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Safety representatives: know your rights

Union safety representatives have long been recognised in the workplace. Tony Lawton explains their role and rights

TRADE UNION safety reps received statutory recognition by the Safety Representatives and Safety Committees Regulations 1977, otherwise known as the SRSC Regs or "Brown Book".

Safety reps are elected by union members in the workplace and the employer is notified of the appointment in writing. The Regulations and Code of Practice provide a unique statutory framework for safety representatives to function within at a unionised workplace.

Safety representative functions

- carry out inspections in the workplace
- investigate potential hazards and dangerous incidents at the workplace and examine the causes of accidents
- investigate concerns and complaints by represented employees about their health, safety or welfare
- discuss individual complaints and general health and safety issues and concerns with the employer
- represent employees in consultations with HSE inspectors and receive information from inspectors
- attend meetings of safety committees.

Employer duties

Under Regulation 4A, employers have to consult safety representatives on the introduction of any measure in the workplace that may substantially affect the health and safety of employees. These include

- the appointment of employees with health and safety responsibilities
- the information they must give employees on risks to health and safety and preventative measures
- planning and organisation of health and safety training
- the health and safety consequences of the introduction of new technology.

The right to inspect the workplace

Regulation 5 gives safety representatives an entitlement to inspect the workplace, or a part of it, provided the employer has been given reasonable notice in writing of their intention to do so and the representative has not inspected it or that specific part of it in the previous three months.

They may carry out more frequent inspections by agreement with the employer who must provide the facilities and assistance that the safety representatives may reasonably require, though the employer is entitled to be present at the workplace during the inspection.

Inspections after accidents

Under Regulation 6, where there has been a notifiable accident or dangerous incident at a workplace, and provided it is safe for an inspection to be carried out, safety reps may inspect the relevant part of the workplace. They need to notify the employer, so long as it is reasonably practicable to do so.

The employer, in turn, is required to provide facilities and assistance as may reasonably be needed. The test of reasonable is what the safety representative needs, rather that what the employer can provide.

Obtaining documents

Safety representatives often do not appreciate their powers under Regulation 7 to inspect documents at work. The employer has, on reasonable notice, to make relevant documents that are required to be kept under the Health and Safety at Work Act 1974 available and allow safety reps to take copies.

There are of course exceptions:

- information the disclosure of which would be against the interest of national security
- information that cannot be disclosed without contravening a prohibition imposed by statute
- any information relating specifically to an individual, unless the individual consents
- any information the disclosure of which would by reason other than its effect on health, safety and welfare, cause substantial injury to the employers' business
- any information obtained by the employer for the purpose of bringing, prosecuting or defending any legal proceedings.

So the safety representative should be able to see copies of accident reports (provided that the injured employee agrees), copies of pre and post accident risk assessments and documents relating to complaints or previous problems about the workplace/work equipment.

Formation of safety committees

Regulation 9 requires an employer to establish a safety committee if requested to do so by at least two safety representatives in writing.

