

Safety File

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Architect cleared of manslaughter charges

A Senior Architect has been found not guilty of the manslaughter of members of the public who contracted legionnaire's disease, but has been fined for breaching health and safety legislation.

The outbreak had been traced to the air-conditioning units at a council-owned arts facility. The outbreak led to nearly two hundred confirmed cases of the disease being reported and the deaths of seven people.

This was the second trial in this case, with the jury at the initial trial being unable to reach a verdict. At this initial trial, the judge ordered the jury to find the council not guilty of charges of manslaughter, but to consider the health and safety offences that had been committed.

The council admitted breaching the Health and Safety at Work Act 1974 (Section 3) in that they failed as an employer to ensure the safety of non-employees. The council were fined £125,000 and ordered to pay costs of £90,000.

The judge commented that the fine would have been higher but, being a public body, any fine would have been met from public finances. Specifically, the judge suggested that if the case were against a commercial organisation with a multi-million pound turnover, the fine would have been in excess of a million pounds.

With regard to the individual architect, the prosecution argued that she was one of the people with key responsibility for the management of health and safety at the affected centre.

The prosecution also alleged that the architect had cancelled a maintenance contract and failed to undertake critical safety tests on the air-conditioning units, particularly tests for Legionella in the building's air cooling tower.

The architect informed the court that her job primarily involved the design of local housing projects and that she had received little health and safety training.

Despite being cleared of manslaughter charges, the architect was found guilty of breaching the Health and Safety at Work Act 1974 (Section 7) in that as an employee she failed to take reasonable care of those affected by her acts or omissions. For this offence, she was ordered to pay a fine of £15,000.

Commentary of the case has focussed upon the lessons to be learnt by middle to top-level management. As the Health and Safety Executive (HSE) commented following the trial:

"You should check your management arrangements and your control measures regularly and you should oversee the work that contractors do on your behalf. There is no room for assumptions that systems are working as they should, and no room for ignoring personal roles and responsibilities at any level of management."



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Fire safety guides

The Regulatory Reform (Fire Safety) Order 2005 became law on 1st October 2006. For businesses that currently have a carefully considered fire safety strategy in place, the new legislation should have little or no impact. The most significant change that employers may notice is that Fire Certificates no longer have any legal status and will not be renewed.

The introduction of the Order was delayed since new guidance documents had not been published. These guides are now available and have been developed to address the particular needs of a range of workplaces. Consequently, there are eleven guides aimed at:

1. Offices and shops;
2. Factories and warehouses;
3. Sleeping accommodation;
4. Residential care premises;
5. Educational premises;
6. Small and medium places of assembly;
7. Large places of assembly;
8. Theatres and cinemas;
9. Outdoor events;
10. Healthcare premises; and
11. Transport premises and facilities.

The titles of the guides are generally self-explanatory, although the introductory pages of the guides provide more detailed advice on the premises the guides are aimed at covering. The "Large Places Of Assembly" guide is aimed at the typical leisure centre.

The guides can be purchased, but are also available free of charge as a download from www.communities.gov.uk.

Since the guides are aimed at specific workplaces (unlike the previous publication, "Fire Safety: an employer's guide") the advice provided is particularly relevant. For instance, in considering storage, the guide refers to gym mats:

"...to reduce the potential rate of fire growth, when not in use foam gym mats should be laid flat and stacked on top of one another in a dedicated storeroom. Stacked side-by-side or vertically against a wall, the potential speed with which a fire may grow is significantly increased."

This type of specific example will assist in the

development of a fire strategy and help employers develop fire prevention procedures contained within an Emergency Action Plan (i.e. information within the written procedures on how fire can be prevented and how its rate of growth can be controlled, thereby allowing more time for an evacuation).

Advice is provided on other issues particularly relevant to the leisure industry. For instance, in discussing safe refuge areas provided for those with mobility impairments, the guide suggests:

"Disabled people should not be left alone in a refuge area whilst waiting for assistance to evacuate the building, (and the refuge area must be) provided with its own means of escape and a means of communication."

In considering evacuation from the refuge area the guide suggests:

"Your fire safety strategy should not rely on the fire and rescue service rescuing people waiting in these refuges."

