

PCS Personal Injury Legal Services

NORTH WEST REGION Autumn/Winter 2014



Public and
Commercial
Services Union

Legal Helpline 0800 328 3255

PCS member left disabled by faulty machine

AVOIDING PAYING for a new embossing machine to minimise costs did not pay off for an employer when a PCS member was seriously injured and left with a long-term disability.

The member worked at the Probate Registry in the Ministry of Justice (MOJ) and one of her duties was to seal documents using the machine. But it was very old, with a broken handle covered with red tape. She complained to her employers that it did not work properly and was causing her shoulder pain.

One day the member pressed down to emboss a document and felt severe pain shoot up her arm. It was so painful that she felt faint and nauseous. The injury was so serious that she was unable to continue with her job.

Thompsons Solicitors issued Court proceedings on behalf of the member. The MOJ at first denied any liability

and refused to compensate the member. They tried to claim that the embossing machine was not faulty and that the lack of a proper handle did not impair its use or increase the risk of injury. In fact they even tried to deny that she had sustained a shoulder injury on the day of the accident.

Breach of legal duties

The case went to trial on the issue of liability and witnesses were called by both sides. The member was able to prove that her employers were in breach of their legal duties and had provided defective equipment.

The accident caused a complex injury to the member's hand and wrist which has had life changing consequences, leaving the member with a long term disability. Medical experts' reports are being commissioned and Thompsons Solicitors will push for her to be awarded significant compensation.

Who said offices are safe places?

A PCS member has received compensation after she was injured when a colleague accidentally walked into her and knocked her into a cupboard.

The member was filing in a tight space when another employee tried to walk past her but accidentally knocked into her right shoulder, which caused her to fall forcefully into the cupboard.

She suffered soft tissue injuries to her shoulder and upper body, which meant that she had to take time off work. She received £2,850 in damages.

It was alleged that her employer, HMRC, had failed to provide a safe place of employment, they had not provided enough space for employees to pass safely and they had failed to move the cupboards to an adequate space.

Slip on water at army base causes painful injury

A FORMER Ministry of Defence training manager, who suffered excruciating injuries after he slipped on water at an army base, has secured compensation with the help of Thompsons Solicitors and PCS.

He slipped on water that had not been highlighted by a clearly visible warning sign – a direct breach of the

cleaning contractor's safety procedures.

Two weeks after the slip, his knee had swollen so much that he had to undergo a surgical procedure to drain the fluid.

With help from PCS and personal injury specialists Thompsons Solicitors he was able to secure compensation for his injuries.

DON'T FORGET

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



STANDING UP FOR YOU

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 PCS representative who will be able to give you further guidance on the issue.

Did you know?

As a PCS 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 PCS branch

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

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About Thompsons

Thompsons Solicitors is the largest specialist personal injury firm in the UK with over 1000 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.

Please email
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newsletter was helpful and what
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covered in future.

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