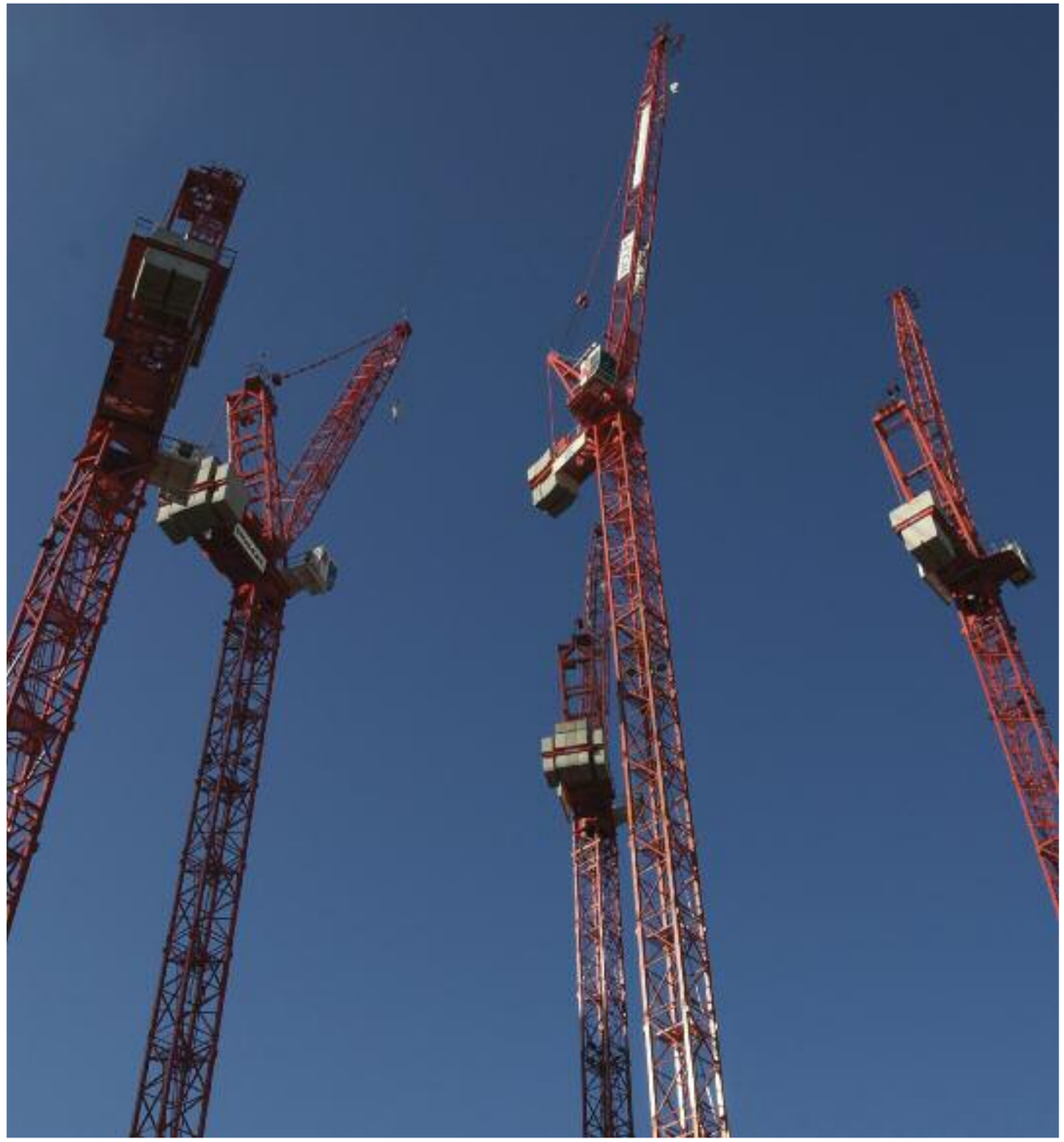
The employer has a duty to consult with the safety representatives who made the request and with the representatives of the recognised trade unions in the workplaces where the proposed committee will function.

The committee should be established no later than three months after the initial request and the employer is required to post a notice in the workplace stating the committee's composition.

Right to time off

Along with the duty to consult with and provide safety reps with reasonable facilities and assistance, an employer has a duty to give a union safety representative paid time off to carry out their duties, including to undergo training.

An elected safety rep who is denied paid time off to carry out their duties may have an employment tribunal claim, provided that they lodge it within three months of the employer's failure to grant the request.



Risk assessments

While it is the employer's responsibility to carry out risk assessments, the safety representative can play an important part in ensuring that this is done properly by using the rights under the Regulations as set out above.

It is very important that safety representatives use these rights to check the employer's risk assessments and plans for risk prevention. There is no doubt that the safest workplaces are those where there are well organised and active safety representatives using their rights under the Regulations.

Helping members who have been injured at work

Safety representatives have a vital role not only in the prevention of injury but also in helping members to win a compensation claim for injury and to work in partnership with the union's solicitors to help them through the process.

