



Business Critical Fines for Health and Safety Breaches

On 3 November 2015, the Sentencing Council issued the new 'Definitive Guideline' for Health and Safety, Corporate Manslaughter and Food Safety and Hygiene Offences. They will apply to all sentences on or after 1 February 2016 regardless of the date of breach.

Fines will be linked directly to the defendant's turnover. Although fines before this new guidance were unlimited, the courts had a relatively wide discretion. Fines are now confined to a matrix and primarily influenced by turnover. The adjustments to the fine range for the degree of risk of harm and culpability (amongst other factors) are comparatively minor. For high turnover, low profit companies, fines could have a very significant impact on their trading ability. A criminal fine of course cannot be insured or indemnified and so will be the defendant company's liability alone to bear.

Under the sentencing guidelines large organisations are defined as those with a turnover of £50 million or more. For such organisations, the guidelines suggest fines ranging from a starting point of £10,000 up to £4,000,000 for health and safety offences with the range extending up to £10,000,000 for those with high culpability and causing a high level of harm. For corporate manslaughter, the new recommended levels of fine will be in the range of £3,000,000 to £20,000,000.

The guidelines emphasise that it should not be cheaper to offend than to take the appropriate precautions and that the fine must be *"sufficiently substantial to have a real economic which will bring home to both management and shareholders the need to comply with health and safety legislation"*.

The guidelines also note that where turnover *"greatly exceeds"* £50 million *"it may be necessary to move outside the range to achieve a proportionate sentence"*.

As with all new guidance it will take a number of cases to be sentenced before any pattern may be observed as to their application in practice, in particular in respect to organisations with a very large turnover. However, this guidance undoubtedly marks a step change in fine levels and will lead to significantly increased fines across the board. For large companies convicted of breaches where the consequence is at the more serious end of the scale, even if culpability is not at its highest, fines could be levied in the millions.

Although the guidelines are not set to take effect until after 1 February 2016, it is inevitable that they will already influence sentencing to some degree.

In the event of a safety incident it is important to obtain immediate legal advice to navigate the investigation process and minimise the very significant exposure that a subsequent prosecution may bring.

Contact

For further information please contact:



Matt Kyle
Senior Associate
+44 (0) 117 902 7215
matt.kyle@burgess-salmon.com