

KEEP IT SAFE



BFFF QUARTERLY HEALTH AND SAFETY UPDATE

APRIL 2011

Welcome to the BFFF quarterly Health and Safety newsletter 'Keep it Safe'.

Many of you will have seen our health and safety column in 'The Bulletin'. The Bulletin will contain headline information on health and safety topics; 'Keep it Safe' will provide more comprehensive information relevant to our industry.

We do hope you find 'Keep It Safe' a valuable read. Please contact BFFF on 01400 283090 or email joannahancock@bfff.co.uk if you have any health and safety issues or wish to receive additional/back copies

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BFFF HEALTH AND SAFETY INITIATIVES

WORKING IN A COLD STORE ENVIRONMENT- ADVICE FOR EMPLOYEES

As you will have seen through the Keep it Safe newsletters, the BFFF Health and Safety Working Group has been working on creating guidance for employees working in a cold store environment on some of the health issues associated with working within this cold environment.

This is an important health and safety subject for our industry and previously there has been a lack of guidance in this area. This in turn has left companies liable to prosecution if they provide insufficient information to their employees.

We are now delighted to announce the launch of this new guidance for the industry, which has been produced in consultation with the Health and Safety Executive and industry professionals. The aim of this guidance has been to create a simple practical document for industry use as an easy method of providing their employees with advice in this area. BFFF is delighted to support the industry by developing this guidance and we are sure that the industry will find it a useful training tool within their company training programs.

[Click here to view the guidance.](#)

HEALTH AND SAFETY WORKING GROUP

The BFFF Health and Safety working group met in January when the group finalised the guidance, 'Working in a cold environment -advice for employees' for our industry. The final draft had significant input from HSE and we were delighted to include their expertise within the final document. The links to the final document are included within the above article.

The group also discussed additional topical issues for the industry including accident reporting methods, promoting near miss reporting, cold store hygiene and the thermal protection of gloves.

We have included a detailed article on the

promotion of near miss reporting within the guidance section of this news letter for members' information. The subject of the thermal protection of gloves was raised due to one of the members experiencing a claim from an employee for frost bite. The employee was wearing double lined gloves which had not been thermally tested which presented an issue for defence from the employees claims. It was actually found when the glove combination were tested independently that they passed the thermal criteria for cold store use. Therefore although there was a positive outcome, it required some significant input from the member company. As a start in this area we have incorporated ' a guide to the recommended Personal Protective Equipment to be worn in a cold store environment' within the latest published health guidance. We will also be discussing this subject further at our next meeting in May. So we will keep you updated on this area and please do contact Joanna Hancock with any thoughts on this subject.

The group meeting was rounded off with a presentation from Doug Russell, Health and Safety Officer for the Union of Shop Distributive and Allied Workers (USDAW) on their take of employers liability claims. They explained that there are several hurdles for employees to overcome to make a claim being:

- There is an injury which is work- related
- Its reasonably foreseeable that work would cause the injury
- The employer failed to do what could be reasonably expected (or breach of statutory duty)

In general they stated that claiming is not a simple and easy process for employees. He also outlined the problems in their view of 'no win no fee' arrangements which included:

- increased costs for defendants
- little control over claims management firms
- No quality control of solicitors

- Controls not properly used
- Some claimants lose out even when successful
- Solicitors cherry-pick easy cases

Finally he questioned the common perception that we now live within a compensation culture. Advertisements and high pressure techniques of claims management firms add to this perception but he argued that employee liability claims have fallen. He quoted Government statistics from the Compensation Recovery Unit that show that year on year there has been a reduction. He also stated that by their figures and research, employees are often reluctant to claim and only 10% of workers who are injured are making claims. This was also backed up by the comments of Lord Young in his recent report where he said 'The problem of the compensation culture prevalent in society today is, however, one of perception rather than reality'.

Overall their presentation provided the group with a good insight into USDAW's views in the area of Employers Liability claims and the opportunity to question them on various aspects. Please contact Joanna Hancock if you would like a copy of the presentation.

Employers Liability claims continues to be an important subject for our members. We have received a presentation from insurance broker Locktons in the area of claims defensability. So please contact Joanna Hancock by email joannahancock@bfff.co.uk for more information.

The working group will be meeting again in May and is available for all members to anonymously raise industry issues for group discussion and feedback. Please contact Joanna Hancock for any further detailed information on any of these points raised.

BFFF HEALTH AND SAFETY PLEDGE

The pledge has been well received by the members in the past with over 50 members signed up to the pledge so far. We would encourage all members to seriously consider signing up to the pledge.

The pledge was designed for members to show

their commitment to providing a safe and healthy work environment for all involved in the food industry. Member companies sign up to show their commitment to the fundamental values outlined within the pledge, which emphasise the importance of complying with all current health and safety legislation, whilst striving to improve standards of health and safety throughout continuous improvement.

There is no cost implication and all members that do sign up receive a colour electronic certificate for display which is re-issued on a yearly basis. Please contact Hazel Cranidge on hazelcranidge@bfff.co.uk for more information.

BFFF LEAD AUTHORITY PARTNERSHIP SCHEME (LAPS) AGREEMENT

We met with our partners on the 7th February when they provided us with an update on their activities and the priorities for our sector.

They reported that their work in the area of campaigns and the final list of priorities has yet to be decided and with the imminent cut backs it is likely to involve reduced resources for proactive work. Reactive work (accident investigation etc) will continue to be a priority. In terms of other planned work we have included a list of current planned topics within the campaign section of this newsletter. They also stated that HSE divisions are also being given some limited freedom to bid for local priorities however this whole area is still under discussion.

