

Michael Appleby discusses recent legislative and other developments in the area of work-related driving and occupational road risk.

## Get into gear on road risk

### OCCUPATIONAL DRIVING

It is estimated that up to a third of all road traffic accidents in Great Britain involve someone who is driving for work. During 2004 there were 3221 deaths on UK roads. Of these, it is thought between 800 and 1000 involved people who were driving in the course of their work. This makes occupational road risk (ORR) one of the biggest safety issues for businesses, but it is also one of the least considered.

ORR is fast rising up the safety agenda. On 12 October 2005 Transport Minister Stephen Ladyman addressed a Fleet Congress meeting concerning road safety and corporate social responsibility. He pointed out that the number of work-related road deaths was too high and that government was looking to companies to be more proactive about improving road safety. He said: “[A]ny company that claims to look after its employees must look after them when they can be at their most vulnerable – when they’re travelling, when they’re out and about.

With a widening remit in the future, it will become even more essential for fleet managers to manage work-related road safety for all your employees. This will mean running well-maintained vehicle fleets, driven responsibly by employees who reach their destination on time, and in the right frame of mind to do business.”

In September 2003, the HSE, in collaboration with the Department for Transport, published guidance for employers entitled *Driving at work: Managing work-related road safety* ([www.hse.gov.uk/pubns/indg382.pdf](http://www.hse.gov.uk/pubns/indg382.pdf)). The guidance applies to “any employer, manager or supervisor with staff who drive, or ride a motorcycle or bicycle at work, and in particular those with responsibility for fleet management.”

It states that some “employers believe, incorrectly, that provided that they comply with certain road traffic law requirements, e.g. company vehicles have a valid MOT certificate, and that drivers hold a



Illustration by Arthur Phillips

valid licence, this is enough to ensure the safety of their employees, and others, when they are on the road”.

The guidance makes it clear that there are three elements to managing ORR:

- the driver (e.g. competency to drive, and health);
- the activity/journey (e.g. routes and scheduling); and
- the vehicle (not only ensuring that it is roadworthy but also whether the vehicle provided is suitable for the job).

There is no specific law that applies to the management of ORR, but it is nevertheless a health and safety risk that has to be assessed and managed just like any other. The applicable law is sections 2 and 3 of the Health and Safety at Work, etc. Act 1974, the Management of Health and Safety at Work Regulations 1999, and the Provision and Use of Work Equipment Regulations 1998 (whether the vehicle is owned by the company or the employee).

A common fallacy among employers is that if an employee uses their own vehicle on company business (often where employees have been given a cash option to opt out of a company car scheme) then

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the risk passes to the employee. This is not the case. If the employee is driving on company business, this is part of the company’s undertaking for the purposes of health and safety legislation and so the risk cannot be delegated.

Although there are clear health and safety responsibilities in respect of ORR it is unlikely that the HSE will initiate investigations. These are more likely to occur where there is a road traffic death and the Police become involved.

In January 2006 the police’s *Road Death Investigation Manual* was updated. This says that a road death will be investigated as a work-related death if there are failures in safety management by the employer that have significantly contributed to the incident. The manual divides ORR into the same three categories set out in the HSE guidance.

To date, most criminal prosecutions have concerned haulage firms, where drivers have been working excessively long hours. However, given the new investigation manual, companies can expect a wider variety of fatal road traffic accidents to be investigated by the police as being work-related. ■