

Accidents at Work - Legal Overview

One of the basic rules in bringing claims for compensation is that the person must not only have been injured but it must have been somebody else's fault. In the case of employers liability the allegation will be that it was the employers fault that the injury happened.

The law concerning the duty of care of the employer to an employee is well established. An employer must take reasonable care for the employees safety in all of the circumstances of the case, however, the employers duty is not an unlimited one. "The law does not require an employer to insure in all circumstances the safety of his workmen, he will have discharged his duty of care if he does what a reasonable and prudent employer would have done in the circumstances, even where a certain precaution is obviously wanted in the interest of safety of the workman there may be countervailing factors which would justify the employer in not taking that precaution

It is not enough for an employee simply to suggest his employer was negligent, he must actually prove he was negligent in order to receive compensation. There are two main elements to proving negligence:

1. That the act complained off was reasonably foreseeable; and
2. That reasonable care was not taken to prevent the accident.

The courts have been very slow to set down any specific duty of care and they have seen it as one which varies with the nature of the employment and the relationship involved between the employer and the worker. In other words an employer might have to take more care to protect a young inexperienced worker than he would have to take with an old hand at the job. The more experienced man would be in a position to know the dangers and to look out for himself whereas an inexperienced trainee would need to have things carefully explained to him.

Reported cases have laid down some general guidelines which are useful but which are not exhaustive:

There is no obligation to warn the employee of obvious risks.

The employer can not foresee every risk that may possibly occur.

An employer may be negligent by omission if he has forgotten to do something which a reasonable person would have done in the circumstances.

The courts have tended to look at the duty of care under four basic headings. These particular headings must of course be applied to the facts and the circumstances of each individual case. The headings which the courts have developed are

The provision of competent co-workers.

The provision of a safe place of work.

The provision of proper equipment.

The provision of a safe system of work.

For an employer to be liable under the competent co-workers heading it must be shown that he had reason to be aware that the co-worker was incompetent after he had hired him but that he still continued to employ him.

Some examples in this area would be an employer who uses cheap untrained labour for dangerous assignments with no questions asked. Another example is where a good employee is asked to perform a new operation which the employee does not realise is beyond his capability and he injures another employee as a result.

An employer owes a duty to ensure a reasonably safe place of work and to maintain the premises in such a condition for the benefit of his workers. It is not sufficient to show that the employee was aware of the danger on the premises. An employer is not to presume that his workers will act with regard to their own safety in relation to dangers at the workplace. Of course, not all of us work at a regular premises such as a factory, shop or office, some people especially those involved in servicing equipment or in certain aspects of building may be sent to premises owned by another person, in other words to a persons home or factory with a view to installing a computer or maybe rewiring the premises. That premises in itself may be dangerous. The employer will not be familiar with the premises and therefore cannot be held responsible, however, the injured worker would be in a position to sue the owner of that building.

The duty to provide proper equipment and appliances extends to maintaining them in a proper condition so as not to subject employees to unnecessary risks. Some equipment which turned out to be dangerous included a cement mixer which operated erratically and carpenters nails which disintegrated when struck by a hammer. The duty under this heading covers two separate points

1. Equipment supplied must be safe.

2. Failure to provide equipment essential to the safety of the employee would also make the employer liable.

Therefore the equipment must be supplied and it must also be proper and safe. The duty of the employer “is not a warranty but only a duty to exercise all reasonable care”.

The provision of a safe system of work is a very wide topic and a suitably all embracing one under which many claims are brought. The degree of safety would depend on the particular job and would vary between wide limits. It is not sufficient for the worker to establish that the employer was negligent, he must also show what actually caused the injury of which he complains. An employee might well have contributed to his own injury and this is also something which the courts take into consideration, but the courts do realise that an employee will frequently be required to do work which he knows to be unsafe but will still do it because he

does not want to lose his job, so where the alternative open to the worker is either to do the job or to refuse to do it and risk losing his employment the court will not hold it against him as being contributory negligence.

Unfortunately many people who do suffer physical injury at work are reluctant to claim because they feel that they may lose their jobs. However, the law protects people from unfair dismissal under the provision of the Unfair Dismissals Act 1977.

Sometimes a good personal injury claim will not turn out to be as watertight as was originally thought, this is because the person against whom you are claiming might raise a technical defence or may say that the accident is not his fault and that you partly contributed to it. The law recognises essentially five different types of defences, these are general defences which can be

raised in answer to most actions for personal injury. Briefly the general defences include the following:

- a) Consent.
- b) Necessity.
- c) Acts of God.
- d) Voluntarily assumption of a risk.
- e) The Statute of Limitations.

Consent, Necessity and Acts of God are not particularly relevant in employers liability claims, however, voluntarily assumption of a risk by a person who agrees to take a chance of an injury from a specific source of danger is a possible defence. A good example of this is the case of someone who injures himself while playing a sport, provided the injury was inflicted accidentally and not deliberately he cannot sue the other player. Not long ago the defence of voluntarily assumption of a risk was readily accepted by the courts in relation to employers liability claims. The assumption was that the employee who knew of the risk and had said nothing could be held to have accepted that risk, however, in recent years this defence has virtually disappeared but it is still a possibility in some claims.

