Health&Safety news

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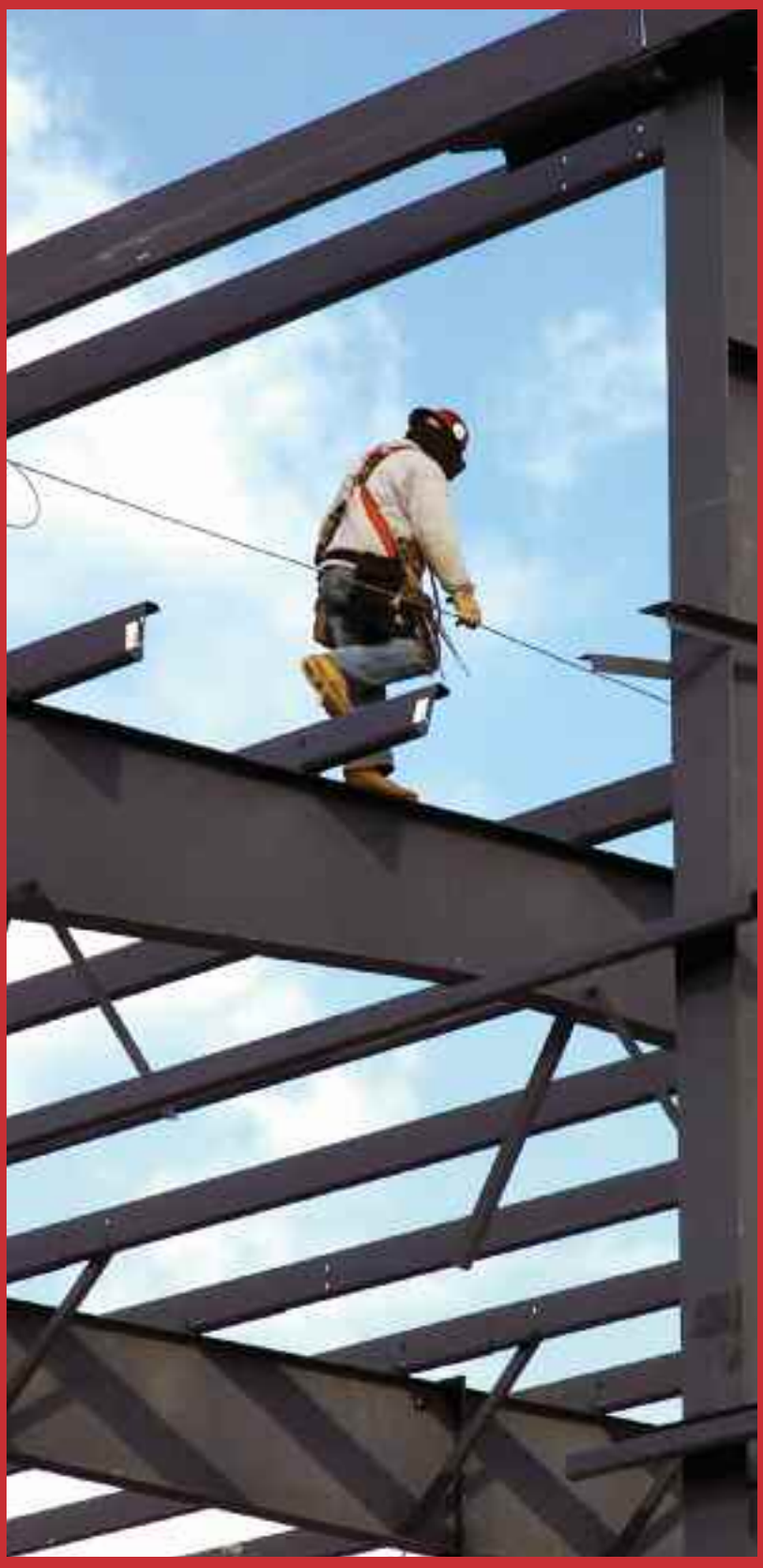
THOMPSONS SOLICITORS
STANDING UP FOR YOU



Standing up for you

Tom Jones, Head of Policy at Thompsons Solicitors, explains how the government's proposals to raise the small claims limit will make it harder to hold employers to account for health and safety breaches

Enforcement of health and safety to take another hit if government proposals are pushed through

EVERY ADULT knows that when issuing warnings to children, you must follow through with a threat; don't warn a child that: "If you don't clean your room we won't go on holiday," when the child knows that the tickets have already been booked and paid for, and the adult has the time scheduled off work.

The same mentality applies in reverse in other walks of life. Employers know that if they can cut corners, and costs, without any obvious consequences, they will often take that course of action, looking for more profit, even if it involves gambling with someone's life.

