

Legal Helpline 0800 0857 857

Midwife compensated after slip

A MIDWIFE, who was injured when she slipped on incontinence pads that had been left on the floor of her ward has secured damages of £12,000.

UNISON member, Susan McCreesh, was attending to a patient at Gloucestershire Royal Hospital. As Susan introduced herself to the patient, the patient asked her to get her baby from the cot. As she walked around to the other side of the bed she slipped and twisted around, striking her shoulder and back on the bed and landing heavily.

Susan realised that she had slipped on two incontinence pads that, according to the patient, had been left on the floor by a member of staff who had used them to mop up some fluid. Susan could not have seen the pads as they were partly hidden by the

patient's bed and by the curtains.

As a result of her accident, Susan suffered neck and lower back pain. Moreover, to add insult to her injuries, the periods of injury related absence were used as part of a formal sickness procedure against her.

Susan contacted UNISON for support and the union referred her case to Thompsons Solicitors to investigate a claim of damages. Thompsons established that the use of incontinence pads to mop up a spillage was not the correct procedure, especially given the infection control policies in place, and that the mop and bucket provided on the ward should have been used instead.

The use of incontinence pads therefore constituted a breach of health and safety and full compensation was secured for Susan.

Member injured after tripping in pothole

A UNISON member, who was injured after stepping into a pothole in a car park at work, has secured £3,000 compensation with the help of UNISON's Legal Service.

Ann Nicholas had finished her shift as a switchboard operator at a Bristol Hospital at 10.10pm and was walking to her vehicle, which was parked in the hospital car park.

The car park was poorly lit and, as she was walking she stepped into a small pothole, causing her to fall forwards and suffer injuries to her elbows, right ankle, right hip and left

knee. A colleague had been injured in a previous similar accident involving the same pothole, but no action had been taken by the management to repair it.

After reporting the incident, Ann contacted UNISON who referred her case to personal injury specialists, Thompsons Solicitors.

Full compensation was secured after Thompsons established that the hospital had breached its health and safety obligations to Ann. Following Ann's accident, the pothole was repaired and the lighting in the car park was improved.

Paramedic injured after slipping in ambulance

AN EXPERIENCED paramedic, who was injured after slipping on the floor of an ambulance in icy conditions, has received compensation with the support of UNISON's Legal Service.

Mr Palmer, employed by South West Ambulance NHS Trust, was attending a road traffic accident in very icy conditions. The back of the ambulance was exposed to the elements when the door was open and from the comings and goings of the paramedics.

The floor of the ambulance was new, but became extremely slippery when wet or icy. However, they had not been provided with anything to clean the back of the ambulance so made do with a make-shift system. As a result, Mr Palmer slipped inside the ambulance and suffered a painful back injury.

Following the accident, Mr Palmer contacted UNISON who referred his case to Thompsons Solicitors. After NHS lawyers refused to compensate Mr Palmer for his injury, Thompsons started court proceedings and sought witnesses who had experience of slipping in the back of ambulances.

When confronted with this evidence, the NHS lawyers still refused to admit liability. However, when Thompsons informed them that they would commission an expert to assess the slipperiness of the floor when wet, they immediately admitted liability and paid Mr Palmer full compensation to avoid such damning evidence coming out in court.

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 4 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 (including assaults)
- Personal injury away from work
- Road traffic accident injury
- Holiday injury
- Slips and trips
- Industrial disease or illness
- Employment law accessed through your UNISON branch

For UNISON Members and their families we offer Free legal advice and representation on:

- Personal injury away from work
- Road traffic accident injury
- Holiday injury
- Slips and trips away from work
- Industrial disease or illness incurred away from work
- Special terms for clinical negligence cases
- Reduced rates for conveyancing and family member wills

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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.

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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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