They also reported that the HSE services currently offered by Infoline and the Incident Control Centre (ICC) are under discussion and need some clarification. They have confirmed that changes are due to be made to HSE's Infoline telephone service later this year however the timing of its closure is still to be confirmed. The HSE web site will continue to be available with its wealth of information and guidance.

The ICC service current deals with RIDDOR, which is the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995. Employers, the self employed and those in control of premises must report specified workplace

incidents and HSE can confirm that a service will be available to allow this legal obligation to continue. So as with infoline, some changes are planned but the details and timescale are not yet confirmed. HSE will confirm the details regarding the changes to both services when they are finalised.

We will be meeting with our LAPS partners again in June so please feel free to raise any points for discussion. We shall therefore be able to report the outcome of our next meeting within the July edition of Keep it Safe.

BFFF MEMBER INSURANCE SCHEME

This scheme was launched to members on the 1st October. The scheme provides members with a free Risk Management assessment service and the possibility to take advantage of a range of insurance products selected for our industry. Why not tap into the BFFF scheme, enjoy a free risk management assessment and if nothing else keep your broker on his toes. Please feel free to contact Joanna Hancock on e-mail joannahancock@bfff.co.uk for further details.

HSE INJURY RATE STATISTICS FOR BFFF MEMBERSHIP SECTORS

As previously reported within Keep it Safe, HSE provide us each year with reportable injury rates and enforcement statistics for our membership sectors. The figures for food producers were published within the last edition of Keep it Safe and I am now delighted to report the figures for the Freight Transport and Storage & Warehousing sectors.

In the past, HSE has only been able to provide us with the number of injuries reported within these sectors. However, they are now able to provide us with the rate of injury per 100,000 employees. It should be noted that there is no standard industrial code relevant to the specific frozen food industry business within transport and storage. As such the figures published below incorporate the whole of the freight transport, storage and warehousing sector across all temperatures. Even though these are general figures, we felt that our Logistics members would find the information of interest for their own use.

Freight Transport

Rate of Injury per 100,000 employees

	Fatal Injuries	Non-Fatal Major Injuries	Over 3 Day Injuries
2008/09	4.5	591.5	2615.6

Storage and Warehousing

Rate of Injury per 100,000 employees

	Fatal Injuries	Non-Fatal Major Injuries	Over 3 Day Injuries
2008/09	2.0	109.4	682.5

HSE FOOD INDUSTRY CASE STUDIES

HSE CASE STUDY – FALL FROM FORKLIFT TRUCK FORKS

Falls from height in the food and drink industries are the highest cause of fatal injury comprising 20% of fatal accidents. Falls from vehicles and forklifts equate to a large proportion of the falls investigated by HSE. The following case study outlines an accident involving a fall from the forks of a forklift truck, the action taken by HSE and HSE advice.

Summary

An employee of a freight haulage company was prosecuted following an accident to another employee, who later died as a result of his injuries. The employee who was involved in the accident was a HGV driver for the company. He and another admin employee were scanning barcodes on pallets, which were stacked on a double-deck trailer. To reach the top deck of pallets, the HGV driver stood on the forks of forklift truck (FLT), which was being driven by another employee. The forks were then raised and the FLT was driven down the length of the trailer so the employee could reach and scan the pallets. When he reached the fifth and last pallet he lost his balance and fell four metres to the ground below.

He suffered significant injuries including a broken pelvis, shoulder blade and eight ribs along with damage to his lungs. He was in hospital for five weeks but developed complications with his breathing following his discharge. He died two months after the accident as a result of injuries sustained in the accident.

Both employees were trained and authorised drivers of FLT's. The FLT driver at the time of the accident had been trained to ACOP standards in the use and operation of counterbalance FLT's, not only at this company but in previous employment dating back over 20 years. In addition, they ignored warning signs affixed to the mast of the FLT that prohibited the lifting of persons.

There was no evidence that the company's management were aware of this type of working practice and several employee statements

indicate that it was not commonplace. There is significant evidence that the company ensured that everyone who required it was trained to an appropriate standard to operate FLT's. This training expressly covered that persons should not be lifted on the FLT and that no passengers were allowed. It appears the two experienced employees devised this unsafe system of work between them, but should have been aware of the risks involved.

Action

The FLT driver was prosecuted under Section 7 of the Health and Safety at Work Act 1974 for failing to take reasonable care for the health and safety of another person, in this case the HGV driver, who may be affected by his acts or omissions at work. He was found guilty and fined £1,500 with an additional £1,000 costs awarded against him.

Advice

The Police and Crown Prosecution Service had considered whether gross negligence manslaughter charges should be brought against the FLT driver.

A substantial number of serious accidents occur each year because people are lifted on (or in other makeshift platforms, e.g. pallets, that are placed on) the forks of a forklift truck. Wherever possible an integrated working platform should be provided, i.e. a platform fitted with controls that are linked to and isolate the truck controls so that only the person in the platform can control the lift height of the platform and the truck's movements.

In exceptional circumstances, occasional use of non-integrated working platforms with forklift trucks is allowed. Non-integrated working platforms are attachments for use in conjunction with forklift trucks to elevate people so they can work at height but they have no controls in the platform that allow a person in the platform to control the lift height of the platform or move the truck - i.e. all truck and working platform movements are controlled by the truck operator.

BFFF has issued 'Guidance on the selection of

appropriate work equipment for work at height activities within a cold store environment'. Please contact Joanna Hancock on e-mail joannahancock@bfff.co.uk for more information.