By using their rights under the Regulations they are able to obtain information and documents that would not be available to either the injured employee or their solicitor. A strong union safety representative can often make the difference between a successful claim and an unsuccessful one.

A risk too far

Henrietta Phillips explains the Appeal Court ruling that risk assessments must be proactive

THE LAW says that employers must be proactive and carry out risk assessments to identify any hazards that might exist in the workplace and evaluate the extent of the risks involved.

But, as any trade union health and safety rep knows, they all too often wait until a risk is brought to their attention, or worse, until someone is injured, before doing something about it.

Thompsons won a claim in the Court of Appeal (CA) on behalf of an RMT member which could prove a template to argue difficult claims for those injured at work due to wrongly timed risk assessments.

In **Allison -v- London Underground [2008] EWCA Civ 71**, the CA ruled that it is wrong for employers to carry out risk assessments after a hazard is brought to their attention. Bosses have a duty to assess risks to their workers regardless of whether any potential hazard has been brought to their attention, the court said.

Dead man's handle

The case involved a London Underground driver who developed a painful condition called tenosynovitis in her right wrist as a result of using the traction brake controller (TBC), or dead man's handle, on Jubilee line trains. She can no longer drive trains as a result.

LUL knew there was a risk of work-related upper limb disorders (WRULDs) from using TBCs. When designing the Jubilee Line trains it consulted with some experienced drivers and experts, including at least one ergonomist.

The main focus of the consultation was the position of the armrest and the adjustability of the driver's seat, although there was also discussion about the operation of the TBC itself, in particular whether it should be capable of operation in both a clockwise and anticlockwise direction, or whether it should only operate clockwise.

At the suggestion of two of the drivers consulted on the design, the end of the handle, which is toward the driver when the handle is at rest, is "chamfered" or "bevelled". This, it was suggested by two drivers, would be more comfortable for a driver when grasping the handle.

Unlike during other aspects of the redesign consultation process, LUL managers accepted this advice without consulting the ergonomists.

The problem for the driver whose claim was considered by the CA was that, due to the small size of her hands, she found it comfortable to rest her thumb against the chamfered end. Indeed she thought this was what the design feature was for. Other drivers had been doing the same thing from time to time.

No special instructions were given to drivers on how the thumb was to be positioned in relation to the chamfered end while the handle was under pressure, although drivers were trained to keep their wrists straight to avoid developing tenosynovitis.

After it became clear that it was the position of the thumb that caused this employee's condition, LUL introduced a new element into the training of drivers, advising them of the need to keep their thumbs tucked under the handle and not to let them rest on the chamfered end.

> Judges have tended to drift back to the position before 1992, where a risk had to be brought to an employer's attention before an assessment is carried out

Training not inadequate

The first court to consider the case said that the test of adequacy of training should depend on the employer's past experience of problems and the information the employer received about a particular employee to be trained.

That court noted that the claimant had not reported problems or symptoms with the handle before injury. The court said this fact, and that the employer could not have reasonably foreseen the injury, meant the training she received was not inadequate.

But the Court of Appeal's three judges did not agree that the training provided had been adequate, given what LUL should have known about the risks arising from, what the court called "the activities of the business".

In other words, LUL should have known a new or redesigned piece of equipment needed to be risk assessed and would require employees to be properly trained in its safe use. It was not enough to provide the training after the risks were known.

The legal ruling is important because it is about much more than the failure to train drivers in the correct use of the redesigned handle. It confirms that the law requires all employers to proactively carry out risk assessments and not wait to be asked.

Insufficient attention

The CA said that, in general, when compensation claims have been brought by people who have been injured at work and the issue of whether the employer was in breach of its duty of care to the employee, court judges have given insufficient attention to risk assessments.

The proactive duty on employers to carry them out became law in 1992. Yet judges have tended to drift back to the position before then, where a risk had to be brought to an employer's attention before an assessment was carried out.

The court said: "Risk assessments are meant to be an exercise by which the employer examines and evaluates all the risks entailed in his operations and takes steps to remove or minimise those risks. They should be a blueprint for action."

