

Duty of Care to Employees – Obvious Risks

Every employer owes a duty of care to its employees, but deciding who is responsible for an accident can be very difficult when the issue is whether warnings against risks should have been given or, if given, were adequate.

Employers often argue that employees are responsible for their own actions, but employers have a duty to warn employees of potential risks in the workplace, even if these are obvious. A recent case confirmed that some risks are so obvious that warnings need not be given – for example where to argue a lack of awareness of the risk would be absurd – but that it is hard to distinguish between what would be deemed to be that obvious and what would not.

In the case in point, an employee turned a box upside down in order to reach material on a top shelf. The box slipped from underneath him, causing him to fall and sustain injury. The employee's case failed both in the lower court and on appeal because the employer had specifically warned all employees that the use of boxes for this purpose was unsafe and had provided a safe alternative for reaching high items.

The Court of Appeal said that an employer is responsible for devising safe working methods and practices and, where they have issued a warning against a specific risk, they should not be held liable for an injury to an employee who ignores the warning. The judge commented that, "some dangers are so obvious that no instruction is required," but this would not have been the case in this instance had the risk not been pointed out to the employee. Had the employer not warned of the potential risks attached to using the box for this task, the argument that the employee was capable of appreciating the risk for himself would have been rejected.

What constitutes a sufficient warning is a grey area and is an issue of fact, not law, so previous case rulings provide little assistance as each case is judged on its own facts. In an unreported case, an employer was held to be liable for an injury sustained by an employee who had mopped a floor and then slipped on the wet surface she created. The employer argued that it was obvious that the floor would be wet immediately after mopping and that it needed to be dry mopped to be safe. This argument was rejected by the court, however.

Employees do have a duty to take reasonable care for their own health and safety as well as that of other persons who may be affected by their acts or omissions at work. They also have a duty to co-operate with their employer so far as is necessary to enable the performance of or compliance with any duty or requirement imposed on the employer by the relevant health and safety law.

It has been suggested that an employer is only under an obligation to warn employees of risks that fit within the broad remit of the employee's job description. For example, if an employee were to put his fingers into an electrical socket, the employer would not be liable for the resulting injury as this is not a part of their 'system of work'. Where the risk is part of a system of work, a

warning is a necessity. For example, an employee who has been asked to rectify a paper jam in a photocopier machine should be warned of the risks.

Ultimately, it is the employer's responsibility to assess and warn against workplace risks and employees should be given appropriate warnings and guidance to protect them from risk of injury.

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