This type of advice is tackling directly an issue that has been of concern to a number of leisure facility operators. Furthermore, a later part of the guide addresses the provision of childcare/crèche facilities:

"The location of childcare facilities/crèches in your premises is important since parents or guardians will often seek to return to the facility when the alarm sounds. It is therefore important that the facility is located so as to avoid parents travelling against the normal direction of escape. The childcare facility should be sited at the same level as the parents or guardians or on the route to the final exit."

This level of specific detail within the guide will be of real assistance to those responsible for fire safety within a workplace and aid in the development of an effective fire safety strategy.

It is suggested that those responsible for fire safety take the time to read the guide and carefully consider the advice contained within it. Arguably, the introduction of the new Order should prompt all employers to review their current fire risk assessment and accompanying procedures.

Manual handling – reducing the burden

The Manual Handling Operations Regulations 1992 (as amended) require employers to “make a suitable and sufficient assessment of all such manual handling operations to be undertaken (by employees).” This applies where it is not reasonably practicable to avoid the need for manual handling.

This sometimes leads employers to identify an extensive range of manual handling operations that should be assessed, including some which may be considered low risk, routine or trivial.

Clearly, some equipment in a leisure facility is large (a trampoline, for example), awkward (an inflatable bouncy castle, for instance) or presents a risk for other reasons (rescue of a spinal injury, for example).

It is often difficult to know “where to draw the line” – should a manual handling assessment be undertaken on the movement of a small number of chairs, as would be the case in setting-up a meeting room, for instance?

The Guidance accompanying the Regulations (L23) provides advice in the form of a “filter”. This filter assists an employer identify those manual handling operations that need a detailed assessment and those which do not.

The filter discusses:

- Lifting and lowering (the weight that can be safely lifted and lowered);
- Carrying distances (how far a load can be carried); and
- Pushing and pulling (the force needed to start/stop a load, and the force needed to keep the load in motion).

The filter also discusses handling whilst seated and the risk presented by twisting during a manual handling operation.

Whilst providing clear advice on whether a detailed manual handling assessment is necessary, the guidance also reminds employers of their general duty to avoid or reduce the risk of injury where this is reasonably practicable.

The filter does, however, identify the situations where an employer may reduce the risk assessment burden and accompanying

written procedures by assisting an employer focus upon real manual handling risk.

“Manual Handling: Guidance on the Regulations” (L23) is priced £8.00 and is available from HSE Books on 01787 881165 or can be ordered online at www.hsebooks.co.uk. Useful information is also included in the free HSE leaflet, “Getting To Grips With Manual Handling” (INDG143) also available at www.hsebooks.co.uk.

Simplifying health and safety

The Health and Safety Commission (HSC) and Health and Safety Executive (HSE) have published a simplification plan as part of its commitment to smarter regulation and their aim of helping businesses comply with legislation more easily.

The HSC/E plan builds upon the work already started in regard to sensible health and safety through which employers are encouraged to focus upon real workplace hazards and avoid accumulating paperwork because trivial risks are being considered.

The plan can be downloaded from www.hse.gov.uk/simplification/index.htm.

In the first year of the plan, the HSC/E will focus upon issues that affect the largest number of employers:

- Sensible risk management – simplifying HSE guidance to, and encourage a proportionate approach to risk assessment and management;
- Forms – projects to reduce the number and burden of HSE forms by stripping out all out-of-date forms and providing electronic versions of all those remaining; and
- Gas safety review – a review of the current regulatory regime, to improve and modernise the system on a risk and evidence basis.

Ultimately, it is often employers who create significant amounts of paperwork and other administrative burdens, often by misunderstanding legislation or assessing and addressing risks that should be considered trivial. However, it is reassuring to note that the HSC/E are taking the lead in this area by focussing upon simplification.

Toilet checks – think again

Many companies utilise documented toilet inspection checklists to ensure that toilet areas are checked on a regular basis: "These toilets are checked every hour", etc.

This provides a structure for cleaning and inspection that, in public buildings, is an important part of delivering a clean and hygienic environment for customers.

However, there is the real possibility that such documented checklists lead to a "tick-box" mentality, leading employees to sometimes tick the checksheet without actually inspecting the area or, as is sometimes noted, the checksheet is marked before the time for the inspection is due: the sheet is ticked in advance (again, probably without an inspection being undertaken).