Further general information on working platforms can be found in Guidance Note PM28 'Working Platforms (non-integrated) on Forklift Trucks' www.hse.gov.uk/workplacetransport/pm28.pdf or on the HSE website at www.hse.gov.uk/workplacetransport/

HSE CASE STUDY- CONTRACTOR FALLS THROUGH A FRAGILE ROOF

In 2008/2009 over 4000 major injuries were caused by falls from height at work. You may think that you are doing everything you can to prevent falls from height at work but everyone could do more. The following case study outlines an accident involving a fall through a fragile roof by a contractor, the action taken by HSE and HSE advice on improvement in this area.

Summary

A logistics company were prosecuted following the death of a builder who fell through a roof while carrying out maintenance work at one of their warehouses.

The building was a steel portal-framed structure with a steel sheet roof and infill brick walls. The roof covering was a sandwich construction consisting of a profiled steel top sheet with a layer of insulation and a bottom plasterboard lining sheet fixed to the purlins by steel screws. Incorporated into the roof construction were eight plastic translucent roof lights.

The company contacted a contractor to replace a number of roof lights that were leaking and in poor condition. The job was to take two days. The work was carried out by three people who were given the job by the contractor.

Access to the roof was via a three-section ladder that had been tied on to an air conditioning unit using a material strop. Some crawling boards had been lifted for use when manoeuvring across the roof, but no harnesses or nets were present.

The accident occurred on the second day. As

the contractor was walking over the roof he stood on one of the remaining roof lights, which gave way under his weight. The contractor fell approximately seven metres to the warehouse floor below.

He was taken to hospital by air ambulance, but died as a result of his injuries.

The subsequent investigation found that the company did not check the competence of the contractors or whether their method statement and procedures complied with the law. The builder who was killed did not have any experience or training in working on roofs.

Action

The company were prosecuted under Section 3 of the Health and Safety at Work Act 1974 for failing to ensure so far as reasonably practicable the health and safety of persons other than their employees. They were found guilty and fined £15,000 with an additional £4,752 in costs awarded against them.

Advice

Companies need to satisfy themselves that contractors are competent (i.e. they have sufficient skills and knowledge) to do the job safely and without risks to health and safety. The degree of competence required will depend on the work to be done.

In this case the company used the same small number of contractors, so it would have been relatively simple to establish a system to ensure the competence of these contractors and have them commit to maintaining health and safety systems. This is particularly important with higher risk work such as work at height.

Protection against falls is required wherever anyone works on or near fragile materials. Suitable protection will normally include a combination of coverings, guardrails, safety nets and safety harnesses. Simply walking the line of purlins should NEVER be allowed. Always treat roofs as "fragile" unless it can be confirmed that they are capable of carrying your weight. Sometimes repairs can be carried out without going onto the roof, by working from a safe place below.

Any work on a roof is high risk. A risk assessment should be carried out for all work on fragile roofs, and except in the most straightforward circumstances, a written method statement should be prepared. This should help to ensure that all involved understand exactly what they have to do.

Further information on working at height can be found at www.hse.gov.uk/falls.

BFFF members collated injury rate statistics

We are in the process of collating members' health and safety statistics for 2010.

All contributors' information is kept confidential within the BFFF offices and contributors have an opportunity for BFFF to provide a detailed comparison for their company.

Contact Joanna Hancock on e-mail joannahancock@bfff.co.uk should you wish to take part.

HSE Campaigns

Each year HSE plans a series of campaigns based on particular health and safety topics aimed at reducing the incidence of work-related fatal and major injuries.

During each campaign, Inspectors visiting premises will focus on the key campaign areas and assess the standards, offer advice and enforce applicable legislation. It is also common during major campaigns that certain businesses will be targeted for inspection based on their activity i.e. if their work area is relevant to the current campaign.

Within this section of Keep it Safe, we will inform you of the proposed campaign profile for the forthcoming year. Due to the current situation regarding imminent cuts within HSE funding, the future of the specific HSE campaigns is under review. Therefore some of these details may change as the priorities change within the HSE, however the information will provide you with the main areas of focus in the near future.

NOISE ACTION WEEK 2011

Noise Action Week 2011 has been scheduled for May 23rd to 27th, the main aims of which is to raise awareness of the impacts that are associated with excessive noise. It is an annual event co-ordinated by Environmental Protection UK, a national charity.

The week gives opportunities for organisations and communities to get involved in raising attention on the difficulties and health risks that excessive noise can cause at home, work, study or leisure.

The organisers of Noise Action Week have launched a website which features a 'get involved' section showing anyone that is interested how they can participate in raising awareness of noise issues. It can be found at www.noiseactionweek.org.uk/index.php.

HSE FOCUS FOR FOOD MANUFACTURE INDUSTRY

The HSE's main enforcement focus for the food manufacture industry for 2010/2011 remains the management of health and safety and, in particular director/board level leadership and worker involvement.

Other topics that HSE inspectors are likely to examine are:

- **Migrant Workers and other vulnerable workers.** Good management practice and compliance with legal responsibilities;
- **Risk Management.** Competent management in terms of basic, sensible and proportionate health and safety also competency of any health and safety consultants contracted;
- **Musculoskeletal Disorders (MSDs).** Whether tasks causing high risk of manual handling injuries and consequent ill health have been addressed, including awareness of upper limb disorders (ULDs) and use of available tools for assessing repetitive injuries;
- **Slips and Trips.** Management of control measures to prevent injuries caused by slipping on food products, wet floors etc.;
- **Machinery.** E.g. compliance with Supply of Machinery (Safety) Regulations and safe maintenance;
- **Noise and Vibration.** good practice in controlling noise and vibration, including health surveillance;
- **Moving Heavy Loads.** Loading/unloading vehicles, working under/adjacent to supported heavy objects, manually moving or supporting heavy objects;
- **Workplace transport.** Segregation of vehicles and pedestrians, safe reversing procedures, traffic management systems, effective signage, training;

- **Falls from Height.** Preventing falls from height by using appropriate equipment and safeguards;
- **Occupational Asthma.** Prevention of occupational asthma from flour and other dusts;
- **Dermatitis.** Prevention of control of dermatitis caused by contact with food products, cleaning agents etc by elimination of the risk where possible, skin checks, hand-care regime and correct glove selection and use;
- **Workplace temperatures.** Risk assessment for high and low workplace temperatures;
- **LPG installations/pipework.** Inspection to ensure sound LPG tanks, valves, regulators and pipework with pipework replaced where required;
- **Meat/Poultry Factories.** Working conditions.