The Statute of Limitations 1957-1991 provides a period of time in which actions for compensation for personal injuries must be taken, after that period the claim becomes statute barred, clearly it would be a good defence to plead that a case is statute barred if it is commenced after the period of 3 years allowed if you had knowledge of your injury and knew that it was as a result of the accident. So remember do not delay in bringing a claim, you must begin proceedings within 3 years of receiving the injury or of discovering the injury. The rule is modified somewhat in relation to children under the age of 18 but it is still good practical advice to say that the sooner you contact us the better.

PROVISION OF A SAFE SYSTEM OF WORK

The employer is obliged to provide safe procedures within which to work. If he fails to do so he will be negligent, and liability for any accident which happens as a result, will invariably be his.

A procedure may involve a safe method of lifting or it may simply involve the habitual clearing of work surfaces. It covers all acts which are normally and reasonably incidental to a day's work and includes the provision of adequate supervision and training.

It may arise in relation to an isolated task which may never have to be repeated in the same way, however, it more usually simply involves a systematic way of getting the job done.

This is most effective where systems of work are supported by written documentary evidence of such systems.

The following arrangements are of value in this area:

- Written Safety Procedures:

for specific tasks e.g. maintenance isolation

for general safety e.g. manual

handling

Rules for Safety

in the contract of employment e.g. use of personal protective clothing, use of safety devices;

at specific workstations e.g.

following safety procedures

The above should be included in the company safety statement.

- Procedures and precautions learned in training (preferably documented with an indication of assessment and attendance records of formal training);
- Standard recognised ways of doing particular jobs (custom and practice);
- Safety memos issued to staff. These must be followed up in practice;
- Written safety communications with staff e.g. safety competitions;
- Safety notices and signs posted in the workplace;
- The employer should build all these elements into the safety statement and into safety training modules.
The more structured the system of work, the more convincing any defence case will be.

It is essential that systems prescribed are practical and are consistently used. In this context, a record of disciplinary actions taken for breaches of safety rules would be important.

In this context consistent application of safety rules and disciplinary action for breaches of such rules is most important.

PROVISION OF COMPETENT STAFF

The employer is obliged not to endanger his other employees by hiring incompetent persons. The incompetence must be the employer's fault so the employer will be expected to provide adequate training and supervision, in order to meet any claim based on the incompetence of a fellow workman.

Where an employer knows that an employee is incompetent and he either chooses to ignore it, or he continues to employ him on work which the employer knows now to be beyond his capacity, he will be liable for the consequence, especially if the work involves an element of risk to fellow employees.

Training is of vital importance in cases where the plaintiff maintains the employer has failed to provide competent workmen. Were employees trained in the use of machinery and were the dangers of such equipment made known? How adequate was the training? The answers will lie in what was reasonable in the circumstances.

In Irish Courts the question of adequate supervision is pivotal. If supervision had been tighter would the act complained of have happened? Were there previous such instances of horseplay and if so how had they been handled? How much supervision is reasonable depends on the circumstances and the need will be greater with inexperienced employees.

The key is to have detailed training and instruction records.

Records to have are:

- Records of selection criteria;
- Copies of external qualifications and training course details;
- Details of internal training and instruction course content;
- Details of any competence assessments or tests;
- Observations of supervisors where available (weekly or shift reports sometimes include safety observations);
- Observations of external or internal safety auditors;
- Employment records to show experience;
- Agreed job descriptions which infer competence;
- Job applications and interview notes confirming experience and competence of the applicant.

Pre-employment medical screening should ensure that the person employed is occupationally suitable, having regard to physical health and mental health. Staff who returns to work after prolonged absence should also be screened to ensure occupational suitability.

PROVISION OF PROPER PLANT AND EQUIPMENT

An employer has a duty to supply and maintain proper machinery and equipment to his employees. This particular duty will more than likely run side by side with statutory obligations under various enactments regulating the use of plant and equipment and, of course, the Safety Health and Welfare at Work Act 1989, in particular the regulations made thereunder.

Any defect in equipment should be remedied as soon as practicable and the equipment in question should be taken out of action if it poses a danger to the health and safety of employees operating it.

If equipment is dangerous warnings should be posted in a prominent position either on or near the equipment in question and employers will need to consider the need to restrict access to it to persons who are trained in its use and aware of its dangers.

In most cases the manufacturers will already have put warning signs on such equipment and will have given operating instructions which should be adhered to by employers.

It is important that all machinery and equipment is regularly maintained. In a claim against an employer a Court will require evidence that the machine was regularly serviced if an employer says he took all due care.

Also it is important that the employer is able to prove such routine maintenance and thus the importance of recording every inspection and every repair carried out to the machine.

