

HSE FEE FOR INTERVENTION SCHEME

SUMMARY

The Health & Safety Executive will introduce a Fees for Intervention (FFI) Scheme on 1st October 2012. Under FFI employers that contravene Health and Safety Law will be forced to pay the HSE's enforcement costs at the rate of £124.00 per hour until the breach has been rectified.

This scheme only applies to organisations where health and safety regulation is enforced by the Health & Safety Executive rather by the local authority. It is estimated that in a full year the HSE will recover circa £40 million in such fees.

BACKGROUND

In October 2010 the Department of Work and Pensions announced that following the comprehensive spending review it was cutting the HSE's grant by 35% over 4 years from April 2011. This was roughly equivalent to £80 million. In order to recoup some of this loss, the Government is introducing FFI to recover the costs from businesses who do not comply with Health and Safety Regulation.

THE NEW SCHEME

The new scheme applies to all businesses that are inspected by the Health & Safety Executive. Inspections by other regulators such as local authority Environmental Health Officers will not be affected. The FFI will not apply to businesses that are already paying fees to the HSE for their work through other arrangements such as COMAH charges.

The intention is that the HSE will recover costs of its regulatory work from duty holders who are found to be in 'material breach' of Health and Safety Law. It will only relate to interventions that occur after 1st October 2012. This will be either from a proactive or a reactive visit where the Inspector judges that there has been a material breach of Health and Safety Law which is serious enough for them to notify the duty holder of the contravention in writing.

WHAT IS A MATERIAL BREACH?

A material breach is where an Inspector is "of the opinion that there is or has been a contravention of Health and Safety Law that requires him to issue a notice in writing to that effect", therefore a letter, an Improvement or Prohibition Notice or a prosecution.

Before deciding to notify the duty holder an Inspector must apply the principles of the HSE's Enforcement Policy Statement and its Enforcement Management Model to ensure the decision on the level of enforcement action is proportionate in all the circumstances. Any notification must make it clear which contraventions are considered material breaches.

HOW MUCH WILL IT COST?

The Inspector will record the time they have spent identifying the breach, advising as to putting it right, investigating and taking enforcement action.

This will include all time spent on carrying out visits including all time on the site during which the material breach was identified, the writing of letters, notices, reports, taking statements and getting specialist reports for complex issues. This total amount of time will be multiplied by an hourly rate to give the amount payable. The current rate proposed is £124.00 per hour.

Chargeable time runs from the start of the visit when the material breach is identified until it is corrected. Invoices will be sent on fixed dates every two months to the site visited unless it is a temporary workplace. Payment will be due within 30 days. Non payment will be a civil debt not a criminal penalty.

JURISDICTIONAL LIMITATION

In order for a Fee for Intervention to apply the breach must be either of a Health and Safety at Work Act 1974 or Regulations made under it. If an invoice is received it should be checked carefully to ensure that any exemptions do not apply. Exemptions, for instance, include the Working Time and Consultation with Employees Regulations.

ESTIMATES OF COST

The HSE itself has estimated the cost to duty holders of intervention. It believes that an enforcement letter will result in an invoice for £750.00. An Enforcement Notice will be approximately £1500.00. The fees can only be charged to organisations not to employees.

DISPUTES

There is a dispute procedure in place. If a dispute is raised the enforcement action taken will be reviewed by a senior manager in the HSE. If you are not satisfied with the response then a further Appeal lies to a panel which is comprised of two HSE staff and an independent representative. If this Appeal is unsuccessful you will have to pay the HSE's time spent in dealing with the dispute at the FFI hourly rate. If the dispute is upheld the HSE will refund any invoices or part invoices that have been paid.

CONCLUSION

The new arrangements could result in significant costs for a business. The HSE have been carrying out a number of dry runs which have identified a number of difficulties, especially in having a consistent approach by HSE Inspectors on what amounts to a material breach. In reality, Inspectors will come under pressure to recover costs from non compliant organisations.

ACTIONS TO BE TAKEN

Managers must be made aware of the need to promptly report the circumstances of any visit by the HSE either by way of a routine inspection or as a consequence of an accident or incident. They must keep careful notes of the circumstances of such inspections in order to be able to be in a position to challenge any suggestion that there has been a material breach and to dispute any invoices received. Consideration should be given as to the training of Managers to conduct such inspections and reporting systems should be developed and implemented.

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