HSE divisions are also being given some limited freedom to bid for local priorities. However this is still under discussion and we will provide you with an update within the next edition of Keep it Safe.

FUTURE EVENTS

Business advice open days are being run throughout the year. The open days cover all aspects of business including Health and Safety issues. They are manned by a full team of business experts who aim to help businesses to meet and understand their legal responsibilities. They also aim to help businesses to enhance their operations through the use of new technology and better marketing techniques.

Confirmed business advice open days for the next few months are as follows:

Location	Date(s)	Venue
Hastings	5/4/11	St. Peter’s Community Centre
Telford	5/5/11	University of Wolverhampton (Shropshire Campus)

Other events of interest over the next few months are:

Event	Location	Date	Venue
Health and Safety Reform 2011 - A Common Sense Approach	London	13/4/11	The Barbican
Machinery Safety Basics	Buxton	23/5/11	HSL laboratory
Workplace Drugs and Alcohol Workshop	Buxton	22/6/11	HSL laboratory
National Food and Drink Manufacture Health and Safety Conference	Nottingham	4-5/10/11	The Nottingham Belfry

LEGISLATIVE UPDATE

REFORMING BRITAIN'S HEALTH AND SAFETY REGIME TO PUT COMMON SENSE BACK

On the 21st March, the Rt. Hon Chris Grayling MP, Minister for Employment with the responsibility for health and safety announced a range of health and safety initiatives in a written ministerial statement.

These included an independent review of health and safety regulation that will be headed up by Professor Ragnar Lofstedt. HSE will be contributing to the review.

Health and safety regulation will focus on high hazard sites and tackling rogue employers and consultants, not tying up the vast majority of Britain's businesses in unnecessary red tape and regulations. The package of changes to Britain's health and safety system is designed to support the Government's growth agenda and to ease the regulatory burdens on business.

Under the plans:

- Responsible employers will no longer face automatic health and safety inspections. Instead health and safety inspectors are being instructed to concentrate their efforts on high-risk locations, like major energy facilities, and on rogue employers who are putting the safety of their staff and the public at risk. This measure will cut the number of inspections carried out in the UK by at least a third. Rogue employers who endanger public and employee safety will also have to pay for the costs of the investigation into their activities.
- Ministers are taking steps to eliminate "cowboy" health and safety consultants who are unqualified but are responsible for many of Britain's most inappropriate health and safety recommendations. A new register of qualified consultants will be made available to businesses, and those who are untrained or give false advice will be excluded from the approved list.
- The Government is also launching a review of all existing health and safety law with a view

to scrapping measures that are not needed and put an unnecessary burden on business. The review will be chaired by a leading risk management specialist, Professor Ragnar E Lofstedt, of King's College London and will publish its findings in the autumn.

- A new online package, Health and Safety Made Simple, will help small and low risk employers find all the help they need in one place to achieve a basic and bureaucracy-free level of health and safety management in their workplaces.

Further information on OSHCR- the online Occupational Safety and Health Consultants Register and 'Health and Safety Made simple' is available within the guidance section of this newsletter.

The Department for Work and Pensions (DWP) report, Good health and safety, Good for everyone, can be viewed online.

FIRST CONVICTION UNDER CORPORATE MANSLAUGHTER ACT: AN OVERVIEW

On 15 February 2011, Cotswold Geotechnical Holdings became the first company to be convicted of the new offence of corporate manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007.

Details of the case

The case concerned the death of Alexander Wright, a geologist employed by Cotswold Geotechnical Holdings. In September 2008, he was investigating soil conditions in a 3.5m-deep trench on a development site in Stroud, Gloucestershire, when it collapsed and killed him.

Mr Wright was left working alone in the trench to finish up when the director of the company left work for the day. Two people who owned the site, who were present, heard a muffled noise and a shout for help. One of the owners called the emergency services, while the other went to the trench where he saw that Mr Wright had been buried up to his head. He removed some soil so

that Mr. Wright could breathe. However, more earth fell into the trench, completely covering the victim. He consequently died from traumatic asphyxiation.

The prosecution made the following points.

- Mr Wright was working in a dangerous trench because the company's systems had failed to take all reasonably practicable steps to protect him from working in that way.
- The company had ignored well-recognised industry guidance, which prohibited entry into excavations more than 1.2m deep.
- The company required junior employees to enter into and work in unsupported trial pits, typically from 2 to 3.5m deep.

Cotswold Geotechnical Holdings was a small company, which employed eight people. Its director, Peter Eaton, was in overall control of the way in which the company managed its affairs. He was charged with gross negligence manslaughter and a health and safety offence, but in 2010, a judge ruled that he was too ill to stand trial.

The jury at Winchester Crown Court found the company guilty of corporate manslaughter after a trial before judge and jury, which lasted three weeks. The dock was empty because the sole defendant was a company — an entity with a virtual legal personality based on general principles of company law.