Comment

This decision confirms that the test for the adequacy of training for the purposes of health and safety is what training was needed in the light of what the employer ought to have known about the risks arising from the activities of his business.

It also confirms that the statutory duty imposes on the employer a duty to investigate the risks inherent in his operations taking professional advice where necessary.

The onus on an employer is higher where there exists a statutory duty. Employers must take positive steps to keep abreast of developments in their line of business. That duty is taken further by this ruling, which links inadequate training with risk assessment.

This is very good news for employees and for union safety reps. It's important to scrutinise every word in a regulation and to use this court ruling to make employers stick to the letter of the law when it comes to protecting the health and safety of their workers.

A link to the case is: www.bailii.org/ew/cases/EWCA/Civ/2008/71.html

Injured abroad

More and more people are travelling abroad for holidays and work. But claiming compensation for accidents abroad can be complex. Martyn Gwyther of Thompsons' specialist overseas accidents unit looks at some of the cases that have brought confusion or clarity to claiming for injuries suffered in a foreign jurisdiction

WHEN AN accident happens abroad, the issue of liability – who is at fault – often has to be assessed in accordance with the law of the country in which it happened. Such laws can be complex and less favourable to injured people than UK laws.

Time limits for lodging claims can be much shorter than in the UK and, crucially, some countries prevent injured people from bringing a claim for damages if they have not reported their injuries in detail or sought medical attention in that country within a strict time limit, which can be as little as five days.

Whether or not a case has to be pursued under the foreign law, union members should still go to their union legal service so that the union's lawyers can assess the prospects of success under the foreign law. They may work with foreign personal injury lawyers and health and safety experts to do this.

RTAs in the EU

Alternatively, many claims can be pursued in England without the involvement of foreign lawyers. This can include road traffic accidents that happen within the European Community.

The 4th and 5th motor directives give the right to a victim of an RTA within the EU to pursue a claim against the insurer of the person who was responsible for causing the accident (provided that they are from another EU state), in the country in which they live. This was confirmed by the case of **Odenbeit**. In fact, insurers have a legal obligation to appoint a claims handler in England and Wales to deal with this type of claim and it is often possible to resolve such claims without the need to commence legal proceedings.

Another possibility is where the accident happened abroad but the parties to the action all live in, or work in England and Wales. In this type of case, the Private International Law (Miscellaneous Provisions) Act 1995 stipulates that the law that will apply to the claim is the law of the country in which the accident occurred, but that this general rule can be displaced if it is substantially more appropriate to do so.

An example is found in the decision of the House of Lords in 2006 in the case of **Harding -v- Wealands** where a claimant, who was injured in a road traffic accident that occurred in Australia, established that the limits to compensation imposed in New South Wales did not apply and that the calculation of damages should be handled in accordance with English law, not least because both the claimant and the driver of the car in which he was injured lived in the UK.

Claims from accidents that occurred in a foreign country can also be pursued in England and Wales when people travel on a package holiday, booked through a tour operator in England or Wales.

The definition of a package holiday was dealt with in the case of **Association of British Travel Agents -v- Civil Aviation Authority**. Although much of the case was irrelevant to personal injury proceedings, it discussed what constituted a package holiday under the Package Travel, Package Holiday and Package Tours Regulations 1992.

What is a package holiday?

The definition of a package holiday is important because a claim can only be brought against a tour operator in England and Wales if the component part of the holiday during which someone was injured forms part of a pre-arranged package that was sold by the tour operator.

The judgment focused on the part of the Package Travel Regulations that refers to aspects of a holiday being sold at an "inclusive price". It concluded that a package holiday is only a package where there is some degree of interrelation between the price of the component parts of the holiday.

In other words, if an element of the holiday is capable of being sold separately and independently of the other elements, and at the same price, then it is not likely to be a package and the claim may have to be pursued abroad. The legal debate around this ruling continues and test cases are anticipated.

