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*standing up for you*

Jon Carlisle, head of industrial disease at Thompsons Solicitors, explains the law relating to diesel fumes at work

# The dangers of diesel exhaust fumes in the workplace

**SINCE ITS invention by Rudolph Diesel in 1893, the diesel engine has been seen as the workhorse engine for all manner of applications: powering the delivery vans and lorries that feed our consumer needs; transporting us to work in cars, buses and trains; to being the engine of choice for industrial equipment.**

Now, with our inner-city roads choked with diesel engine cars, lorries, vans and buses, governments around the world are now taking more notice of the potential health risks. Although health concerns of exposure in the open mainly affect the elderly and those with pre-existing illness, what about workers' health?

Workers are exposed to significantly more diesel exhaust fumes on a daily basis often indoors or in the confines of the cab of a vehicle. With our government hell bent on cutting so-called red tape, for how much longer can the health risks simply be ignored in favour of profit and productivity?

## Health risks

It has been recognised that many occupations potentially involve exposure to

diesel engine exhaust emissions (DEEs). From the more obvious ones – like professional drivers (of heavy goods vehicles, buses and trams) and bus depot workers – to miners and warehouse workers exposed to the emissions by diesel powered fork lift trucks loading and unloading, and even fire fighters, where on-call fire engines may be kept running while in the station.

But DEEs can cause a range of health problems including breathing difficulties. The International Agency for Research on Cancer (IARC) has classified diesel engine exhaust as a “definite” carcinogen in humans.

The fumes comprise a combination of particles, chemical molecules and gases, some of which are absorbed into soot particles and are hazardous and potentially carcinogenic. The particulates are easily inhaled into the respiratory tract. Exposure to high levels of white smoke, such as in garages when buses are started from cold in the morning, cause upper respiratory tract irritation and prolonged exposure to blue or black smoke can lead to coughing and breathlessness.

A particular impact has been noted on lung cancer and bladder cancer. Research has found a 40% increase in mortality →

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*Workers are exposed to significantly more diesel exhaust fumes on a daily basis*”

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➔ risk in bus drivers for lung cancer and a 29% increase in risk of bladder cancer, with one study finding a 60% increase in risk for those who had driven buses for 10 years or more.

For lorry/HGV drivers, the research found an increased risk of 50-60% of lung cancer for both short and long-haul drivers with service of 18 years or more.

**The law**

Exposure to diesel emissions is covered by a number of regulations, including The Control of Substances Hazardous to Health Regulations 2002 (COSHH). An employer is required to carry out a suitable and sufficient assessment of the risks to health that arise from exposure to hazardous substances under COSHH. Regulations require a risk assessment to identify the potential level of exposure and measures of control that need to be applied, and require an employer, when it has been identified that exposure cannot be

“Regulations require a risk assessment to identify the potential level of exposure and measures of control that need to be applied”

avoided, to investigate and implement controls to reduce the exposure in the workplace.

This can include changing the method of work, modifying the layout of the workplace, modifying the working practices to eliminate exhaust emissions inside the workplace and, where practicable, substituting diesel with a safer fuel, battery powered vehicles or alternative technology.

**Workplace exposure limits (WELs)**

Currently no WEL has been set for diesel emissions themselves, however a number of the component gaseous elements of diesel exhaust have WELs. The particulate material has no WEL but does trigger the application of regulations on the limits for inhalable and respirable dust.

**Health and Safety measures**

There are many steps that can be taken to reduce exposure. Often these are simple. They can include keeping warehouse doors open to circulate the air, installing roof and wall mounted extraction, ensuring regular servicing of engines and trucks – keeping engines running only when required – and separating workshops from the cause of the fumes and providing those with their own separate ventilation system.

The COSHH Regulations also require that employers investigate whether the exposure can be prevented. This can be achieved in some cases by simply replacing diesel operated vehicles with other transportation methods and/or electrically powered vehicles or siting generators down wind of the workforce or outside tunnel entrances.

Safety representatives should be proactive in pressing employers to undertake a risk assessment and look at ways to reduce exposure and the number of individuals exposed. Occupational health checks should also be undertaken on a regular basis to identify those at greater risk due to any pre-existing health problems and to monitor the ongoing health of all employees likely to be exposed.



