

Legal Update

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Key Points:

Enforcement Visits - Louise emphasised the need to be thoroughly prepared prior to an HSE visit and to seek legal advice. A visit is also an opportunity to ask questions of the HSE too.

-25% of all RIDDOR reports will result in a visit – and 49% of those will lead to enforcement.

- Complete RIDDOR reports accurately and honestly giving only relevant information: Be aware that accepting liability in the report will prejudice your case later on, so think ahead.

Brexit - All EU law will become domestic law when we leave the EU. The laws can then be changed as required. There is no current evidence that H&S legislation will be changed or watered down.

FFI – Ensure your company identifies the appropriate person to deal with FFI invoices. Payment will indicate you accept you are in breach so if you believe you are not guilty either don't pay and appeal or pay but clearly state why you believe you are not guilty.

New PPE regulations – 21 April 2018 – New regulations apply. 21 April 2019 – PPE certified under old directive will no longer apply. 21 April 2023 – all certificates under old directive expire.

Legal Privilege – Be careful when conducting and reporting on accident investigations as some content could become incriminating.

Sentencing Guidelines - Fines over £1m now the norm for large companies. Total fines Feb 2016-Feb 2017 - £54M - up from £30.3M the previous year. Largest fine was £5m - Alton Towers accident.

Appeals Against Sentence - See presentation slides for the outcome to high profile cases such as Wilko, ConocoPhillips, Watling Tyre Service, Kenneth Thelwall and R (HSE) v M J Allen

Bottom line: More individuals are likely to receive custodial sentences. Seek legal advice at the outset to avoid prosecution, or to position to defend or mitigate.