Where a claim can be pursued against a tour operator in England and Wales, the case of **Hone -v- Going Places Leisure Travel Ltd** confirms that there is no strict liability on the tour operator under regulation 15 of the Package Travel Regulations. Instead, it is for the injured person to prove that the tour operator or agent has breached a duty of care that they owed to that person. In other words, it is still down to the claimant to establish that the tour operator was to blame for the accident.

The package holiday regulations impose a requirement on the tour operator to investigate the safety of a hotel only against local safety regulations. In **Codd -v- Thomson Holidays**, a child was injured trying to close the door of a stuck lift at a Spanish hotel. The hotel had a system of maintenance that it said was in accordance with Spanish legal requirements.

The claimant's case was that the hotel should, in accordance with English law, have put a notice on the faulty lift warning residents not to use it. This was rejected. The Court of Appeal said that while English law applied in establishing whether there had been negligence by the Spanish hotel, there was no requirement for the hotel to comply with English safety regulations.

Similarly, in **Wilson -v- Best Travel**, the court ruled that glass patio doors, through which a British holidaymaker fell while on holiday in Greece, complied with Greek safety standards and so there was no breach of duty. English law would have required that the glass doors be made of re-enforced safety glass.

Laws and cases aside, the fact remains that every accident is different and, just as in any accident claim, in order for a holiday claim to succeed, it is necessary to prove that somebody else was to blame and that injuries sustained were as a direct result of their actions.

Allergic to latex

Latex allergies are a lot more than just a rash caused by gloves. For many victims allergies have had life changing, and in some cases, life threatening consequences. Helen Tomlin explains the type of latex allergies that exist and the responsibilities that employers have to sufferers

TANYA DODD lives in constant fear of coming into contact with latex. The life and career of the former trainee nurse at Scarborough General Hospital was blighted after developing type 1 latex allergy from gloves worn routinely as part of her job.

Any contact with latex could send her into potentially fatal anaphylactic shock. Tanya has to live in a latex free environment, which has included replacing everyday items such as hairbrushes, pens, mobile phones and shoes with latex-free alternatives. She has also been forced to change her diet to eliminate foods that have similar proteins to latex, such as melon and grapes.

Thompsons, instructed by UNISON, secured a six figure compensation settlement for Tanya. But no amount of compensation can make up for the loss of her career and the devastating impact that the allergy has had on her life.

Tanya was in the middle of her nursing training when her symptoms developed. The hospital had not mentioned the dangers of latex to her and she was never advised to minimise her exposure to it.

The only type of glove available on the wards was latex based and Tanya was told that if she was caught using latex-free gloves without special authorisation from occupational health and the ward sister, she could face disciplinary action.

Dugmore

Yet the dangers of developing latex allergy are well documented. It is hard to believe that health sector employers have not taken heed of the widely publicised case of Alison Dugmore, whose eight-year battle for compensation resulted in the groundbreaking legal decision holding employers strictly liable for ensuring that employees are protected from harmful substances such as latex.

This meant that employers could no longer argue that they didn't know a substance was harmful.

In **Dugmore**, the employers argued that Mrs Dugmore's latex allergy had developed before they could have reasonably been expected to be aware of it. However, on appeal, the court held that this was no defence.

Under the COSHH Regulations 2002, Dugmore established that regulation 7(1) imposes an absolute duty that employers shall either prevent or control exposure of employees to harmful substances. Therefore, an employers' duty to prevent or control exposure is not confined to foreseeable risks, nor is it dependent upon the results of a risk assessment. The duty is absolute, non-delegable and strict.

There is no way of predicting who is likely to develop a latex allergy, or what type of the three reactions they will suffer. The least serious, irritant contact dermatitis, manifests itself as an itchy skin rash, located in the area that has been in contact with the latex product.

The second is Type IV latex allergy, which is an allergy to the chemicals used in the NRL products and results in a red scaly area on the skin of the affected person. This typically occurs within six to 48 hours of exposure.

And the most serious Type 1 latex allergy sees the sufferer develop urticaria, asthma, hayfever-type symptoms, incessant itching and in some cases anaphylaxis.

There is no cure and the more an allergic person is exposed to latex, the more serious the reaction becomes.