When coupled with the range of other checksheets that employees are sometimes faced with, there is a real danger that a number of systems will fail because of the "tick-box" mentality.

The need for documented health and safety related inspections should be identified through the risk assessment process and Arrow Leisure Services have always been doubtful of the need for documented toilet inspection checks. Ideally, employees should be trained, encouraged and thanked for using initiative and checking toilet and changing areas each time they pass the area, rather than being held to a strict hourly or two-hourly regime.

During training courses, when discussing documentation, there is often agreement that employers develop too many checksheets – the toilet inspection being the most common.

However, the argument that they should be removed because they are a "nuisance" is not a strong one – many health and safety issues can be a nuisance, but they are nevertheless essential.

During one training course recently, a delegate provided a further reason for removing documented toilet inspections.

The delegate had previously attended a LeisureWatch (Child Protection) seminar where

the tutor informed the group, based upon experience, that such visible checksheets provide a "window of opportunity" to potential child abusers. They will know that the toilet area is unlikely to be inspected by an employee for a certain period of time.

Other delegates added that this "window of opportunity" idea might be extended to include vandals and drug abusers.

Possibly it is time to reconsider the use of the infamous toilet inspection checklist.

Training Courses Offered

Institute of Leisure Amenity Management

Managing Safety in Leisure (2 days)
Working Safely in Leisure (1 day)

Chartered Institute of Environmental Health

Risk Assessment (1 day)
Foundation Certificate (1 day)
Stress Awareness (1 day)
Principles of COSHH (½ day)
Principles of Manual Handling (½ day)

Public Training Courses

ILAM Managing Safety in Leisure

13/14 November	Ivybridge, nr. Plymouth
13/14 December	Rotherham

CIEH Risk Assessment

7 December	Wolverhampton
15 December	Tredomen, nr. Caerphilly

Consultancy Services

Health and Safety Audits
Compilation of risk assessments
Retained Safety Officer Service

To discuss any of your training or consultancy needs, please contact Nigel Scriven on 01495 767973 or (mobile) 07776 313486 or e-mail arrowleisure@aol.com.

Planning and delivering training

A leisure organisation, through the process of risk assessment, will identify induction requirements (i.e. information that is required by all employees) and formal qualifications (for example, lifeguard, first aid, coaching or risk assessment qualifications).

In addition to the induction and "qualifications" that employees require, the risk assessment process will often identify the need for employees to be trained in more precise subjects: basic manual handling, principles of chemical safety, setting-up an inflatable bouncy castle, supervising a roller-skating session, etc.

The term "briefing session" may be best applied to these training requirements: they do not lead to a qualification and can often be delivered in short, quarter to an half-hour sessions.

The difficulty arises in attempting to plan and deliver these identified briefing sessions.

During a recent health and safety audit, Arrow Leisure Services encountered a very simple system that was used, very successfully, to ensure that all employees were appropriately briefed on relevant subjects.

As the saying suggests, "The simplest ideas are often the best."

Basically, the employer had created a "training matrix" that was clearly linked back to the risk assessment process: a risk assessment on roller-skating identified the need for relevant employees to attend a briefing session, for example. The risk assessments also deliberately used the word "briefing session"

rather than the word "training" (which implies something more formal, structured and longer in duration).

The format of a simple training matrix is provided below.

The black cells identify that the employee is not required to attend the briefing session; for example, because their job role does not require it (e.g. Employee 1 and VDU Safety).

During the audit, this sheet was seen displayed prominently in a staff area, and Duty Managers expected to identify any briefing sessions that could be organised during their shift by looking at the employees available (during quieter periods) and the sessions that they need to attend.

Once the session is delivered, the Duty Manager places a date and their initial in the appropriate cell (e.g. Employee 1 and Bouncy Castle).

Once a week, the Centre Manager would update the training matrix and type in the date, Duty Manager's initials and shade the cell grey, thereby making it easier to identify "gaps" (e.g. Employee 2 and Fire Drill). The new matrix would be displayed and old copies were filed.

If a procedure was changed, during a review of the risk assessment, for instance, all relevant cells would be returned to "white" indicating the need for refresher training (e.g. roller-skating).

Basically, this type of training matrix proved very effective for one employer and might possibly be equally useful for a number of other organisations.