The provision (or lack) of protective clothing is a common feature of employer liability cases.

It is not enough to supply protective clothing but an employer should ensure his employees wear it where desirable, not where simply necessary. He may wish to incorporate the obligation to use such protective equipment in his contracts of employment and may make it a dismissible offence for an employee to refuse or fail to use such equipment.

In any event, when things go wrong the employer will ultimately carry the can, so it is in his own best interests to ensure compliance amongst his workforce.

Where an employee is more prone to a particular kind of injury than his workmates the employer should pay particular attention to his needs and should ensure he does not expose him to unnecessary risks. So where a man has only one eye and goggles are needed for the job in hand, the employer should ensure the employee wears them or else he should move him to a less risky occupation.

Suppliers of equipment may be found liable for defects and may share or attract full liability in some cases where equipment is found to be unsafe.

Equipment should be modern and suitable for the purpose and regularly maintained. A Court will look at a number of aspects to establish the standard of plant and equipment safety including the following:

- Was the equipment used suitable for the purpose?
- Was the equipment safe to use?

- Confirmation that plant and equipment was in good working order.

This should include consideration for:

- a) purchasing of equipment to ensure standards of safety are adequate;
 - b) restriction of equipment used by contractors loaned/sold;
 - c) retaining equipment following an incident;
 - d) keeping equipment isolated and out of use following an incident.
- Maintenance records covering regular safety reviews of the plant and equipment.
 - Personal protective equipment arrangements (i.e. supply, renewal, ensuring it is used, etc.).
 - Safety instructions for operation of plant which must be enforced to be of value.
 - Details of warning notices affixed to hazardous equipment.
 - People supervision, particularly with untrained personnel.
 - Training details including safety training for plant and equipment operation;
 - Comparison of the plant safety features with known standards, industry norms or specific safety guidelines or codes of practice.

PROVISION OF A SAFE WORKPLACE

The employer is obliged to provide a reasonably safe workplace. This includes safe means of entry and exit from the premises in respect of all areas where people have access. What is reasonably safe will depend on the workplace and on the circumstances. An entrance to a building site will not be judged on the same standards as an entrance to an hotel.

Information to consider

- Earlier hazard audit reports on the area confirming it is safe for the purpose.
- Regular cleaning and maintenance records for the area.
- House-keeping procedures covering the area including rules on individual responsibility for house-keeping standards.
- Structural engineering reports and comparisons with technical standards where appropriate.
- Information on lighting, ventilation, spatial and other internal and weather conditions.

- Dust, fumes, temperature, humidity, measurements and tests such as floor friction (slip tests) etc., where appropriate.
- Details of industry standards and compliance therewith.
- Information on compliance with statutory obligations, safety inspections and regulatory duties.

EMPLOYEES WORKING ELSEWHERE

The duty of the employer to his employees extends to cover them while working elsewhere than the employer's own premises, although the obligation is not as onerous as the employer does not have the same control over another premises as he does his own.

A person who even temporarily has control over someone else's employee may be responsible to him for any injury to which that employee may be exposed to and for which the second employer/occupier is responsible.

In many instances a warning of the danger may be enough, and in others the employer may have to take steps to protect his employees such as actually requiring the occupier to take steps to make his premises safer before he will allow his employees to work there.

Again it is a question of what is reasonable in the circumstances and any such cases before the Irish Courts have been decided on the facts and not on any rigid principle of law (except where they have been in breach of statute).

When an employee is working off-site, it is important to ensure the following:

- That a competent and appropriately trained employee with any necessary assistance is used to do the work.
- That the employee is required to make contact with the client company liaison person or with his own superiors in the event of any doubt about the safety of a procedure.
- That the employee be provided with appropriate and well maintained equipment for doing the work.
- That the employee is supplied with and wears appropriate personal protective equipment.
- That the work has been checked out by the employer in advance and any safety arrangements necessary agreed with the client company.
- There should be a clearly established routine for dealing with contractors on site.

However, where an employee fraudulently misrepresents thus causing loss to another, the employer will not be liable unless the employee was acting within his actual or ostensible authority.

An employer will not usually be held liable for the consequences of industrial action taken by his employees which is directly at odds with their employment obligations. For an employer to be held vicariously liable for the acts of his employees they must generally have been acting in the belief that they were furthering his business.

So if an employee injures another employee at work, his employer may be vicariously liable to the injured employee for the wrongful act of the employee to blame.

In effect, the employer steps into the shoes of the employee to blame, however, he will only be liable if that employee is acting within the course of his employment and generally speaking with his employer's interests at heart.

VICARIOUS LIABILITY

Vicarious liability is where one person is held liable for the acts of another even though he himself is not personally at fault.

The employer is said to be vicariously liable for the wrongful acts of his employee on the basis that what the employee did was done in the course of his employment and with the implied authority of his employer.

When the employee does something which he was not employed to do the employer will not be liable. However, what is “within the course of his employment” has generally been liberally interpreted in favour of the employee.