Risk assessments

The risk assessment is the most useful tool in identifying areas where staff are at risk of developing latex allergy.

As no one knows who will develop allergic reactions to latex, all staff must be protected through a risk assessment. The risk assessment should look at work done and risk of infection. Where there is a risk of infection, latex gloves may be provided. But employers can also use the risk assessment to look at eliminating the risk from unnecessary exposure to latex, substituting other materials where feasible, such as vinyl or nitrile gloves, and generally limiting exposure to latex.

The risk assessment should simply ask "do we need to use latex-based products to complete this task, or is there an alternative?" It should be recorded and staff given appropriate training and health information based on its findings to enable them to protect themselves.

The employer also has a duty to positively monitor employees' health. Staff must undergo regular health surveillance to monitor for asthma or dermatitis reactions.

This includes an assessment of previous medical history for respiratory or skin problems before they start a job where there is a risk of latex exposure, yearly checks on all staff's respiratory and skin conditions and a written record made of the findings.

For staff known to be particularly at risk of developing a reaction to latex, such as those with asthma, these checks should be more frequent.

Where a positive result is identified from the health checks, or a person is suspected of having contracted latex allergy, they should report the matter immediately to the identified person within their employer, who should then refer the person for testing and diagnosis through the occupational health department.

Steps should then be taken to assist the person in avoiding further exposure to latex by providing latex-free equipment and a latex-free environment.

> There is no way of predicting who is likely to develop a latex allergy

No protection from harassment

A Court of Appeal decision in a bullying claim taken under the Protection from Harassment Act has made stress at work claims even more difficult to successfully pursue writes Keith Patten

WHEREAS THE 2006 case of **Majrowski -v- Guy's and St Thomas' NHS Trust** confirmed that employers can be vicariously liable for harassment of an employee by another, the case of **Conn -v- City of Sunderland** indicates that only cases where that harassment involved unacceptable and probably criminal behaviour on two or more occasions can succeed.

Billy Conn had worked as a paver as part of the same team all his working life. He alleged he had been subjected to bullying behaviour by his supervisor on five separate occasions. These involved shouting and swearing at Mr Conn and other workers.

The last incident included a threat of violence, after which Mr Conn went off work and never returned. He effectively suffered a breakdown.

Thompsons, instructed by Mr Conn's union the GMB, made a claim in what is known as common law negligence, alleging that the breakdown was a reasonably foreseeable consequence of the supervisor's conduct, and also under the Protection from Harassment Act alleging that the five incidents amounted to unlawful harassment.

The claim was partially successful at the first court hearing. The judge found that two of the five alleged incidents were serious enough to make the risk of injury reasonably foreseeable. Therefore the employer was negligent.

The first of these incidents involved aggression by the supervisor against Mr Conn and two colleagues. The supervisor had asked them to shop workmates who had been leaving early. When they declined, he became aggressive and threatened to "punch out the cabin windows".

This was an odd threat, apparently directed against the employer's property rather than an individual. However, it was made in the context of his loss of temper and therefore was an act of aggression against the employees.

The second incident, the judge accepted, involved further aggression by the supervisor against Mr Conn. The altercation culminated in the supervisor threatening to give the claimant "a good hiding".

The judge also found the two incidents amounted to harassment under the Protection from Harassment Act and that they had caused the claimant temporary anxiety, for which he awarded £2,000.

The defendants appealed.

The Court of Appeal

When the case came before the Court of Appeal (CA) in 2007 it was clear that the judges considered it to be a trivial matter that should not result in compensation.

If the incident involving the threat of violence to the property was not found to be harassment, the whole case would fall.

Stress was laid on remarks made in passing by one of the Law Lords in the Majrowski decision as to the kind of conduct that would qualify as harassment under the Act in workplace cases.

This was that the conduct must go beyond that which is "unreasonable and unattractive" to be "oppressive and unacceptable". Such conduct would need to be serious enough to give rise to criminal liability under the Act.

