Britain: Labour government delays directors' liability as work deaths rise

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Despite assurances that the Labour Party is committed to safety at work, more than 50 people each month are killed in work-related accidents in the UK. In fact, the government of Prime Minister Tony Blair's New Labour has the worst record for deaths at work of any government since the Health & Safety Executive (HSE) started compiling figures in 1981.

On average, there have been 662 workplace deaths per year under Blair's government; compared with an average annual rate of 575 since 1981—a 15 percent increase.

The sectors with typically the highest fatal accident rate include manufacturing, construction and service industries, which includes such diverse categories of employment as land transport, travel agencies, hotels and restaurants and defence.

Between April 1, 2002 and September 30, 2002, the last six months that figures are available, service industries deaths accounted for a massive 220 of the total 305 workplace deaths recorded by the HSE. This amounts to 72 percent of the total number of workers and members of the public killed. This figure also includes those killed through suicide and trespassing on railway lines.

Aside from publishing safety guidance, the HSE has also campaigned to bring stiffer penalties against companies and their directors for injuries caused in the workplace. In April 1998, the HSE, the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) jointly published a "Protocol of Liaison on Work Related Deaths". This established the manner in which the police and the HSE should handle investigations involving work-related deaths. It also deals with the coordination of prosecutions by the HSE and the CPS.

When the protocol was first published in April 1998, it represented an important step forward in the investigation of work-related deaths, as it required some form of police investigation in which there would be consideration of the offence of manslaughter. Prior to the protocol's publication, only those deaths referred to the police by the HSE ever gained any form of police investigation.

As a general guide, the police are now supposed to investigate where there is evidence or a suspicion of deliberate intent or gross negligence or recklessness on the part of an individual or company, rather than human error or carelessness. The protocol still only applies to "land-based deaths". It does not apply to deaths at sea in British waters or deaths on board British ships. The Zeebrugge ferry, Piper Alpha and Marchioness disasters were some of the most notorious examples of failed manslaughter prosecutions and the exclusion of deaths at sea from the protocol is a major weakness.

While welcoming more police involvement in cases of fatal injuries in the workplace, David Bergman of the Centre for Corporate Accountability believes that too few police officers have the appropriate training to properly investigate deaths at work. "The police's record on investigating possible manslaughter cases in companies is patchy. In many cases the police simply examine the scene of death but do not think of searching office files or computer records to see if the cause of death had been identified as a serious safety risk in the past and whether the company has since failed to properly address it," he says.

Bergman's views may be borne out by the number of police referrals to the CPS for manslaughter charges. During 2000/2001, the police referred 26 cases of work-related death to the CPS to consider possible manslaughter charges. The CPS has so far started prosecutions for manslaughter in just six of these cases.

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Since April 1992, a total of 162 possible manslaughter cases have been referred to the CPS, although it has only brought prosecutions for manslaughter in 45 cases, ten of which have resulted in convictions. At present, only four companies, seven directors and two business owners have been successfully prosecuted for manslaughter.

The Health and Safety Commission (HSC) is trying to make individual directors more accountable for accidents—fatal or otherwise—in their charge. According to the HSC's "Enforcement Policy" statement of January 2002 companies, their directors, and their managers are to face closer legal scrutiny when they breach safety laws.

The policy requires authorities and their inspectors to consider the role of individual directors and managers and take enforcement action against them where justified. It also requires inspectors to notify an organisation's director each time an improvement or prohibition notice is issued, or prosecution is taken, as well as to publicise the names of all organisations and individuals convicted or issued enforcement notices. The policy also says that inspectors should publicise the decision-making process so that it is clear how the enforcement policy will work in practice.

Most of the content of the HSC's enforcement policy is not new. Back in 1999 Deputy Prime Minister John Prescott launched a consultation called "Revitalising health and safety" to mark the 25th anniversary of the Health and Safety at Work Act 1974. Listed as "Action point 11", the consultation states that "it is intended that the code of practice will stipulate that organisations should appoint an individual director for health and safety."

Unsurprisingly, business lobby groups such as the Institute of Directors and the Confederation of British Industry have come out in force against the government's proposals, arguing that the pursuit of individual directors would lead to "scape-goatism". They favour the status quo of collective corporate responsibility where the company, and not individuals, is accountable and which makes it very difficult to secure a successful prosecution.

So far, big business is winning the argument. Four years on, the government has still not being able to find parliamentary time to put the proposed legislation on the statute books.

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