Fine issued

Mr Justice Field is reported to have commented that the gross breach of duty to Mr Wright was a grave offence. He fined the company £385,000. The company, which was stated to be in a parlous financial state, could pay the fine over 10 years at £38,500 per annum.

The fine aimed to mark the gravity of the offence and the deterrent effect it was intended to have on companies to strongly adhere to health and safety guidance. The company was a small-scale enterprise and a larger fine would cause it to be liquidated, which would result in four people losing their jobs. It might be that the fine would put the company into liquidation. If that was the

result, it was unfortunate but unavoidable, and was a consequence of the serious breach.

The level of the fine may be gauged against the definitive guidelines laid down by the Sentencing Council for the sentencing of organisations on or after 15 February 2010, where such organisations have been convicted of corporate manslaughter and health and safety offences causing death.

The Sentencing Council's guidelines include the following.

- Factors likely to increase seriousness.
 - How foreseeable was serious injury?
 - How far short of the applicable standard did the organisation fall?
 - How common was this kind of breach in the organisation?
 - How far up the organisation did the breach go?
- Mitigating factors.
 - Prompt acceptance of responsibility.
 - High level of co-operation with the investigation.
 - Genuine efforts to remedy defects.
 - A good health and safety record.
 - A responsible attitude to health and safety.
- Financial information.
 - The law must expect the same standard of behaviour from large and small organisations.
 - Size is relevant: the means of any defendant are relevant to the level of a fine.
 - The court should request information about the financial circumstances of the organisation.
 - Best practice will usually be to call for the relevant information for a three-year period, including the year of the offence.
 - The court should look at turnover and profit

and also assets to gauge the resources of the organisation.

The court should consider the following factors relevant to the financial consequences of a fine.

- The effect on the employment of the innocent should be taken into account.
- The effect of shareholders and on directors will not normally be relevant.
- The possibility of the fine putting the organisation out of business will be a relevant consideration, but this may be an acceptable consequence.

Fines should normally be paid within 28 days by larger organisations. For smaller organisations, this may be extended.

The offence of corporate manslaughter normally involves a level of seriousness significantly greater than a health and safety offence. The appropriate fine will seldom be less than £500,000 and may be measured in millions.

The fine in the Cotswold Geotechnical Holdings case — £385,000 — is therefore less than the starting point recommended by the Sentencing Council.

Breach of duty of care

Under the 2007 Act, an organisation is guilty of corporate manslaughter if the way in which its activities are managed or organised causes a death and amounts to a gross breach of duty of care to the person who died.

A substantial part of the breach must have been the way in which activities were organised by senior management. In this case, the Crown Prosecution Service (CPS) concluded that there was sufficient evidence for a realistic prospect of conviction.

Reactions to the trial

Reactions to the result of this case as the first corporate manslaughter trial have included the following.

- There have been criticisms of the length of time from the date of death to the guilty verdict — two and a half years.

- This case was not a true test of the effect of the Act as Cotswold Geotechnical Holdings was a small company run by a sole director. The first real test would come when a large, perhaps multinational, company with a complex management chain was charged with an offence under the Act.
- Solicitors were reported to have commented that the case would herald an “avalanche” of similar cases. The accuracy of this prediction remains to be seen.

Following the trial, a spokesperson for the CPS stated that the death of Mr Wright had been a tragedy and would never have happened if Cotswold Geotechnical Holdings had properly protected him. It was hoped that the conviction had offered his family some sense of justice.

RIDDOR CONSULTATION

Lord Young’s report Common Sense, Common Safety, published in October 2010, suggested changes to increase the threshold for reporting workplace injuries to seven days.

In response the HSE opened consultation on the change in 31 January 2011 with the deadline for responses on 9th May 2011. The consultation paper is available online at www.hse.gov.uk/consult/condocs/cd233.htm.

The change would align the incident reporting threshold with that for obtaining a fit note from a GP for sickness absence and would ensure that someone who has suffered a reportable injury has had a professional medical assessment.

There has been considerable negative reaction to the consultation however. Brendan Barber, the General Secretary of the TUC said: “This proposal to change the reporting requirement to over seven days makes no sense and will reduce the ability of employers to learn the lesson from injuries that have occurred. It is also clear that any change would have a significant effect on the ability of regulators to investigate incidents, yet the consultation paper ignores this, and instead looks only at the ‘savings’ to employers. It also ignores the fact that employers will still be required to record all incidents that occur over three days.”

He added: “When proposals for changing health and safety law are made without any reference to the benefit to either the health or safety of workers, it is clear there is something very wrong with the way that the Government sees regulation.”

Further concerns expressed include:

- RIDDOR reportable injuries are already underreported, with research showing that only 32% of the reportable injuries suffered by workers and 12% by the self-employed are not properly recorded with the HSE under RIDDOR
- RIDDOR isn't effectively enforced which is why so many employers ignore it. Furthermore when injuries are not properly recorded it makes it difficult to accurately assess the risks workers face and difficult for enforcers to protect them.
- Changing the accident reporting criteria from 3 days to 7 days will only serve to take a huge number of injuries out of the official statistics and erode standards further.

'Keep it Safe' is now available to all BFFF members via the Health & Safety page of the 'Members Only' section of our website

<http://www.bfff.co.uk/members>

Login details have been provided to our main and Health & Safety contacts at each member company.

Back copies of 'Keep it Safe' are also available under the Health & Safety section of the website.

GUIDANCE

PROMOTING NEAR-MISS REPORTING

Near misses are incidents where an unplanned event occurs for which there is no resultant injury or damage, but the potential exists for harm to result if the event occurred under different circumstances. In risk management terms it is essential that near misses are investigated and remedial actions taken in order to prevent the same incident becoming a full-blown accident leading to injury or worse.