One of the three CA judges was clear that the incident involving the threat to punch out the cabin windows did not cross that boundary. He did not consider it was even close to doing so, though he did concede that the incident would have been unpleasant for Mr Conn.

This judge said that, because it involved a threat to property, not to an individual, and was directed at Mr Conn and two workmates rather than specifically at Mr Conn, it was not conduct likely to attract criminal proceedings and could not, therefore, attract civil sanction under the Protection from Harassment Act.

Even the second incident that the original judge had found for, which did involve a threat of violence against Mr Conn, was "not free from doubt" as to whether it had crossed the line.

> What is the world coming to if such incidents are taken as giving rise to liability in damages?

Comment

What is criminal under the Act is the course of conduct. There is no requirement that each individual incident is intrinsically criminal and indeed it often will not be. In fact it is because the conduct, which amounts to harassment, was often not intrinsically criminal that the Act was passed in the first place.

Focusing on the criminality of the individual actions cannot, therefore, be the correct approach. In any case, the threat to commit criminal damage is intrinsically criminal.

The distinction between criminal damage and a threat to the person seems artificial - what needs to be looked at is the overall conduct in context, and that was a supervisor who had clearly lost control of his temper.

Why that was not "oppressive and unacceptable" is not clear.

Secondly, the fact that there were two other workmates present cannot be conclusive of whether or not the conduct was targeted at the claimant. Again, context must be relevant. It is a bizarre world in which supervisors can threaten with impunity so long as they always make sure they threaten at least two people at once.

What is perhaps worse is the attitude of the Court of Appeal to the final incident, which did involve a clear threat of violence directed at the claimant.

None of the three judges were prepared to commit to a view that this was harassment, though one did not rule out that it was.

The third CA judge offered little in the way of a considered judgment. He instead vented his fury that his court had been bothered with such matters. He said: "What on earth is the world coming to", if such incidents [the one involving the threat against property] are taken as giving rise to liability in damages?

It would of course be a rather better world and one in which employers' "respect at work" policies have some meaning. But what this comment clearly indicates is the Court of Appeal's agenda was to take the Protection from Harassment Act out of the employment context.

Based on Conn it is hard to see how most workplace cases taken under the Act will succeed.

And it is hard to see how Majrowski would have stood a chance of success if the court had decided it according to whether the acts of alleged harassment were indeed harassment, as opposed to just deciding the legal issue of whether or not an employer could be vicariously liable.

Don't slip up

By far the majority of workplace accidents are slips and trips. They are the compensation claims most likely to be ridiculed in the media. But, as Ben McBride explains, the law makes them no laughing matter

READ THE one about the so-called "killer petal", where a man claimed £1.5m for a serious back injury after slipping on debris by a flower stall in a London station? What fun the media had with that one, warning the floodgates would open to a tide of copycat claims by commuters struck down by fallen blossoms.

The reality of course was rather more serious. There had been repeated complaints by the station that the flower shop was failing to keep the walkway free of hazards. Water and petals regularly littered the area.

The florist was found by the court to be in breach of its duty of care, which was higher because of its position on a station concourse, and that it had no safe and proper system of work.

It is rare that a slipping accident is unforeseeable for the purposes of risk assessments and prevention. However, the law gives defendants some significant ways of avoiding being found to be strictly liable for slipping accidents.

The Workplace (Health, Safety and Welfare) Regulations 1992, which cover workplace slips and trips, apply to anyone working in a workplace, not just employees.

So if a plumber called to fix a leaky pipe at a supermarket slips and is injured, they will be covered by the regulations. But a shopper who slips will not. They have to rely on the Occupiers' Liability Act 1975, a law which is weaker than the workplace regulations and is far from the route to easy money that headlines such as the "killer petal" often portray slips and trips as.

The main "slipping" regulations

Regulation 12 of the regulations deals with the conditions of floors and "traffic routes", stipulating that they must be of suitable construction for their purpose.

This includes that they must be suitably drained and have no holes, slopes or uneven or slippery surfaces that present a risk to health and safety. They should be kept clear of obstructions that could cause a slip, trip or fall.