> *"The government's proposals would affect tens of thousands of injured people every year, removing their right to access free or affordable independent legal advice"*

The odds of the gamble may be about to be strengthened in the employer's favour, after the government published plans – first announced in November 2015 – that would, if pushed through, severely restrict access to justice for injured people in England and Wales and keep lawyers from being involved when holding companies to account for their health and safety failings (unless the injured don't mind paying out of their compensation).

The government's proposals would affect tens of thousands of injured people every year, removing their right to access free or affordable, independent legal advice. Currently, the system allows injured people to claim back their legal expenses if they get compensation above £1,000.

However, if your compensation for your pain and suffering falls below £1,000 (regardless of how much your losses and expenses have been), you cannot recover your legal expenses, however unfairly you have been treated.

If the government gets its way, the £1,000 limit would increase 100% to £2,000. In a single, destructive stroke

➲this would force tens of thousands of personal injury claimants to pay the cost of getting independent legal advice out of their own pocket rather than being paid by those who caused the injury.

Many people will simply be put off bringing a case in the first place, even when they are fully entitled to – an effect which we have seen with the introduction of Employment Tribunal fees in 2013 where there has been a huge drop off in claims.

While the government says its proposals are designed to tackle a problem with "fraud" in "whiplash" claims, this is a dangerous con – a fig leaf – and its clear that what the government actually wants is to impose the small claims limit increase to all personal injury claims, whether they occur in the workplace, on the road or anywhere else.

Good work undone

Just think of some of the cases that the unions have pursued over the years where legal boundaries have been pushed and the law has been changed to help the employee, not the employer. The government's proposals, if enacted, would undo all that work. The average employee simply won't have the knowledge, experience or finances to progress a case through the legal maze without the help of a solicitor.

> *"The government has been talking up scare stories of a "compensation culture" and "whiplash fraud", when their own statistics in fact show that the number of work injury cases has dropped 12% over the last ten years"*

Individuals who have claims but who are denied the ability to recover their legal costs will end up fighting insurers on their own and in their own time. With people working longer hours for less pay, in real terms, they will simply not have the time to pursue a personal injury claim. If they do, they will end up not knowing whether to accept the insurer's injury valuation, which (in our long experience at Thompsons) we know they will more than likely try to under-settle. Employer's insurers will undoubtedly seek to take advantage by either making extraordinarily low offers (knowing they are unlikely to be challenged in a court of law), or refuse to make offers of settlement, increasing anxiety on the claimant. They will become wise as to just what they can get away with.

With the scope of accountability of employers likely to diminish if these proposals come into force, there is a double hit for injured employees – not only will they lack legal representation but instances of accidents will likely increase as employers try to get away with bad safety practices.

Right to compensation attacked

The proposed change to the small claims limit would mean the end of long-established principles of UK law that the polluter should pay for all of the consequences of their negligence, and directly attack injured people's right to get compensation using an independent solicitor.

Take the example of a worker who is injured by faulty machinery. A wrenching injury to the shoulder occurs and the insurance company argues that he is partly at fault and therefore reduces the compensation it offers him. They also tell him that the machine was not in fact faulty but fail to provide any documentary evidence.

How does that worker know what to do first and how to respond? That worker also has, in the back of his mind, that this is their employer they are dealing with and feels he can't say much for fear of losing his job – if only he could have access to independent legal advice.

The government has been talking up scare stories of a "compensation culture" and "whiplash fraud", when their own statistics in fact show that the number of work injury cases has dropped 12% over the last ten years, and they admit there is no suggestion of fraud by injured workers.

The government skates over the fact that the insurance industry's own figures show they have saved a staggering £8.7bn in claims costs for motor insurance claims in the last five years… and yet, premiums are higher now than they were in 2010 and have increased by 17% in the last year alone. I bet your car insurance hasn't got cheaper?

The changes, in effect, mean a huge cheque being paid by the government from your taxes to insurers, their multi-millionaires bosses and their shareholders.

Using the government's own figures (which are a gross underestimate) these proposals would see our already squeezed NHS lose £millions per year, and the Treasury (and, therefore, public services including schools and the NHS) lose £millions more every year. Meanwhile, the government admits that the insurers will get £millions of extra profit every year.

On the steps of Downing Street, when she spoke for the first time as prime minister, Theresa May said that her government would not work for the "privileged few" but instead for those who are "just about managing". It is hard to think of many people who better fit the definition of "privileged few" than insurance CEOs.

Less money for vital public services

The detail in the government's consultation confirms that these proposals would mean even less money for vital public services already suffering from the Tories' vindictive budget cuts, and more money for highly profitable insurers and their grossly overpaid chief executives.

