

FBU Personal Injury Legal Services

REGIONS 11-12

Autumn/Winter 2014



Legal Helpline 0808 100 6061

FBU continue fight for justice for Marlie Farm victims and families

VICTIMS AND families are still fighting for justice nearly eight years after two firefighters were killed and many others injured in an explosion at a fireworks factory in Marlie Farm, East Sussex.

The fire spread to a container loaded with fireworks, which caused an explosion. Claims were brought on behalf of ten fire service victims and their families, including two widows, and four police claimants. The trial was heard at the High Court in February and March 2013.

The judge, Mr Justice Irwin, produced a carefully drafted but resounding judgment in favour of the claimants in August 2013

Suffering prolonged

However, East Sussex Fire & Rescue Service chose to prolong the suffering of the families and the injured claimants by appealing the decision.

The appeal will be heard in early February 2015. The FBU will continue to provide legal representation to strike down this appalling appeal.

Family of member who died from mesothelioma receives compensation

THE FAMILY of a retired firefighter, who died from an incurable cancer after being exposed to asbestos, has received compensation for his death.

The 78-year-old worked at a fire station for over 25 years, from 1960-1986. During this time he was exposed to asbestos.

From July 2011 his health began to rapidly deteriorate and he was admitted to hospital suffering severe breathing difficulties.

Doctors had to drain around two litres of fluid from his lungs.

On 1 August 2011, he was diagnosed with mesothelioma, which affects the lining of the lungs, and he

died three days later.

His widow contacted industrial disease specialists, Thompsons Solicitors, through the FBU, to investigate a claim on behalf of his family.

Support

With the support of the FBU, Thompsons gathered crucial witness statements from former firefighters employed at the same fire station, who described how the late firefighter was exposed to asbestos while attending fires in local shipyards, factories and houses.

This evidence was vital in linking the member's mesothelioma to his time employed there.

DON'T FORGET

Whether it's you or a member of your family who has suffered, the FBU is here to help.

Holiday - how much and where from?

IF YOU believed UKIP or the Conservatives you would think that the EU is all bad.

In fact your employer doesn't give you holidays out of the goodness of their heart, your legal entitlement to holidays comes from the Working Time Regulations 1998 (the Regs) which the UK brought in because of an EU Directive – the Working Time Directive (the Directive).

Under the Regs, employees are entitled to a minimum of 5.6 weeks' paid holiday in each leave year (subject to a maximum of 28 days) and four weeks of that comes from the holiday entitlement under the Directive. The Regs override any contractual term.

Payment for each week of holiday and the rate of a week's pay is calculated in accordance with sections 221-224 of the Employment Rights Act 1996 (ERA).

In 2004 the Court of Appeal considered the position in relation to overtime. In the case of *Bamsey -v- Albion Engineering and Manufacturing plc*, the Court of Appeal held that an

employee's normal working hours for the purposes of calculating a week's pay (for the purposes of holiday pay) will only include overtime if there is a contractual obligation for the employer to provide the employee with overtime and for the employee to work that overtime.

Where either the employer does not have to provide overtime, or the employee does not have to work overtime, overtime will be discounted when calculating a week's pay and the "normal working hours" are then the remaining basic hours within the employment contract.

Recent judgement

In a recent judgment of the European Court of Justice – another institution the Tories and UKIP would have you believe only deals with the shape of bananas or interferes with UK laws – it was decided that, for the four weeks' holiday that the Directive guarantees you (but not for the 1.6 weeks you get from the Regs), a week's pay is not limited to the worker's basic salary but should

include pay for tasks the worker is required to carry out under their contract of employment – and that includes commission payments.

There have been several first court decisions in relation to whether overtime payments should also be included in the calculation of what is owed when a worker goes on holiday. All those decisions are being appealed by the employers because they lost! The appeals were heard by the Employment Appeal Tribunal this summer and we await the judgement.

A worker not paid their holiday pay in accordance with their legal entitlement can bring a claim for breach of the Regs and/or unlawful deduction from wages. Both claims are made in the Employment Tribunal. The time limit to bring either claim is three months less one day from the date that the employer failed to pay the correct amount of holiday pay.

If you think you have been paid incorrectly while on leave, you should raise this with your FBU representative who will be able to give you further guidance on the issue.

Faulty hose lever causes injury

A MEMBER, who fractured his ribs after he was thrown over a nearby wall by the pressure from a faulty hose, has received £3,500 in compensation.

The member was injured while he was removing a divider branch from a hose. Normally he would slowly release pressure via the divider branch valve. However, this time the

lever became stuck, and he had to use more force to open the valve.

High pressure

As he did so, the lever opened the valve too quickly which forced the large amount of pressure out of the hose.

The pressure hit the member and lifted him off his feet and threw him backwards over a nearby wall.

Did you know?

As an FBU member you receive free legal advice and representation on:

- Personal injury at work, on holiday or on the roads
- Industrial disease or illness
- Serious injury including brain & spinal cord injuries
- Employment law accessed via your FBU branch
- Free 24 hour criminal law helpline for members arrested and taken to a police station for interview (funded by Legal Aid) (access via 0800 587 7530)

Your family receives free legal advice and representation on:

- Personal injury away from work, on holiday or on the roads
- Serious injury including brain & spinal cord injuries
- Special terms for clinical negligence
- Reduced rates for conveyancing, wills and fixed fee probate

Call the FBU Legal Service On: 0808 100 6061

About Thompsons

Thompsons Solicitors is the largest national specialist personal injury firm in the country with over 1200 staff in a network of offices nationwide.

We secure over £150m compensation each year for people who have been injured and suffered loss as a result of accidents caused by the carelessness of others. Thompsons only works for injured people, never for insurance companies or employers.

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to let us know if this newsletter was helpful and what topics you would like covered in future.

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