

## Work Related Driving – What will the effects of Corporate Manslaughter have on Work Related Driving?

*(This article is to be used as a general guide only. It is not intended to contain definitive legal advice which should be sought as appropriate)*

With the implementation of this new Act you will need to ensure that you operate a coherent and manageable vehicle and driver risk assessment programme if you provide Company vehicles or people have to drive as part of their work.

You will be guilty of the new offence of Corporate Manslaughter if the way in which your senior managers managed or organised its activities causes a person's death as a result of a gross breach of a duty of care.

The vehicle and driver risk assessment programme will apply whether you run large corporate fleets or are a smaller company with just a couple of employees. This programme should include:

- A clear policy covering the use of vehicles and driving, either as a separate policy or relevant clauses included in the Written Statement of Main Terms and Conditions of Employment
- A vehicle and driver risk assessment – including a realistic assessment of the risks and remembering to include anyone who may be involved – this includes others may be allowed to drive Company vehicles, for example spouses and partners, and staff who use their own vehicle on Company business
- Regular driver checks – not just at commencement but also periodically (at least every 12 months) covering licence, driving skills and health, including basic eye-checks. Relevant training should be offered to employees who need it, for example because of their accident record
- Regular vehicle checks
- Check the suitability of the Company vehicles for the drivers and the work carried out
- Creating an audit trail – it is not just about doing all this, but being able to show that you have done it. This also includes properly following up on incidents and accidents.
- Regular communication

If you drive a Company vehicle or are responsible for others who drive in the course of their work you need to be aware of your responsibilities. Some employers believe incorrectly that provided they comply with traffic law regulations, ie ensuring that their Company vehicles have a valid MOT and they are adequately insured, that is enough to satisfy Health and Safety Regulations. Regrettably this is wrong. The Health & Safety at Work Act applies to on-the-road activities, including people using their own cars for business purposes, just as much as they do in other workplaces. The risks involved for your staff and the general public need to be assessed.

Did you know that:

- 1 in 3 road accidents involves a vehicle being driven for work
- Each year there are 3,000 fatalities on our roads
- 25% - 33% of all these road deaths involve people driving on Company business
- On average 200,000 drivers lose their licence
- 1 in 6 drivers has accumulated points on their driving licence
- There are over 1 million speeding citations issued each year

You don't need to have a full time fleet manager but you do need to ensure that you assign someone the responsibility of ensuring compliance to all the Regulations regarding vehicles and driving. By having the programme stated above in place it will help you:

- Improve your health and safety that will minimise the risk of your company being prosecuted
- obtain improved insurance arrangements
- help protect you against personal injury claims
- help protect your company's image

You must also remember that employees who drive their own vehicles on business use are subject to the same controls and policies relating to drink, drugs and other substances, use of mobile phones.

In March 2005 The Road Transport (Working Time) Regulations came into effect regarding mobile workers that restricted working hours. For further information on these Regulations visit: [www.dti.gov.uk](http://www.dti.gov.uk).

Under the terms of PUWER (The Provision and Use of Work Equipment Regulations) companies have an additional legal responsibility to make sure the vehicles are safe. Therefore not only under POWER, but the new Act, if a death results from a road traffic accident caused by a defective vehicle you may need to consider whether the company, through one of its controlling officers was responsible for any lack of maintenance of the vehicle concerned.

Even if a corporate manslaughter charge is not applied, then the Health and Safety Executive might still decide to prosecute if they believe any accident is caused partly or wholly by the negligence of the Company.

You can download full guidance on the what is expected of employers in the HSE publication [Driving at Work – Managing Work Related Road Safety](#) .

This publication contains around 100 questions the HSE suggests employers should be asking themselves. A selection of these questions include:

- Do you arrange for drivers to be trained, giving priority to those at highest risk, e.g. those with high annual mileage, poor accident records, or young drivers?
- Do drivers need to know how to carry out routine safety checks such as those on lights, tyres and wheel fixings?
- Are drivers aware of the dangers of fatigue?
- Do drivers know how to use anti-lock brakes (ABS) properly? Have you told staff that they should not drive, or undertake other duties, while taking a course of medicines that might impair their judgement?
- Do you ensure that privately owned vehicles are not used for work purposes unless they are insured for business use and, where the vehicle is over 3 years old, they have a valid MOT certificate?
- Is planned/preventative maintenance carried out in accordance with manufacturers recommendations?
- Have you taken steps to stop employees from driving if they feel sleepy even if this might upset delivery schedules?

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Finally....in what is believed to be the first case of its kind a company was fined £30,000 in June 2006 after one of its workers was killed in a car accident outside of working hours when he drifted into the path of an oncoming articulated lorry.

This incident that took place in October 2002, involved a 21 year old driving a company van when he had worked 11 days without a day off before the crash. His work also involved driving farm machinery. During the 3 days immediately before the accident it was found that he had worked from 6 a.m. until 2 a.m. the following morning. The investigation also found that this young lad was not the only one doing this.

Therefore the company was fined because it had failed to properly monitor the hours its employees were working.

Also the inquest into his death recorded a verdict of accidental death as the coroner felt that he had worked intolerable hours and had probably fallen asleep as he was driving home.

With the new Act now comes unlimited fines and the above fine was before this fine. Also, there was no mention of any personal damages claimed for the young lad's death.

Therefore, you have to seriously think about how from now on you are going to manage this matter if all or part of the above is applicable to your company and its employees.

HR Solutions can provide you with relevant Company vehicle policies and drivers risk assessments, but it is also worth consulting experts in this field.