The insurers are raking it in and are happy to see premiums go up. Meanwhile it is hardworking people on low incomes who struggle to afford to drive a car to get to work in the morning and home to their families in the evening, who bear the brunt.

It is the same people who are being told that their injury, worth "just" £2,000 is too "minor" to deserve the support of an expert lawyer. The audacity of those receiving eye-watering rewards packages is staggering – they lobby for changes to the small claims limit that will only mean more profit for them and leave people injured at work out in the cold. It is simply unacceptable.

Workers' Memorial Day, which is held every year on 28 April, reminds us of the need for strong health and safety laws working hand-in-hand with strong enforcement.

End of civil enforcement

The implementation of the Enterprise and Regulatory Reform Act 2013 stopped workers from being able to rely upon breaches of key health and safety regulations when pursuing civil claims, and criminal enforceability has been significantly eroded with catastrophic cuts to the budget of the Health and Safety Executive.

But if the government wishes to effectively shut lawyers out of the process and workers are left trying to unpick the statutory duties that may have been breached, it will come as no shock when employers begin pushing the boundaries of what they can get away with and cutting corners.

You can help defeat these unfair and vindictive proposals. Please put pressure on the government to think again by writing to your MP (there is a pre drafted letter at **www.feedingfatcats.co.uk**).

You can also follow @FeedingFatCats on Twitter.

Workplace driving

Imogen Wetton, Senior Serious Injuries Solicitor at Thompsons Solicitors, discusses safety concerns in relation to workplace driving

A forgotten safety risk?

> *An average of five people die each day as a result of a road crash and a significant number of these, statistically, are likely to have been driving as part of their work*

MANY OF us spend large parts of our working week behind the wheel, whether it be commuting or driving as part of our jobs.

Statistics from the 2011 census reveal that over 11 million people commuted from one local authority to another to carry out their duties, which, in some cases, can be a considerable distance.

It is no surprise, therefore, that multiple workers are suffering serious or fatal injuries each year when driving for work purposes. Statistics reveal that, in the year ending September 2016, there were over 25,000 serious or fatal casualties on UK roads and an average of five people die each day as a result of a road crash and a significant number of these, statistically, are likely to have been driving as part of their work.

Devastating news

A serious or fatal road crash is horrific for all involved. It is completely sudden and unexpected. A day begins like any other, and then the devastating news is delivered which tears families and communities apart.

The threat to employees while driving is often overlooked by companies and health and safety representatives because driving is perceived as something that occurs away from the traditional workplace. However, this is an oversight that is a missed opportunity to save lives.

You can probably already hear the "elf and safety" critics screaming about how employers cannot possibly foresee dangers on the roads. However, what employers can do is to foresee gaps in education and ensure that guidance is provided as well as adopting appropriate policies that promote safety in this area.

Some useful tips for employers and safety representatives include:

- Ensuring that there is a clear policy on driving for work purposes, including expectations as to applicable standards.
- Providing training sessions on hazard perception and the Highway Code. Many workers took their driving test

decades ago, and bad habits may have been picked up over the years. Improving the safety of workers' driving abilities will hopefully not only reduce collisions but could also reduce time-off work for injuries sustained (whether sustained in or outside of work).

- Providing flexible working so commuting employees can avoid rush-hour, either by starting early or late
- Removing unattainable time pressures so that workers do not feel pressured to arrive somewhere as quickly as possible
- Communicating a clear "bad-weather policy" to employees. If the weather is so bad that the Met Office has issued warnings, could employees meaningfully work remotely rather than requiring them to attend the workplace? For those required to move between different sites, such as a healthcare worker visiting a client at home, thought should be given to whether that is practicable given the hazardous weather.
- Promoting workplace cycling schemes and car-share schemes, but combining it with safety discussions around cycle helmets and high-visibility clothing
- Providing sufficient breaks and support for shift workers and talking openly to them about any concerns (for example significant fatigue on their return journeys home)
- Adopting, and enforcing, policies preventing work calls when driving, even on hands-free devices.

"These suggestions are about changing culture, and it is perhaps all the more significant when considered hand-in-hand with Workers' Memorial Day"

These suggestions are about changing culture, and it is perhaps all the more significant when considered hand-in-hand with Workers' Memorial Day which takes place annually on 28 April.

Workers' Memorial Day is about remembering and honouring the lives of those lost at work, and seeking to prevent future deaths.

With the changing concept of work, and the increased flexibility required, the numbers of those killed on the roads will likely rise.

David Robinson, professional support lawyer and senior serious injuries solicitor at Thompsons Solicitors, considers whether potential civil liability extends to employers for assaults caused by its employees at workplace social events

The office party

IMAGES Of the uninhibited David Brent character in The Office will cause many workers across the country to have a wry smile as they compare it to their own workplaces, particularly at times such as their own office Christmas parties or quiz nights.