Despite this it is often difficult to get employees to report near misses. There are many contributing factors to this including a desire to avoid trouble or criticism, a belief that it is not important as nothing was damaged and nobody was hurt and simple apathy.

As with many safety culture issues, the first step to implementation is ensuring that there is adequate buy-in from senior management. Primarily this means securing their commitment to allow resource to investigate any reported near misses and to act on the findings. If nothing is seen to come out of investigating near misses then they may not be reported.

Secondly, it is important that a policy is set regarding near miss reporting and is sufficiently communicated throughout the organisation. Furthermore the need to report near misses should be included in employee rules e.g. in employee handbook.

Employee involvement is important – if workers are consulted for their input into H&S issues then they are more likely to follow instructions. This consultation can involve explaining that near misses are indicators of underlying problems with work activities and that instead of causing people to get into trouble, reporting near misses may save lives and will not be used as a ‘stick to beat them with’.

This message can be backed up with toolbox talks, delivered in the employee’s work area and applied to their work activities. Furthermore less direct methods such as poster campaigns, memos etc. will help to promote the issue.

COMBINED H&S AND FOOD SAFETY INSPECTIONS

Lord Young’s report Common Sense, Common Safety, published in October 2010, made a recommendation that local authorities combine Health and Safety inspections with Food Safety inspections in order to increase efficiency and reduce burden on business.

In response to this the HSE, the Food Standards Agency (FSA), and Local Government Regulation (LGR) have released a joint statement to promote the local implementation of the recommendation.

They state that the practice of planning appropriate joint interventions should be adopted by all local authorities from 1st April 2011 “where the local authority’s food and health and safety intervention programmes coincide”. The statement goes on to point out that in most local authority officers already combine H&S and Food Safety inspections in one visit, subject to competence.

RIDDOR AND AGENCY WORKERS

Agency workers can be easily overlooked by organisations when it comes to Health and Safety. This is not helped by the relatively unclear definition of when they become an ‘employee’ for the purposes of Health and Safety. When it comes to notifying the Incident Contact Centre in the event of a RIDDOR reportable accident, the first issue to consider is if the worker is a temporary employee, a self employed contractor or an employee of another organisation. The difference is important because their employment status will distinguish who has what responsibility for the worker’s health, safety and welfare, including RIDDOR reporting. The distinction comes primarily from the worker’s contract of employment and its terms but also from who pays their wages, who provides employment benefits, who deals with their tax issues etc.

As an employee, the worker is entitled to exactly the same protection regarding health, safety and welfare as any other employee, no matter how short their “employment” is. This extends to RIDDOR reportable accidents.

If the worker is considered to be an employee of the agency while working at a client site, in most cases the accident will be reported by the agency. Agency workers may also be legally considered to be self employed and therefore should make the report themselves.

In order to avoid dual (or even triple) reporting this issue needs to be discussed between the host employer and the agency, with reference to the worker's contract of employment and the terms between agency and host employer.

PROVIDING DRINKS FOR COLD STORE WORKERS

There is a requirement under the Regulations 22 of the Workplace (Health, Safety and Welfare) Regulations to provide an adequate supply of wholesome drinking water. Furthermore the Approved Code of Practice to Regulation 25 states that employer-provided 'eating facilities' should include an electric kettle for heating water. There is no more direct legal requirement to provide hot drinks of any particular type e.g. tea and coffee.

However, because provision of hot drinks to those who work in a cold environment is a generally accepted control measure for working in such an environment, it can be reasonably argued that there is a need for employers to supply workers with access to hot drinks, for instance see HSE's Cold Store Risk Assessment case study: <http://www.hse.gov.uk/risk/casestudies/pdf/coldstorage.pdf>.

Under S.9 of the Health and Safety at Work etc. Act 1974, employers cannot levy a charge against an employee for controls put into place for their health, safety and welfare. If provision of hot drinks was identified by risk assessment as a suitable control then S.9 could be argued to extend to providing hot drinks.

The form that hot drinks can take is entirely down to the individual employer. Arguably they could just provide hot water for employees to drink but this would most likely be perceived as miserly by the workforce, having a bearing on employee/ employer relationship issues.

In summary, there is no direct legal requirement

to provide specific hot drinks such as tea or coffee BUT it is a simple way to provide cold store employees with a warming drink and a break from the cold environment which are important control measures for dealing with cold environments.

SCISSOR LIFT SAFETY WARNING

The HSE has issued a safety alert to warn service and maintenance engineers and those in the construction industry who use, or lease out, certain types of scissor lifts, after three fatal incidents in Europe within the past four years.

Users of JLG 500RTS and 400 RTS scissor lifts are being advised to make daily safety checks to ensure that safety critical components are working correctly, after the five people were killed in three separate overturning incidents.

The HSE says that in all three fatal overturn incidents in Europe over the past four years:

- the oscillating axle which allows the machine to be driven on uneven ground with the platform in the transport position failed to lock when the platform was raised
- the lift/drive interlock system did not work, allowing the platform to be elevated above 6.7m without the stabilisers being deployed.

Owners of both these types of scissor lifts are being advised to ensure that the oscillating axle lockout system and the lift/drive cut out switches are checked for correct functioning, in accordance with the manufacturer's recommendations, before the machine is next used and that users complete daily inspections and function testing of both elements.

HSE Inspector Richard Clarke said: "Though this safety alert is primarily to warn those who own and use these specific models of scissor lift, and those with similar interlock systems, it should serve as a reminder to all users of mobile elevating work platforms that there is a need to regularly maintain, inspect and test the equipment. This isn't just recommended by manufacturers but is also required by law."