Employee / Session	Fire Drill	Manual handling	COSHH Cleaning	Bouncy castle	Roller-skating	VDU safety				
Employee 1	10/06 JD		14/06 PT	18/10 JD						
Employee 2			14/06 PT	18/10 JD						
Employee 3	10/06 JD									
Employee 4	10/06 JD									

Developing written instructions

It is often useful within a staff handbook or safety manual to provide general "information" on certain hazards (electrical safety, chemical safety, setting up a computer workstation, for example). On other occasions, it is necessary to provide step-by-step "instructions" on how a work activity should be performed (a backwash in a swimming pool, for instance).

These instructions may be written into the staff handbook or procedures and/or may be displayed where the task is undertaken.

In developing written instructions, a useful mnemonic can be applied (S.R.E.D.I.M.). This was illustrated recently when Arrow Leisure Services was requested to advise on an accident that had occurred in the kitchen at a leisure facility.

The task was the emptying, cleaning and refilling of a medium sized deep fat fryer that, in this case, had led to a minor scalding injury.

Although the task is relatively straightforward, it does assist in understanding the S.R.E.D.I.M. principle. Also, in this case, written instructions for the task were displayed on the wall above the deep fat fryer:

Cleaning the deep fat fryer

1. Turn off the deep fat fryer.
2. Empty the oil.
3. Clean the deep fat fryer.
4. Refill the deep fat dryer.

Many will quickly notice the weaknesses in this procedure: there is no reference to how long the oil should be left to cool down before it is emptied, and the procedure does not include any specific detail (how to clean the deep fat fryer or to what level it should be refilled, for instance).

The S.R.E.D.I.M. principle provides some guidance.

Firstly, **S**elect the task for which a written procedure is needed (as identified through risk assessment).

Secondly, **R**ecord the stages, in general terms, associated with the task: turn off, wait

to cool, empty, clean, refill.

Next, **E**xamine the stages and **D**evelop a safe system of work. At this stage, it may be useful to observe an experienced employee undertaking the task, ensuring that they understand that they are being observed. In this way, they are most likely to undertake the task in the safest way (wearing PPE where appropriate, for example) and the observer has the opportunity to ask specific questions ("Is the valve being turned clockwise or anti-clockwise?" "What should the dial read at this stage?" for instance).

With this detailed information to hand, the observer can **D**evelop the safe system of work or written instruction/procedure putting appropriate detail on the stages involved in the task.

The next stage in the process is to **I**nstall the safe system of work through training, a briefing session or by simply displaying the procedure close to where the task is undertaken.

Finally, as with all precautions and procedures, the employer should **M**aintain the safe system of work: for example, by ensuring that it is being observed and reviewing the procedure if there are incidents or accidents or a change in routines or equipment.

The S.R.E.D.I.M. principle is straightforward to understand and has numerous applications. Its basic philosophy can be related to the instructions accompanying flat-packed furniture, where purchasers slavishly follow the instructions provided. If one step is missing, misleading or too vague, the whole project can be frustrating. Within the field of health and safety, instructions that have stages missing or are misleading or vague can have much more serious consequences.

E-Safety File

Why not have Safety File by e-mail?

You will tend to receive it earlier than the posted version and can more easily share information with colleagues.

Simply e-mail Arrow Leisure Services on arrowleisure@aol.com.

Age discrimination

The Employment Equality (Age) Regulations 2006 came into force on 1st October 2006 and aim to give individuals equal rights to employment, training and promotion regardless of age. Terms and conditions, transfers, dismissals, redundancy and retirement are also affected by the new Regulations.

Ultimately, the Regulations prohibit:

- Direct discrimination (e.g. inviting job applicants only from people of a certain age);
- Indirect discrimination (e.g. applying a criterion which might disadvantage people of a certain age);
- Victimisation on the grounds of age; and
- Harassment on the grounds of age.

An employer who wishes to claim an exemption from the legislation (e.g. they are keen to employ only younger individuals) will have to "objectively justify" their practice.

There are some specific exceptions within the Regulations:

- The lower National Minimum Wage that applies to younger employees will not be seen as illegal (despite it treating employees differently on the basis of age);
- The payment of "service-related pay" (incremental pay systems and long service awards), will not be affected by the new Regulations on the basis that they depend upon five years service or fulfil a business need.

