

# UNISON Personal Injury Legal Services

GREATER LONDON REGION Autumn/Winter 2014



Legal Helpline 0800 085 7857

## Cyclist suffers brain injury

**A MEMBER who was left with a lifelong brain injury after being hit by a car has received substantial compensation.**

The UNISON member was cycling around a roundabout when a motorist drove into his path and collided with him, throwing the cyclist to the ground and severely injuring his head and neck.

The damage to his head resulted in a traumatic brain injury alongside a total loss of sense of smell and a substantial loss of taste. He also needed a frontal lobectomy.

The motorist was subsequently convicted of driving without due care and attention.

The brain injury continues to impose substantial restrictions upon the member's life. He has developed epilepsy and suffered several seizures,

which means he has had to surrender his driving licence.

This has restricted his social life and means he can no longer take his elderly mother on trips that they both valued and enjoyed.

### Personality changes

The head injury has given rise to personality changes, depression, memory problems, fatigue and a lack of motivation. He now struggles with day-to-day affairs.

But, the member was able to return to work after a short period of absence, because of the routine nature of his work.

Once court proceedings were commenced the motorist's insurers began to make settlement offers and eventually it was possible to settle for £165,000.

## Slip on ice forces careworker to take early retirement

**AN EMPLOYEE of a sheltered housing scheme has been awarded £50,000 in compensation after being left with permanent problems with her balance and forced to retire early.**

Significant snowfall and cold weather caused the UNISON member to slip and fall. Her head and neck took the brunt of the fall and she was knocked unconscious.

With the support of her union, the member exposed that her employer

had failed to implement an adverse weather policy, despite one of her colleagues suffering a fall on the ungritted pavement three days before.

### Vestibular dysfunction

The 62 year-old was taken to hospital and underwent an MRI and CAT scan and was diagnosed with vestibular dysfunction.

The condition causes chronic dizziness and imbalance which doctors advised she is likely to suffer with for the rest of her life.

## HGV driver injured

**AN HGV driver has reached a settlement with his former employer after he sustained a serious injury at work.**

The UNISON member was working for the London Borough of Greenwich when he was loading a broken wardrobe onto a vehicle. He slipped on a piece of wood on the tailgate and fell to the ground, fracturing his left arm and injuring his lower back.

He had to have surgery to repair the fracture and was left with significant, permanent problems with his left arm. He was dismissed from his employment. Thompsons Solicitors, with the help of UNISON, pursued a claim on his behalf.

The London borough at first denied liability for the accident and alleged that the member was solely responsible. But Thompsons Solicitors argued that the council's own training DVD did not show the working system they had described in their denial and threatened court proceedings if liability was not admitted.

An agreement on liability was eventually reached and the borough paid £110,000 in damages.

## UNISON raises funds for UKABIF

**In 2013-2014, the UNISON President, Maureen Le Marinel, nominated the United Kingdom Acquired Brain Injury Forum (UKABIF) as her charity for her presidential year.**

UKABIF is a charity that brings together brain injury survivors, their carers, health care professionals and lawyers.

Many serious injury lawyers at Thompsons are actively involved in supporting UKABIF local groups because of the important work they do for those with brain injuries and their families.



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

## Did you know?

**As a UNISON 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 UNISON branch

**For UNISON members and their families we offer 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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**Textphone: 0800 0967 968 Mon-Fri 6am-midnight Sat 9am-4pm or the hard of hearing:**

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## About Thompsons

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

We secure over £150 million 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 [newsletters@thompsons.law.co.uk](mailto:newsletters@thompsons.law.co.uk) to let us know if this newsletter was helpful and what topics you would like covered in future.



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