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UNISON national health and safety seminar / Belfast 2019

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seminar
12th
November
2019

UNISON's Legal Assistance Scheme and the role of the H&S representative

Speakers:

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&

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UNISON's Legal Assistance Scheme

Employment assistance

Personal injury assistance

Clinical negligence scheme

Criminal law scheme

Free legal advice

Wills

Conveyancing

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Comprehensive Personal Injury Legal Assistance

Civil Claims:

Accident claims – manual handling, assault at work, slips, trips and falls, road traffic accidents

Disease Claims – work related stress, work related upper limb disorder, asbestos, deafness

CICA Claims:

Criminal Injury Compensation Authority

Victim of a crime of violence



Civil Claims

Accident/injury caused as a result of negligence/breach of a legal duty

Employers owe a duty of care

Employer breached that duty of care

The breach caused the injury

The accident/injury was foreseeable

Limitation – claim must be brought within 3 years of the date of the accident

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Civil Claims

Injury/Disease caused as a result of negligence/breach of a legal duty

Complexity of cases

Limitation – the 3 year limit runs from the date our member knew/ought to have known they had an injury related to their work.

For protection of harassment claims the period is 6 years

UNISON's Work Related Stress Claims protocol

CICA cases

Legal Scheme work related CICA cases

Assault at work

Where not sufficient merits to pursue a civil claim

Limited compensation

Stringent reporting requirements

Limitation – 2 years from the date of the assault

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Role of the Union

Preventing accidents, improving Health and Safety
But all too often accidents/injuries do occur

Advice to members – how to access early advice
Action in the workplace

Wider impact on Health and Safety

(80% pursued their case to prevent further accident/injury occurring ;
65% saw changes in their workplace as a result)



PI claims

Foreseeability

What is it and how do we prove it?

Risk assessments

What are employer's duties?

Key points to remember:

- All risks
- Level of risk – low/medium/high
- Controls – can be equipment, training, PPE, other measures



How H&S reps can help

Create 'tomorrow's evidence' in your daily union work

Make notes of H&S issues which members or others bring to your attention

Raise concerns with employer – H&S meetings/committees/emails or reports

Hold employer to account/its obligations



Incident reporting

Ensure that all accidents are reported, no matter how minor

Ensure that all 'near misses' are reported

Why?

- Employer warned about risk of injury and puts them on notice of problem
- Creates evidence of foresight for purpose of PI claim and can make the next claim easier to prove
- Active union involvement makes for safer workplaces

After an accident

Importance of accident reporting:

Ensure accident reported without delay – accident book/1st aider report/ RIDDOR report to HSE

Contemporaneous record – doesn't change/lose its memory

Be specific and accurate about cause of accident (if known)

Don't speculate if you don't know – we may be able to investigate later

Police report for assaults at work

Advise member to seek prompt medical attention

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What next?

Check records for previous accidents/near misses

Take photographs (if relevant) and make a note of date/time

Check for witnesses – will they help? Obtain contact details

Previous complaints? Who by/ who to/when? What was done?

Helpful documents eg H&S meeting minutes, notes, reports

Find out whether inspection/maintenance records exist

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Workshop session: Exercise 1

Matthew is a health and safety rep at Chatterton hospital. The staffroom/kitchen has a water cooler which most people use. It's a busy area with lots of people coming and going throughout the day.

Over the last 6 months Matthew noticed that there can be a pool of water by the drinks area at the end of the day. One of his members thought the cooler might be leaking.

Just before Christmas, Tom slipped as he was walking past the cooler. He managed to stop himself falling so thankfully didn't hurt himself. A few weeks later another member, Janet, slipped and fell as she was walking past. She fractured her right leg and was taken to hospital. She will need to stay in hospital for a least a week following surgery.

Discussion points:

1. What steps should Matthew have taken before Janet's accident?
2. Look at the accident form provided. What do you notice about it? Would you have completed it differently? If so, what would you have included?
3. What steps would you take after the accident happened?
4. What information or documents do you think that you could provide to UNISON's lawyers?

Workshop session: Exercise 2

Millie works as a home carer in the community. She visits service users in their homes to provide personal care. The number of calls that Millie makes every day has increased over the last few years due to funding cuts and, although she does a lot of overtime, she can't spend as long as she would like to with the clients.

One of her clients, Barbara, suffers from dementia but wants to stay in her own home. Millie has cared for her for several years without many problems. Over the last few months, Barbara's condition has deteriorated and she has tried to hit Millie a few times before. Millie had put these in the daily record book at Barbara's house. She also wondered whether there was any further medication that Barbara could have taken. Nothing changed so she told Kate, her H&S rep, about all the problems she was having as she didn't know what to do.

Last week Millie was helping Barbara with her personal care when Barbara suddenly became aggressive and kicked out at her, hitting her in the shin. Millie felt bruised but didn't see her doctor as she thought it would get better. Millie is now struggling to drive to her clients but is worried about going off sick as they are struggling for money after her husband's car accident last year.

Discussion points:

1. What steps should Kate have taken once Millie reported the problems she was having at work?
2. What should Kate do after Millie is injured?
3. What information or documentation do you think that you could provide to UNISON's lawyers?
4. What else would you advise Millie to do?



Exercise 1 – discussion points

1. Reports to employer about water on floor / raise at H&S meetings / near miss report for Tom
Ask for inspection/maintenance of machine to check for faults
2. Name/dates/description of accident/details of witnesses / nothing re cause of accident
3. Report accident/ RIDDOR report/ photographs or sketches of scene / secure witness contact details and speak with them/make own notes
4. See 3 + near miss reports, H&S meeting minutes, reports to employer, photographs or sketches own notes of discussions

Exercise 2 – discussion points

1. Advice to member – report to employer/supervisor/ask for updated RA/care plan. Find out whether others have had problems/encourage them to report

Report it to employer yourself and ask for risk assessments/care plans to be updated and medication plan considered

- make a note of your reports/when/who to

Consider other risks – short cuts/rushing

2. Ensure accident reported to employer

Ask for details of colleagues who visit the service user. Speak to them to see if they will help/get contact details

Find out about previous complaints/other injuries or near misses

Advise member to seek medical attention asap

3. Copies of own notes and reports to employer about the problems

Service user notes and documents will be confidential so should not be copied and sent. Make a note of what assessments there are. Knowledge of what documentation is available is still helpful – we know what to ask for in disclosure.

4. Millie's husband – has he made a claim via UNISON's lawyers for his injuries?

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Thank you for listening

Any questions?

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