BALFOUR BEATTY: THE CASE FOR COMPLIANCE

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Government Enforcement Alert

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Large companies will need to reassess the adequacy of their health and safety controls in light of new large scale fines for workplace accidents.

On 6 May 2016 Balfour Beatty Utility Solutions Limited ("**Balfour Beatty**") was fined £2.6 million following the death of a sub-contractor in 2010. Construction companies around the UK should sit up and take notice of the severity of this fine. The fine was the first to be handed down under the new Health and Safety Sentencing Guidelines (the "**Guidelines**"), which came into force on 1 February 2016. It signals the beginning of a new age in corporate sentencing. Please click here for our alert on the Guidelines. The article below will look at the wider impact of the sentencing.

IMPACT ON THE INDUSTRY

Concerns within the industry will be acute. It is difficult to predict how Courts will apply the Guidelines and whether there will be consistency in the approach. For the most serious cases, larger companies with turnovers measured in tens of millions of pounds may face fines ranging from £2million to £10million, or beyond.

COMMENTARY

The scope of the new fines will mean that the boards of directors of companies - of all sizes - should turn their minds to the adequacy of their health and safety programmes and procedures. Companies may need to reassess their controls and determine whether they are suitable for work being performed.

In the event of a serious incident, the extent of these procedures could make £millions of difference to the fine and, in some cases, may protect the company from criminal liability.

To be robust and effective, health and safety programmes should address the following:

- Demonstrating a commitment by the board to health and safety compliance - often this will involve having a health and safety function reporting directly to the board;
- Creating a business-wide risk assessment of the health & safety risks of the company's operations, personalising this to specific risks arising in different business areas;
- Providing regular health and safety training targeted at risks within the business; and
- Supporting a robust whistleblowing policy and/or safety forum, so that genuine grievances raised by the workforce are dealt with appropriately by the company.

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A NEW WORLD …

Companies which have implemented robust and appropriate safety procedures and continue to assess the workability of these controls in the workplace will be better placed to defend allegations that they have breached health and safety law.

Boards should seek advice about whether their company has breached, or is at risk of breaching, health and safety law, taking account of their existing plans, programmes, procedures and controls.

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