However if adequate measures are taken to prevent a person falling, such as handrails, then the existence of hazards are not in themselves a breach of the regulations. The key to whether an employer can defend themselves against a compensation claim for a slipping injury is "suitable".

In the case of **Palmer -v- Marks and Spencer (2001)** a water bar was about 9mm higher than the floor at the threshold of a door. The claimant tripped and it appeared that M&S would be strictly liable for their injury under regulation 12.

However, the Court of Appeal said questions of suitability and risk in this regulation involved consideration of the degree of risk and likelihood of harm before the accident.

In other words, it had to be possible to foresee the risk of accident in order for the defendant to be strictly liable.

In the recent case of **Brandon -v- Herts County Council**, the injured person alleged that the wooden parquet floor at her library was inherently slippery. Two colleagues had had similar slips. Risk assessments before and after the accident had noted that the floor was slippery.

> Thompsons secured compensation for a union member who overbalanced and hurt their elbow but did not fall as their shoe had stuck to the floor

But the defendant said the previous accidents had not been reported, so did not know about the risk, and tried to prove that the floor was not slippery. The judge used the decision in **Palmer -v- Marks and Spencer** to decide the case. He agreed that some quantifiable risk to health and safety before the accident must be shown in order for a defendant to be liable under the regulations.

But in this case the council was found liable for the accident because the risk could be shown and because the council had failed to act on the results of the risk assessment.

Temporary conditions

It is not necessarily the case that the condition of a floor must be permanently hazardous to make the employer liable for it.

In the 2007 case of **Ellis -v- Bristol County Council** the initial trial judge said that regulation 12 – that the surface of the work place floor must not be slippery – applied to the construction of the floor and not transient hazards.

But the Court of Appeal found the judge should have heeded the Code of Practice to the regulations, which supported the fact that the legislation was intended to cover states of slipperiness that occurred from time to time with frequency and regularity (in this case urine on the floor of the residents of an old people's home, which had caused previous accidents and had labelled the home hazardous in an inspection report).

So, health and safety reps should refer to the code of practice alongside the regulations. It says in paragraph 93: "Surfaces of floors which are likely to get wet or be subject to spillages should be of a type which does not become unduly slippery. A slip resistant coating should be applied where necessary. Floors near to machinery which would cause injury if anyone were to fall against it should be slip resistant and.. be kept free from loose materials."

And in paragraph 95: "where a leak occurs and is likely to be a slipping hazard immediate steps should be taken to... mop it up."

Tripping hazards

In the case of **Burgess -v- Plymouth City Council** in which the claimant, a cleaner, was injured when she fell over a large plastic box, the court found it was irrelevant that the claimant was injured by an object she was paid to tidy away.

The court said the defendant should not have allowed the box, which was used to store children's lunch boxes, to be on the floor in the first place. It was reasonably practicable, under regulation 12, to keep the box elsewhere them elsewhere.

It was also irrelevant that the box was big, bright blue and in front of the claimant.

So, with a little common sense and lateral thinking, it is reasonable for an employer to remove an object before a fall.

Other relevant slipping regulations

Suitable lighting, clean floors and sufficient space are all covered elsewhere in the Workplace Regulations. They are all important factors in claims for slipping and tripping accidents.

For example, Thompsons successfully secured compensation for a union member who over-balanced and hurt their elbow, but did not fall because their shoe had stuck to the sticky kitchen floor.

While the judge in the case found that this was not technically a slip or a trip and so Regulation 12 was not relevant, the employer was in breach of Regulation 9 which states that floors, walls and ceilings should be kept "sufficiently clean".

Comment

There is a lot of literature on the HSE website about the predictability of slipping accidents.There is even a slipping assessment tool at www.hsesat.info to help you judge the risk . A slip is rarely a one off event which could not have been prevented by risk assessments, instructions to staff and forethought.

Given this, the Workplace Regulations should almost always be read with the Code of Practice and the HSE literature gives detailed, helpful advice as to where risks arise and how to prevent slips.

www.hse.gov.uk/slips

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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