VEHICLES AT WORK- INTERACTIVE CASE STUDIES

The HSE has put together some 'before-and-after' interactive case studies to help you think and talk about vehicle safety in the workplace. The examples detail the incident, environment and consequences of workplace transport accidents. Each example includes a publication reviewing the incident and recommendations for improvement. To view the case studies click [here](#).

OCCUPATIONAL SAFETY AND HEALTH CONSULTANTS REGISTER (OSHCR)

The Occupational Safety and Health Consultants Register (OSHCR) is now open to the public. OSHCR is a register of consultants who can offer general advice to UK businesses to help them manage health and safety risks. Businesses will be able to search the database for consultants according to key words i.e. industry specific or topic and it is free of charge to businesses. For more information click [here](#).

NEW GUIDANCE FOR LOW RISK BUSINESSES

New guidance has been unveiled for low risk businesses by HSE.

This site launched by the Health and Safety Executive will make it easier for low risk businesses to comply with the law and manage health and safety in their business.

For many businesses, all that is required is a basic series of tasks. The site will take you through the steps and help you make sure you have done what you need to – and no more.

To visit the site and to find out further information please click [here](#).

NEW ON LINE STATISTICS TOOL AVAILABLE FROM HSE

HandS-On is a new statistics tool that allows you to view, manipulate, create and export tables from HSE's injury and ill health data using a powerful analysis tool. It gives you direct access to HSE's data and should save you time, as you can now

access the information you need, when you need it.

The tool is free to use for both HSE employees and members of the public. The data comes from two sources, RIDDOR and the Labour Force Survey (LFS). Data is currently available for the years 2001/02 to 2009/10. You can search and modify a range of popular tables or use the advanced search function to create bespoke tables.

Statistics Branch are offering support and advice on the search and reporting options and help with running bespoke searches. To access the tool, go to <http://www.hse.gov.uk/statistics/hands-on/index.htm>

BFFF will continue to receive our bespoke information from HSE for members, this tool is available as an addition resource from HSE.

FLOUR DUST IN NON BAKERY PROCESSES

A recent survey by HSE has indicated exposure up to 2 x the Workplace Exposure Limit (WEL) for flour dust (and no health surveillance) in the production of thickeners, pasta, soups, cereal, custard etc. Typical operations are sack tipping, weighing and cleaning up. There is also a low awareness of the risk in this area.

Flour dust can cause:

- irritation to the eyes (conjunctivitis) resulting in watering, painful eyes;
- irritation to the nose (rhinitis), resulting in a runny nose;
- occupational dermatitis, resulting in redness, itching and blistering of the skin;
- asthma if a worker becomes sensitised, resulting in breathlessness, tightness in the chest, wheezing and bronchitis.

Flour dust is a hazardous substance as defined under the Control of Substances Hazardous to Health (COSHH) Regulations 2002 (as amended).

Flour dust has been set a Workplace Exposure Limit (WEL) comprising a long-term exposure limit of 10mg/m³ (averaged over 8 hours) and a short-term exposure limit of 30mg/m³ (averaged over 15 minutes). Exposure to flour dust should be reduced as far below the WEL as is reasonably

practicable.

Some bakery additives/bread improvers contain enzymes (eg fungal alpha amylase) which are potent sensitisers, so exposure to them should be minimised. This may be achieved by using improvers in liquid, paste or dust suppressed powder form.

Further guidance on the control of dust and health surveillance is available from the Federation of Bakers Email: info@bakersfederation.org.uk

2011 EYESIGHT LEGISLATION TO AFFECT THE FROZEN FOOD INDUSTRY

Since this January, new European legislation will require all commercial vehicle drivers to have their eyes checked every five years and carry details of their prescription. It is hoped that this legislation will dramatically improve road safety by reducing the number of accidents caused by drivers with poor vision.

Any driver must be fit for purpose at work and on the road. The better an employee looks after themselves, the less chance there is of sickness absence disrupting your working schedules and worst of all, upsetting your customers.

Wouldn't it be helpful if you could provide the drivers with the means to access regular eyesight tests. Regular eyesight tests are as important as going to the dentist and can help detect eye disorders such as glaucoma and cataracts.

Introducing a health cash plan can help employers to meet their duty of care responsibilities and minimise their risk of litigation.

Westfield Health is delighted to be able to offer the **Foresight Healthcare Plan** to members of the British Frozen Food Federation. From as little as **£1 per employee per week**, this easy to use plan provides employees with money back towards essential healthcare including eyesight tests, prescription glasses and contact lenses.

For more information please contact Westfield Health on 0845 602 1629, email tradeassociations@westfieldhealth.com or visit www.westfieldhealth.com/foresight

EUROPEAN AGREEMENT ON WORKPLACE STRESS

The EU has published a new report, which claims that a European health and safety agreement between workers and employers is helping to deal with stress at work in the EU.

Over the last 10 years, work-related stress has increased in 9 Member States and has only fallen in Sweden. Studies suggest that between 50% and 60% of all lost working days are related to stress.

In the UK, it is estimated that 10 million working days are lost due to anxiety, stress and depression linked to work. The direct costs related to stress at work are now estimated to be as high as 4% of EU GDP.

In response to this, European workers' and employers' representatives reached an agreement in 2004 to ensure a minimum level of protection against stress at work.

The UK implemented the agreement through a booklet entitled *Work-related Stress: A Guide — Implementing a European Social Partner Agreement*. It was drafted jointly by partners including the Confederation of British Industry, the Trades Union Congress and the Forum for Private Business, with the support of the then Department of Trade and Industry. The jointly funded booklet was launched by ministers and representatives of social partners in July 2005. In the UK, the Guide is a non-binding instrument addressed to the whole economy.

