

Memo

To Safety Co-ordinators
From Dr Melanie Taylor, University Safety Advisor
Date 16th March 2005.
Distribution Dr S Robson
Reference Circular 5/2005

Duties under COSHH 1994

At a recent STeam meeting, we discussed a case which interpreted the duties under regulations 6 and 7 of the COSHH Regulations, and which you asked me to obtain further information on. The HSE are happy with the outcome of the civil claims case, as they believe it clarifies the absolute duty to **control** exposure to hazardous substances, ie in regulation 7(1), the phrase "reasonably practicable" qualifies the duty to prevent exposure, **not** the duty to control adequately.

The case is perhaps more helpfully summarized in the latest issue of Croner's case law, which I reproduce below. I hope this helps!

Case Naylor v Volex Group plc (2004) HSB 331, CA

Statute Ref. Control of Substances Hazardous to Health Regulations 1994, Regulations 6,7

Facts N was employed by V to make up wiring harnesses for motor vehicles. After April 1997 this work involved soldering, an operation which was potentially hazardous because soldering gave off fumes containing colophony, a toxic substance. N claimed that exposure to colophony caused her to develop industrial asthma and she claimed compensation on the basis of breach of the employer's duty under regulations 6 and 7 of the 1994 Regulations. At first instance, her claim succeeded. The employers appealed to the Court of Appeal.

Decision

1. The appeal would be dismissed.
2. The purpose of the 1994 Regulations was protection and prevention, imposing positive obligations on employers to seek out risks and to take precautions against them.
3. In respect of regulation 6, which imposes a duty to carry out risk assessments in relation to hazardous substances, the employers had made a risk assessment some time before 1997. This was not in writing. The assessment led the employers to believe that employees were not exposed to a risk from colophony. The assessment was based on HSE standards which were withdrawn in January 1997. The employers also obtained a report by a firm of consultants which noted that there was serious concern about previous testing methods.

4. The employers should have been alerted to the need for a reassessment of risk.
5. Regulation 7 of the 1994 Regulations states, in summary, that every employer shall ensure that the exposure of employees to substances hazardous to health is either prevented or, where this is not reasonably practicable, adequately controlled. It was argued on behalf of the employers that N's exposure to colophony was minimal and that it could not have reasonably anticipated that she would suffer any injury.
6. The Court of Appeal ruled that this was no defence because the duty under regulation 7 was absolute.
7. Where prevention is not reasonably practicable, an employer's duty to control exposure is not qualified by reasonable practicability.
8. The word "adequately" is a purely practical matter depending upon the nature of the substance and the nature and degree of the exposure and nothing else.

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