly, and that employees are aware of them and understand them and that should situations change whilst the employee is traveling that organisations can identify who is affected and advise and assist them. This process will need to be administered and maintained in a manner that allows organisations to produce an auditable log of events for each and every employee's trip. It will be this log that organisations will use and rely on to mount a legal defense should the corporation face a claim or prosecution.

"You only have to cast your mind back to the conflict between Israel and Lebanon, which displaced and affected many people and travelers," explains Matthew. "In this particular instance the situation deteriorated rapidly over a number days, but warning signs were apparent and therefore a number of corporations successfully evacuated employees and travellers before it was too late."

Luckily systems have been developed to advance and automate this process. These systems reduce the resource burden on associated with managing corporate travel and also allows usage automatically, which means that these systems are easy to adopt and very quick to implement.

"The Corporate Manslaughter Act will transform the way in which companies conduct international business," concludes Matthew. "Businesses that show negligence with travel policies that result in employees' death will be prosecuted with certainty. Businesses are urged to review their travel policies, as a successful prosecution will certainly lead to crippling fines and irretrievable, long-term damage to the brand. Businesses will also need to take appropriate measures to ensure that duty of care is shown to each and every employee of the organisation."

## What it all means

Juries will consider how the fatal activity was managed or organised throughout the organisation, including any systems and processes for managing safety and how these were operated in practice. A substantial part of the failure within the organisation must have been at a senior level. Senior level means the people who make significant decisions about the organisation or substantial parts of it. This includes both centralised, headquarters functions as well as those in operational management roles.

## Duty of care in post rooms – a plan of action

"In any business, there is a duty of care to the post room staff who may be contaminated or suffer injury from opening threat mail addressed to the company," says Kirstine Wilson of Scanna. "A postal security plan will help demonstrate a company's duty of care and adherence to its code of ethics and investment in its staff."

A postal security plan should as a very basic requirement the following:

1. A risk assessment - this will help decide on the threats a company might be facing and their likelihood. Companies must identify their vulnerabilities and the potential impact of exploitation.
2. Staff should be correctly trained, however, this is difficult to measure without an actual incident by which time any failure may be too late for the personnel.
3. Employees receiving post may be trained to look for suspect letters, however, they will generally rely totally on the post room staff.
4. Where possible, and in accordance with recommendations from the CPNI website (Centre for the Protection of National Infrastructure) x-ray equipment should be used to assist staff in the detection of hazardous postal items.

"All risks should be documented and all precautions taken to ensure adherence to duty of care principles," says Kirstine. "Procedures should be continually reviewed to meet evolving company standards and threats."