The EU says although the agreement has not been implemented evenly in all countries, 19 Member States now have legislation or binding collective agreements that address stress or other psychological risks at work.

Presenting the new report on the results of the agreement, László Andor, EU Commissioner for Employment, Social Affairs and Inclusion, said: "Here we see how a European agreement followed up by employers and workers at national level can concretely improve working conditions in Europe."

ENFORCEMENT

RISK ASSESSMENT MUST BE FOLLOWED BY ACTION

A court was told this week that a company had assessed the risks from a work activity and had identified measures to control the risks but, several years later, had still not put them in place.

His employer was fined £20,000 and ordered to pay costs of £6329 after a teenager suffered horrific burns to his legs at its Sevenoaks depot.

The employee, who asked not to be named, was spraypainting a lighting tower in a shed at the site. While using thinners in this process, he inadvertently spilled some on his trousers. Walking across the shed to go to his locker and find a change of clothes, he passed a gas burner which was being used to heat the workshop. His clothes caught fire and he ran outside where he was helped by colleagues who hosed him down and put out the flames.

In hospital for 16 days, six of which were spent in intensive care, he suffered burns to both legs, his left arm and his hand. Since then the employee has undergone skin grafts and was unable to work for six months.

An investigation by the Health and Safety Executive found the spray shed had several health and safety failings.

The company had executed a risk assessment but had not implemented the measures identified. A further management action plan, dated three years after the original assessment, re-iterated these measures, but they had still not been put in place at the time of the incident.

MAN SEVERS FINGERS AT BAGEL FACTORY

A man severed two of his fingers while operating unsafe machinery at a London bagel bakery city magistrates have heard.

Mr Raakesh Patel, from Harrow, was attempting to clear a dough blockage at the Ixxy's Bagels factory in Park Royal, North West London, in

November 2007, when a moving blade severed the middle and ring fingers on his right hand down to the knuckle.

The City of London Magistrates Court heard that Ixxy's Bagels Ltd was aware the equipment was faulty at the time of the incident. The rotating blade in the bagel dividing machine continued even when the rear doors were opened.

Despite being aware of this fault, a Health and Safety Executive (HSE) investigation found Ixxy's failed to take adequate steps to prevent Mr Patel, 26, from using the machine.

Ixxy's Bagels Ltd, of Harley Street, London, pleaded guilty to breaching Regulation 5(1) of the Provision and Use of Work Equipment Regulations 1998 and was fined £2,250 with £9,719 costs.

After sentencing, HSE Inspector, Jack Wilby, said:

"Work equipment must be maintained in an efficient state and in good working order."

"Ixxy's Bagels Limited failed to do this resulting in one of their employees severing the tips of two of his fingers."

"Ixxy's Bagels were aware of the fault on the machine, at least two days before the incident and failed to take adequate steps to protect their staff. This is another unfortunate reminder to employers, that you have a duty to maintain your work equipment. Failure to do so can result in serious personal injury as we have witnessed with this young man."

LICHFIELD FOOD FIRM PROSECUTED AFTER CONVEYOR INCIDENT

A Lichfield supplier of prepared salads has been prosecuted after a man broke his arm in a moving conveyor.

Tamworth Magistrates' Court heard that Zubair Hussain was cleaning a conveyor, which had

been installed six months previously as part of a £1m upgrade.

The 29-year-old's forearm was broken in four places and his thumb and index finger were also fractured when his right arm was pulled between the running roller and conveyor belt.

A Health and Safety Executive (HSE) investigation found the conveyor was inadequately guarded.

Mr Hussain spent 19 days in hospital as a result of the incident and has since had two operations and will need further surgery in the future.

The court was told the cost of fitting a guard to the machine after the incident was just £600.

HSE prosecuted Soleco UK Ltd, trading as Florette, of Wood End Lane, Fradley Park, following the incident on 19 March 2010. The firm pleaded guilty today to breaching Regulation 11 of the Provision and Use of Work Equipment Regulations 1998. The company was fined £10,000 and ordered to pay £2,587 costs.

HSE inspector Christia Killen said:

"This was a preventable incident that has caused permanent, debilitating injuries to Mr Hussain."

"If Soleco UK had operated a more rigorous purchasing policy system for checking and commissioning new equipment, its supplier could have fitted the guards before the machine was put into use."

"Once Soleco UK had discovered that the conveyor was not properly guarded, nobody should have used the machine until the fault had been corrected."

"HSE provides free guidance on machine safety, which clearly states that employers, not their suppliers, are responsible for making sure that new equipment is safe to use."

KEBAB COMPANY PUT EMPLOYEES AT RISK

A manufacturer of kebab meat towers has been fined after workers were found using machines designed to skin, cut and mince frozen chunks of meat without the proper safety guards in place.

The HSE served six prohibition notices between 24 March 2009 and 7 May 2010, ordering the company to stop using a skinning machine, a meat pre-breaker/reducer and a bowl mixer until the appropriate protective devices and guards were fitted and maintained in working order.

However, the company failed to carry out this work and it took significant and ongoing intervention by the HSE to prevent the unsafe machines from being used.

The HSE prosecuted the owner Mr Ozgul Balciner who admitted breaching regulation 11 of the Provision and Use of Work Equipment Regulations 1998 and s.37 of the Health and Safety at Work etc Act 1974. The latter provides that where an offence committed by a body corporate is proved to have been committed with the consent of, or due to the neglect by, any officer of the body corporate, then that person as well as the body corporate will be guilty of the offence.

Mr Balciner was fined £4000 and ordered to pay £10,000 costs. The company Oz Kebab Ltd was fined £5000.

