18 Enforcement of Safety Regulations

Insurance cover does not extend to penalties resulting from prosecution. A view contrary to the insurer's is that the new enforcement initiatives on noise by the Health and Safety Executive does not represent mere rhetoric. New standards for an employer's duty under common law are set as a result.

The first successful prosecution under the Health and Safety Act, 1974 [1] of an employer for failing to protect employees from dangerously high levels of noise has resulted in the (then) maximum penalty of a £1000 fine. Employees of John Haggas Ltd of Keighley, Yorkshire had been exposed to noise levels above 90 dBA in contravention of the 1972 Code of Practice. [2]

Health and Safety Inspectors may require capital expenditure on noise control measures to reduce very high noise levels, as far as reasonably practicable, down to 90 dBA Leq 8H required by the 1972 Code. Enforcement notices have already been used to require major capital expenditure on engineering controls rather than just relying on ear protectors. There is some laxity in that "where engineering controls are considered reasonably practicable, but the employers have opted for the provision of ear protection, further enforcement action should not be considered provided protection is effective and worn in noisy areas." This less strict approach is allowed provided the hearing protection is "effective and worn in noisy areas."

As has been demonstrated in the West Yorkshire wool textile industry the Health and Safety Inspectorate is only holding back with enforcement action where real efforts are made to institute systems to enforce ear protector rules, e.g. making compliance a condition of employment.

There are obligations on both sides of the industry and progress is made on the basis of co-operation involving employees, unions and safety representatives. Proper noise control programmes need a positive attitude. Safety representatives can do a great deal to ensure that employees are aware of why they need to wear muffs or plugs even when they may seem uncomfortable or hot or look stupid. No employer in such circumstances can afford to fail to seek co-operation of his employees. Of course, the big stick may be one way of achieving the end, but persuasion, proper explanation and consultation are likely to be far more effective. Employee attitudes cannot be changed without management accepting parallel obligations.

In *Manchester Timber Importers (FWM) Ltd v Deary*, 1984, an employer's claim that the fitting of acoustic enclosures to noisy wood-working machines would "unreasonably reduce the productivity of the machines and thereby jeopardise the continued existence of the small undertaking" was rejected by an industrial tribunal in Manchester. The tribunal decided that the provision of ear protectors did not represent compliance with the

[1] Section 2(1): It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

[2] Health and Safety Information Bulletin 100, 3 April 1984. Keighley is just north of Bradford. Perhaps there is an 'M62 noise belt' in UK.

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requirements of the 1974 woodworking regulations when noise levels were on average around 94 dBA. [3]

In this particular case, the company had been relying on ear protectors alone, which it had supplied. However, the Health and Safety Inspectorate was aware that the machines concerned were commonplace throughout the industry and were invariably used with acoustic enclosures as well as ear protectors. The tribunal did consider the question of cost v risk, as the statutory provision was qualified by the words "reasonably practicable". It considered the employer's fears that the business would be put in jeopardy but, after considering the evidence, held that it was possible to install the enclosures and still operate the machines without any appreciable loss of productivity once the operators became accustomed to them.

In accepting the advice of consultancy and advice services to comply with Health and Safety Inspectorate notices, one complaint by companies is that noise reports tend to represent advertisements for protective equipment or acoustic panel manufacturers. There is therefore a growing need for some sort of consumer protection in this field. It is inevitable that the number of service companies will grow. Employers must study their noise problems, identify those at risk, make sure they use noise control measures and ensure that hearing protection programmes are effective, including instructing and training employees on the use of correct equipment. This promises to be an industry in itself.

With no abatement of increasing standards of safety requirements, with EEC directives to comply to as well, the threshold for negligence at Common Law seems set to be lowered with a deemed increase in the employer's knowledge. Derivative civil law claims are also set to rise in tandem with more successful prosecutions. It would be surprising if the same litigation industry built around asbestosis and other industrial diseases will suddenly grind to a halt with the tailing off of such claims.

[3] HSIB 100, 3rd April 1984. On the other hand, a Kidderminster worker faced dismissal for failing to wear hearing protectors.

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