**Matthew Tollitt**, senior serious injuries solicitor at Thompsons Solicitors looks at the regulations governing construction sites and the way civil law can be used to overcome restrictions imposed in 2013

# Health and safety in the construction sector

**THE CONSTRUCTION industry is a major employer in this country but is also one of the most dangerous, with a fatality rate six times the national average. In 2015, there were 65,000 work-related injuries and 67,000 work related illnesses.**

**Enforcement gap**

The industry has been subject to statutory regulation since 1961 but enforcement of the regulation depends on the right resources being made available. The evidence is that this is not happening; according to a TUC survey of health and

safety reps published in September 2016, more than 80% of construction workplaces have never had a health and safety inspection. This is against a background of government funding of the Health and Safety Executive (HSE) being slashed by nearly half by 2019/20.

The government has also restricted the ability of workers to claim compensation if they are injured or made ill at work following employer negligence.

Construction sites where there is a well organised trade union are the safest. However, there has been a long history of employers who attack workers who raise ➔



➔ health and safety issues and many have been subject to intimidation and blacklisting. Thompsons Solicitors represented over 250 Unite the union members in high court litigation relating to the use of blacklists by the UK's largest construction companies, such as Sir Robert McAlpine Ltd and Balfour Beatty Engineering Services, and secured over £10m in compensation.

#### What the regulations require

The Construction (Design and Management) Regulations 2015 (the 'CDM Regs') came into force to replace regulations from 2007, which in turn

replaced 1996 regulations. Under part 4, the CDM Regs impose a range of duties on employers, including: the duty to provide a safe place of work; good order and site security; stability of structures, and safe traffic routes. There are also specific provisions for the most hazardous areas of work such as demolition and excavation.

Due to changes made by the coalition government, which came into force on 1 October 2013, breaches of these provisions do not now automatically result in civil liability to compensate anyone injured as a result. But, in practice, a good personal injury lawyer should be able to demonstrate

how such a breach results in negligence in common law, and will establish a claim provided a defendant can be identified.

#### Making a claim

Identifying a defendant is not usually a problem, because the employer of an injured construction worker has a "non-delegable" duty of care. However, difficulties can arise from the longstanding practice of sub-contracting and the often complex nature of contractual relationships that result.

This means that those on a construction site may technically be self-employed or

may not be working in environments solely controlled by their own employers. This can mean parties against whom claims are made often seek to avoid their responsibilities.

A claim against an employer or contractor inevitably results in an element of 'passing the buck' between employer, contractor and sub-contractors. A 'self-employed' worker, nominally the person in control of his own work, can therefore find himself being blamed for his own misfortune.

#### Construction accidents

It is not unusual for actions arising from construction accidents to feature more than one defendant. However, a good lawyer will identify the correct defendant and minimise delaying tactics on the part of their insurers or lawyers.

In most construction cases, counter-allegations that the injured persons themselves were to blame, either wholly or in part, will be made. In cases where this is clear-cut a compromise is inevitable, but where there is an unsafe system of work a judge should be reluctant to take this into account when awarding compensation, at least to any large degree.

Levels of compensation will vary depending on the severity of injury involved. Because of the especially hazardous nature of construction work – particularly with the risks of falling from heights – injuries are more likely to be severe. Sadly, many cases result in life changing or catastrophic debilitation.

Fortunately, injured workers who pursue claims through their unions can rest assured that their cases will be handled by the most competent personal injury lawyers who will recover maximum compensation with minimum fuss. Importantly, unlike many high street lawyers, union members also receive 100% of their compensation with no deduction being taken by their lawyer in fees.

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Jon Carlisle, head of industrial diseases at Thompsons Solicitors, considers the risks of sleeping by day and working by night

# Working on the night shift

**WAS IT just me or did every child playing football in the street in the summer holidays get told to “move on” by Nora Pendleton (or your own version of Nora) because her husband Dave ‘Pop’ Pendleton was trying to sleep in the middle of the day?**

Pop was the, generally fun, father of one of my fellow street footballers and best friend, but he was completely different, and

not particularly pleasant, when trying to sleep during the day – how dare he spoil our summer holiday football game!