The Regulations also set a default retirement age of 65: employers will have to justify earlier retirement ages and employees will have the right to request to work beyond their normal retirement age.

Further, more detailed information on the Employment Equality (Age) Regulations 2006 can be found on the internet at the Department for Trade and Industry website: www.dti.gov.uk/employment/discrimination/age-discrimination/.

This website also links to the ACAS website, which also contains detailed, practical guidance on the Regulations.

Air vents and PPM

Many employers benefit from the compilation of a Planned Preventative Maintenance (PPM) schedule that documents the routine maintenance, examination and inspections required in a workplace. The PPM may therefore specify, for example, the month (and possibly associated cost) of portable appliance testing, fire extinguisher services and external inspections of sports equipment.

Month / Item	Jan	Feb	etc	Contractor	Cost
Portable Appliances				JJ Electrics	£850
Fire Extinguishers				Fireway	£95
Trampoline				Jumps	£85

PPM requirements should be identified through the risk assessment process, and the inclusion of a cost can assist with budgeting.

It was reported in May that a group of three leisure facilities had been recommended by their council's health and safety officer to clean their air vents because of the "potential of criminal and civil action against the council."

The bacterial presence and levels of dust had exceeded the guidance issued by the Heating and Ventilating Contractor's Association.

The health and safety officer also reported that it was unlikely that any cleaning of the ventilation ductwork had taken place since at least 1991. The estimated cost of the work was £47,000.

A clear, additional recommendation was made: that a regular, preventative cleaning schedule be implemented, i.e. PPM. The financial burden imposed by this case could have been avoided through a properly planned cleaning programme recorded on a PPM schedule.

A quick thank-you

We would like to thank all of those who have taken the time to contact us about the value they place in this bulletin, particularly the comments regarding the "Decide, Document, Deliver and Develop" article in the last issue. We hope that this issue is equally helpful.

Strange but true

Employees in a restaurant in Cumbria needed hospital treatment and the premises were closed for 15 days whilst health and safety officers tried to locate the source of an apparent occupational health problem.

Employees noticed that their skin was red and becoming inflamed and that their eyes were blistered. The employees were treated in the hospital for burns. Health and safety officers understandably focussed upon chemicals within the premises, gases and fumes.

Ultimately, they discovered that a sunbed tube had been put in the kitchen instead of the fly-killing bulb that was required.

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One particular employee was responsible for cleaning out the storage tanks of petrol tanker trucks. He had been employed in that capacity for two months.

The employee began to fill a tanker with water, a standard safety procedure that forces flammable vapour out of the container. He returned an hour later to check whether the water level was high enough to proceed. However, he had trouble deciding, because it was so dark inside the tanker.

However, our employee is a resourceful character: he lit a cigarette lighter for light.

His little test successfully determined that the water level was not yet high enough for safety. The vapour explosion launched him through the air, and he landed in the company car park 100 meters away.

~ ~ ~



In fairness, Arrow Leisure Services has reduced the size of the picture and this has obscured the warning at the bottom of the sign: "Also, the bridge is out ahead".

A 3-year-old girl has an operation to correct an eye squint. Two hours before the operation, the nurse places some "magic cream" on both hands in order to numb the sensation in the hand in readiness for a needle.

The diligent father accompanies his daughter to the anaesthetic room where the "cling film" type covering over the "magic cream" is removed and the "magic cream" wiped off. The needle is inserted, the anaesthetic applied and the girl is ready for the operation.

At some point during this exercise, some "magic cream" finds its way, unnoticed, onto the father's pullover. The operation is a success, the young girl, father and mother go home, and the father takes the pullover off and puts it back in a draw.

Some days later, the whole family go for a Sunday meal. In the car park, the father notices a white substance on his pullover. Suspecting it to be toothpaste, he licks it off.

Quite quickly, the father realises that he has no sensation in his tongue and is beginning to talk like someone who is drunk!

"Magic cream" seems to last quite a long time on a pullover – I know this for a fact because this "Strange but true" story is personal!

~ ~ ~

A council banned doormats used outside council owned flats because they are a significant trip hazard. Council officials gave tenants until 18th September to remove the offensive articles. The council has since overturned its rules, which would now only apply in sheltered housing schemes and blocks allocated to older tenants (where the risk is higher).

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