But, as was often the case with David Brent, things get out of control. Just how much responsibility does an employer have for personal injuries caused by an assault from a colleague?

An employer has a duty to provide its employees with a safe place of work, a safe system of work and safe and competent colleagues. There are often, however, grey areas as to what amounts to work – the office Christmas party being a typical example.

The gravity of the situation was starkly highlighted in the recent high profile case concerning the death of Thomas Hulme who died as a result of a single punch by a colleague who had thrown his shoe out of a minicab window following a social night out.

The legal principle of vicarious liability needs to be considered in such situations. Vicarious liability is a principle that places responsibility upon a person or organisation (in this case an employer) for the actions of another (in this case its employees). Last year, the Supreme Court tackled this in a combined appeal in which the Thompsons' case of **Cox -v- Ministry of Justice** was at the forefront; the test laid down in these combined appeals has

now been applied in the case of **Bellman -v- Northampton Recruitment Limited** which was heard in the High Court in December last year.

Following a company-organised Christmas party, a number of staff decided to extend celebrations and attend another venue where the managing director ended up punching Mr Bellman twice and knocking him to the marble floor below causing him to sustain a serious brain injury.

Vicarious liability?

In view of the fact that the incident happened following a company-organised night out, a case was brought against the company for the injuries sustained,

Workplace social events

- alleging the company was vicariously liable for the actions of the managing director.

The first stage of the test to be applied by the court was considering the nature of the assailant's job, and thereafter it needed to be proven that there was such sufficient connection between that job and the wrongful conduct that the company should be deemed responsible.

As the managing director, it was accepted that the assailant had wide discretion and involvement over all aspects of the business, and this included overseeing the organisation of the Christmas party.

Not just another attendee

Indeed, the managing director paid for the Christmas party including food, drinks, transport and accommodation. He was therefore not just an attendee at the party. That said, however, the court accepted that the managing director could not be said to be always on duty just because he was in the presence of other company staff.

> *"The obligation for employees to participate came to an end when the party was over and that any attendance in the post-party socialising was therefore outside of the expectations of employment"*

In considering the issues widely, the court accepted that there was an expectation for employees to attend the Christmas party, particularly given the relatively small number of staff who were employed.

Although the court recognised that no formal disciplinary proceedings would be applied for failing to attend, it acknowledged that failure to attend would attract adverse comment. As a result, attendance at the Christmas party was considered to be closely connected to the nature of the employment.

An important distinction was made in the case, being that the obligation for employees to participate came to an end when the party was over and that any attendance in the post-party socialising was therefore outside of the expectations of employment. Although the assault that occurred followed a discussion about a work-related matter, it was held that there had been multiple social discussions that had taken place throughout the evening and discussion only reverted to work-related matters when the group of attendees had narrowed.

The court concluded that there was insufficient connection between the managing director's role and the assault that took place and, as a result, the company was not found to be responsible.

So what does this case highlight about the responsibilities of an employer to its employees at work-related social events?

This case cannot be relied upon by every employer hoping to be absolved of all responsibility for assaults caused at social functions. Each case will turn on its individual facts but the key will always be the nature of the role with which an assailant was employed and then whether there is any connection (considered in broad terms) between that job and any assault.

Atmosphere

Application of the legal test is complex as ultimately it results in lawyers assessing intricacies of personal relationships. Such complexities are highlighted by the words of David Brent in The Office: "I've created an atmosphere where I'm a friend first, boss second. Probably entertainer third".

Whenever individuals come together, there is always the potential for clashes and incidents. But as an employer, the key is perhaps not to try and merge those three facets of "friendship", "boss" and "entertainer" and instead to ensure professional boundaries remain intact. It is when there is a blurring of boundaries and grey areas where lawyers may end up getting involved.

The government is trying to take away your right to free or affordable legal representation if you're injured at work or anywhere else.

Why? They're prioritising #Feeding**FatCats**

If government plans go ahead, hundreds of thousands of people will lose their right to free legal representation. Meanwhile it will cost the NHS and the government at least £150 million of your taxes **every year** and fat cat insurers will be rewarded with multimillion pound profits.

Visit **www.feedingfatcats.co.uk** to take action and stop the government #FeedingFatCats.

#FeedingFatCats is a campaign run by Thompsons Solicitors. Thompsons is proud to stand up for the injured and mistreated.

@feedingfatcats

Health and Safety News aims to give news and views on developments in health and safety issues and law as they affect trade unions and their members. This publication is not intended as legal advice on particular cases.

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To join the mailing list, email hsn@thompsons.law.co.uk

Contributors to this edition: Tom Jones, David Robinson, Imogen Wetton

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