



# Health and Safety Bulletin

## The effect of GDPR on health and safety

### Articles in this newsletter:

- The effect of GDPR on health and safety
- Violence at work
- Case law update
- Pleading guilty

### Useful contacts:

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Since you must have an e-mail address to receive our bulletin, we are sure you have been inundated recently with e-mails from people who need you to confirm you are happy for them to keep storing your personal data (including us!).

Although this is currently the most obvious effect of the introduction of the General Data Protection Regulations (GDPR), there are also implications for how we collect and manage data for health and safety records. Since GDPR impacts how your organisation handles sensitive personal information, which includes employee phone numbers and home addresses, a number of health and safety records are likely to be affected. This article is an opportunity to highlight a few of them.

*Personal data shall be processed lawfully, fairly and in a transparent manner in relation to individuals* – this means that when information is collected from individuals they must understand how the information will be used and how long it will be kept. This may have implications for many different types of health and safety records such as risk assessments, training records and near miss reports. When workers put their name to these records, is it clear they might be used later in an accident investigation or disciplinary procedure?

*Personal data shall be adequate, relevant and limited to what is necessary* – quite often health and safety related records include information that is not fundamental to the record. For example, many people have visitor signing in books that ask for information about car registrations or mobile telephone numbers – if you have never had occasion to use this personal information, how can you demonstrate it is necessary? Another common example is recording workers names and addresses on accident forms – if you have this information on their personnel files, is it necessary to duplicate it on another piece of paper?

*Personal data shall be accurate and, where necessary, kept up to date* – this could have significant implications for anyone suffering from a long-term health issue requiring them to have a specific risk assessment to ensure the control measures in place are adequate for their condition or a personal emergency evacuation plan (PEEP) in the event of a fire. The regulations do not suggest such documents are illegal, but they must be accurate (and that the version people refer to is the relevant one).

*Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary* – how many of us keep health and safety records (whether or not they refer to an individual) just in case or until we are forced to destroy them because we have run out of archive space? This requirement indicates that organisations should have a register of health and safety records, listing their retention time. System audits should also be carried out to ensure records (both paper-based and electronic) are destroyed in compliance with the policy.

*Personal data shall be processed in a manner that ensures appropriate security of the personal data* – how sure are you that only relevant people can access health and safety records that identify individuals? Access should be controlled to both stored paper and electronic records. If you use e-mail to distribute health and safety information (internally and externally), how confident are you that the information can only be accessed by the people it was meant for?

### Conclusion

GDPR is not just about getting consent for marketing e-mails. Its main objective is to ensure that organisations can demonstrate they are applying the principles that were previously enshrined in the Data Protection Act.

The introduction of GDPR is an opportunity for us to trigger a review of how we are collecting, using, storing and distributing records – so that we can be confident we are using any personal records in the way we would hope others would do for us.

**Recently issued health and safety information:**

- L74 First aid at work The Health and Safety (First-Aid) Regulations 1981. Guidance on Regulation <http://www.hse.gov.uk/pubns/books/l74.htm>
- Ionising Radiations Regulations 2017 Approved Code of Practice and guidance <http://www.hse.gov.uk/pubns/priced/l121.pdf>
- Six Steps to return to work - a free online toolkit for employees & employers to support the return to work process following mental health sickness absence. <https://returntoworkm.h.co.uk/>
- ACAS Managing staff experiencing mental ill health <http://www.acas.org.uk/index.aspx?articleid=6064>

## First aid guidance changes

HSE has recently updated the guidance supporting the The Health and Safety (First-Aid) Regulations. Changes include:-

- The introduction of blended learning as an accepted method of first aid training (e.g. part distance and part face-to-face)
- The addition of Automated External Defibrillators (AEDs) to both the First Aider and Emergency First Aider syllabus
- The addition of haemostatic dressings/tourniquets (used when bleeding is difficult to control by applying pressure) as examples of training employers might identify as required through their first aid

risk assessment

The HSE have also updated their frequently asked questions (FAQs) page to reflect the changes in the guidance.

The new guidance is available at <http://www.hse.gov.uk/pubns/books/l74.htm>.

The FAQs page is at <http://www.hse.gov.uk/firstaid/faqs.htm>



### About Clwyd Associates...

We are a management consultancy, focusing on health and safety, and SAP based in the Midlands.

We employ consultants with at least 15 years practical experience backed up by recognised professional and academic qualifications - ensuring our clients receive first class service.



## Case Law update

*This bulletin focuses on prosecutions for gross negligence manslaughter*

The owner of a construction firm (contracted to demolish Harvey's and Carpetright retail stores) was sentenced to a **six-year prison term** with an additional fine of **£400,000** and **£55,000** court costs after being found guilty of gross negligence manslaughter after a worker was killed and another seriously injured. The director of a second company (subcontracted to disassemble the roof) was also **jailed for eight months**, fined **£90,000** and ordered to pay **£45,000** court costs having been found guilty of the same offence. The building was due to be demolished remotely with construction plant as this posed the least risk to workers. However, between winning the contract and work starting onsite, the company's owner decided the structure should be dismantled piece by piece instead. Within one day, one of the subcontractor's employees fell through the roof sustaining fractures to his spine, pelvis, right leg, heel and wrist - the workers were told to keep demolishing and in the afternoon

another subcontractor employee fell through the roof sustaining fatal head injuries

A lawyer was killed in Hanover Square, London when three large unglazed window frames, together weighing 655kg fell on her - she died at the scene from massive crush injuries. The frames had been delivered the day before the incident, as scheduled, but could not be fitted immediately due to other delays on site. After delivery, they were left on the pavement, leaning against the building and no efforts were made to secure them and or place a barrier around them. It is thought a door in the building blew open in the wind, hitting the frames and causing them to topple - The on-site project manager was convicted of gross negligence manslaughter and was sentenced to **12 months imprisonment** with **£33,000** court costs. The Project Manager was found guilty of an offence under the Health and Safety at Work etc. Act (HASWA) and sentenced to **six months' jail**, suspended for two years with **£33,000** court costs.

A property developer was

sentenced to **30 months in prison** after being convicted of gross negligence manslaughter after a workman he employed was trapped under earth whilst working in a 2.7m deep excavation adjacent to a swimming pool. The property developer had denied all charges arguing that he paid the workman £3,600 to do the work and that he was a "self-employed builder who was responsible for his own safety."

A company director and a site foreman were convicted of gross negligence manslaughter following the death of a carpenter who died one month after falling through a gap in the first floor of a building on which he was working. A Health and Safety Executive inspector had previously raised concerns when he visited the site and issued six improvement and prohibition notices. The company director was given a **nine month prison sentence** with **£35,000** court costs. The site foreman was also given a **nine month prison sentence** but only **£10,000** court costs. The director's company was fined **£120,000** for breaching HASWA.



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