To the young me, Pop’s nightshift was an alien and unnatural concept with the only side effect being the inconvenience of being chased off our football pitch. Now, years later,

there is a significant body of medical evidence that shows the serious health effects of night shift working.

Recent research has found that shift work has been associated with an increased risk of heart attack and coronary problems, as well as increased incidence of type 2 diabetes.

Health and Safety Executive (HSE) guidance recognises that long-term exposure to shift work can be linked to gastrointestinal problems, cardiovascular problems, an increase in susceptibility to minor illness and a potential risk to reproduction in female shift workers.

“*There is a significant body of medical evidence that shows the serious health effects of night shift working*”

## Circadian rhythms

This is the term used for the internal body clock. This clock is running in the background of the brain and cycles between sleepiness and alertness at regular intervals. For most, it involves a big energy dip in the middle of the night and tends to naturally coincide with the cycle of daytime and night time.

The fact is we are not nocturnal creatures and it is this that makes it so hard for night shift workers to sleep during the day and stay awake at night. When our lifestyle is out of step with our natural body clock, we can experience changes in mood, mental awareness, hunger and heart function meaning that shift work can take a toll on our mental and physical health.

The risks to health have been known for some time, with the European Commission publishing a proposal for a directive in 1990 that noted a higher incidence of various health problems in night shift workers.

This proposal eventually became the Working Time Directive and was implemented in 1998 as the Working Time Regulations, where it is specified that an employer shall take all reasonable steps to protect health and safety of workers and to undertake regular health assessments of night workers.

## The employer’s duty

An employer has a legal duty of care to their employees to take active steps to



safeguard their health and safety. This duty requires employers to keep abreast of developing research about the risks of the practices and to take positive action for the safety of workers in the light of what the employer knows or ought to have known. The duty increases where the employer knows that an employee may be particularly vulnerable to a particular type of illness.

The employer has a duty to undertake a

risk assessment of any risk associated with shift work.

An employer who has regularly breached the Working Time Regulations protection for night shift workers, or required employees to work permanent nights and failed to provide regular health checks, will find it difficult to prove that they were not in breach of their duty to their employee.

An employer should seek to establish who may be potentially more at risk →

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*The implications of potential night shift health issues are significant, both for the employee who suffers ill health and, if they can be shown to have failed to comply with the Working Time*

*Regulations, the employer*”



➔ from shift work with certain groups such as: younger or older workers, new and expectant mothers and workers with pre-existing health problems particularly coronary heart disease.

This does not mean that some of these groups should not work night shifts, but that their risk should be managed – through regular health surveillance to help identify those at risk, and by educating the

workforce about the health risks of shift work, the importance of maintaining a good diet and identifying health issues early – aided by the right of employees under the Working Time Regulations to receive free night shift health assessments.

The implications of potential night shift health issues are significant, both for the employee who suffers ill health and, if they can be shown to have failed to comply with

the Working Time Regulations, the employer.

Proving a material cause of the condition suffered can be difficult, particularly when many of the conditions associated with night shift working are common across the whole population.

However, the evidence is out there and employers should now be looking to rigorously assess the level of night work

being asked of their employees and the extent to which it can be minimised, along with ensuring that regular health checks are carried out.

With proactive health and safety at work and proper assessment of shifts and shift workers, maybe the ‘Pop’ Pendletons of today will be able to sleep better and those long summer days of street football can proceed uninterrupted.

The government is trying to take away your right to free or affordable legal representation if you're injured at work or anywhere else.

Why? They're prioritising  
**#FeedingFatCats**



If government plans go ahead, hundreds of thousands of people will lose their right to free legal representation. Meanwhile it will cost the NHS and the government at least £150 million of your taxes **every year** and fat cat insurers will be rewarded with multimillion pound profits.

Visit [www.feedingfatcats.co.uk](http://www.feedingfatcats.co.uk) to take action and stop the government #FeedingFatCats.

#FeedingFatCats is a campaign run by Thompsons Solicitors. Thompsons is proud to stand up to the #feedandmedevast



Health and Safety News aims to give news and views on developments in health and safety issues and law as they affect trade unions and their members. This publication is not intended as legal advice on particular cases.

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Contributors to this edition: Jon Carlisle,  
Matthew Tollitt  
Design & production: [www.rexclusive.co.uk](http://www.rexclusive.co.uk)