

New Sentencing Guidelines

As of the 1st February 2016 new sentencing guidelines came into force for health and safety, corporate manslaughter and food safety and hygiene offences.

The intent of the new guidelines is to set standard levels of penalties for companies found guilty of serious offences. It is likely the new guides will lead to an increase of fines across the board. They will likely also lead to many more directors, managers and junior employees being given custodial sentences for breaches of health and safety legislation.

“If for example a director or employee knows there is a breach of the law that has at least a medium likelihood of causing death or disability. The new guide directs as a starting point a punishment of one year’s imprisonment, with a variance of 6 to 18 months depending on any relevant factors.”

These guides apply even if there has been no accident at all – just an exposure to risk is enough.

The sentencing guide directs for much greater fines across the board and takes into account the financial turnover of the company being sentenced.

The detail

Sentences are now calculated using a 9 step approach.

1. The court will decide a culpability factor, ranging from ‘very high’ a deliberate breach or flagrant disregard of the law to ‘low’ a single occasion that did not fall far short of an appropriate standard. If a safety problem is known this becomes a ‘deliberate breach’ if the company does nothing to remedy it.

“The new guidelines are likely to affect the biggest change in organisational safety culture at board level since the Health and Safety at Work act 1974” Alan Thomas Divisional Director Health and Safety Capita Real Estate.

Examples of fine levels were culpability is ‘very high’ and harm is category 1 very high.

Turnover or Equivalent	Fine Starting Point	Range
£50 million and over	£4,000,000	£2,600,000 – £10,000,000
between £10 million and £50 million	£1,600,000	£1,000,000 – £4,000,000
between £2 million and £10 million	£450,000	£300,000 – £1,600,000
not more than £2 million	£250,000	£150,000 – £450,000

2. The potential level of harm will be decided. A high level of harm i.e. a high likelihood of death means fines and sentencing falls in the harm category 1 level. At this point penalties take into account the organisation’s annual turnover or equivalent.

Significant reductions occur as the scale moves down to the culpability low - harm category 4 very low end of the scale.

The range adjustment upward or downward is decided by relevant factors such as increases for a past poor record or cost-cutting at the expense of safety etc. or decreases for self-reporting, co-operation and acceptance of responsibility.

3 & 4 – The court takes a ‘step back’ to review and, if necessary, adjust the fine after making considerations such as if it is proportionate to the overall means of the offender to pay or whether there will be a detrimental effect on the ability to pay compensation etc.

5 - Considers any factors which indicate a reduction, such as assistance to the prosecution.

6 - Allows for reductions for guilty pleas.

7 - Takes into account compensation, ancillary orders and remediation.

8 - Allows for sentencing an offender for more than one offence.

9 - Requires the court to explain the reasons for the sentences.

Individuals being sentenced have a similar culpability factor and harm category process. The more serious end of the scale, very high culpability, harm category 1 directs an 18 months’ custody with a range between 1 – 2 years’ custody.

For more information, please contact:

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