

# COVER<sup>2</sup>COVER

Spring 2013

## 'NO WIN NO FEE' REFORMS

In December 2009, Lord Justice Jackson delivered his long anticipated review of civil litigation costs. It was designed to tackle those areas where the legal costs of settling claims had become 'disproportionate'. Just how disproportionate was illustrated by the Association of British Insurers (ABI) who surveyed over 50,000 low-value motor accident claims in 2009 and 2010, and found that for every pound paid in compensation, 87p was paid in legal costs.

From 1 April 2013 the Legal Aid, Sentencing and Punishment of Offenders Act and new Civil Procedure Rules will bring the Jackson reforms into effect. They look to restore the balance by ensuring that the costs of civil litigation are shared more proportionately between claimants and defendants.

### **MOST SIGNIFICANT CHANGE FOR A GENERATION**

The Chartered Insurance Institute calls the Jackson reforms the most significant changes to civil litigation and claims handling for 'nearly a generation'.

The reforms include:

- Litigants who have entered into a conditional fee agreement (CFA) - more commonly known as a 'no win no fee' - with their lawyer will no longer be able to recover the success fee when they win their case.
- Litigants taking out After the Event (ATE) insurance will no longer be able to recover their premiums from the losing side.
- A cap on the payment that the claimant lawyer can take from damages awarded in personal injury cases, of 25% of the final damages award.

- Application of Qualified One Way Cost Shifting means that claimants conducting their case properly will not have to pay towards the defendant's costs if the claim fails. However, protection will be lost if the claim is found to be fraudulent, if the claimant fails to beat a Part 36 offer at trial or where it is struck out by reason of being an abuse of the court's process.
- Introduction of Damages Based Agreements in civil litigation - another type of 'no win no fee' arrangement for claimants but where the lawyer's fee is related to the level of damages awarded rather than the amount of work done by the lawyer.
- Increased sanctions to encourage early settlement.
- New mandatory cost and case management rules include the requirement for parties to set share and agree budgets at the beginning of the court process.

### **IMPACT ON BUSINESSES**

The Government will be extending the existing electronic Road Traffic Accident Claims Portal. Originally set up to cover low value motor claims up to the value of £10,000, it will now be known as the Claims Portal and will include employers' and public liability claims. It will also deal with claims up to the value of £25,000. For businesses this represents a radical change. It will lead to shorter response times, condensed negotiation and the need for stringent controls when it comes to claims management in order to benefit from the potential cost savings. This element of the reforms has now been delayed until after 1 April 2013.

### **FAST ACCURATE REPORTING ESSENTIAL**

All parties involved will need to have robust processes in place to hit the strict deadlines and fast and accurate reporting will be vital. A greater front-loading of evidence will help identify valid claims and companies will need to decide on their claims strategy (whether they are going to admit liability or not) from an early stage.

Via Covernotes, we will keep you updated on the new timetable of implementation, however if you would like to learn more please visit [www.justice.gov/civil-justice-reforms](http://www.justice.gov/civil-justice-reforms). If you would like to talk through how these changes could affect your business, please call us.



## TEMPS - A QUICK FIX OR A RISK?

From June to August 2012, Britain's businesses took on an additional 1.6 million temporary workers. Employed across a range of sectors from agriculture to hospitality, the use of temporary or seasonal workers has become a year round feature of the British employment landscape. Many businesses rely on the short notice availability and flexibility of temporary staff as a key part of their business strategy. Those using temporary workers however, should beware of cutting corners in both health and safety, and in the recruitment process.

### TEMPORARY WORKERS HAVE RIGHTS TOO

The Health and Safety Executive (HSE) has laid down clear guidelines regarding the rights of temporary workers when it comes to their health and safety. It is important businesses observe these rights as well as ensuring that their recruitment process does not expose them to unwittingly employing staff with no legal right to work in the U.K. Poor recruitment can also lead to increased theft/incidents of fraud where employees have not had the appropriate background screening.

### REDUCE YOUR RISKS

There are a number of steps you can take to reduce the risks such as:

- Make sure you have appropriate health and safety training in place (typically temporary employees may have no experience in the trade/environment and so need more supervision).
- Carry out your own background screening of temporary staff.
- Plan in advance for busy periods and have a pre-screened workforce ready to call up at short notice.

Also, make sure you check your recruitment agency contract to ascertain your contractual liabilities. Your employers' liability policy should cover your legal liabilities in the event of a temporary worker sustaining an injury but as always, prevention is better than a cure.

## VIOLENCE IN THE WORKPLACE: A GROWING THREAT

When three British managers arrived at their firm's French factory to deliver bad news on the factory's future, the Guardian newspaper reported that the disgruntled workforce decided to take matters into their own hands by holding the managers hostage overnight. While this particular incident of 'boss napping' ended peacefully, it is a high profile example of a recent growth in workplace related violence which more commonly sees employees suffering from verbal or physical abuse.

### ASSAULTS AND THREATS

The U.K.'s British Crime Survey 2010-11 states that 1.5% of working adults fell victim to one or more violent incidents at work, which is equal to 331,000 workers; a rise of 4% on 2009-10 figures. Of the recorded 654,000 incidents, roughly half were actual assaults with threats making up the remainder. Workplace violence can come from customers, clients, or patients receiving goods or services, or can take the form of harassment (bullying or mobbing), most often perpetrated by an employee, or group of employees.

### YOUR RESPONSIBILITIES

From an employers' perspective, the Health and Safety at Work Act 1974 lays down a clear legal duty to ensure the health, safety and welfare of their employees. The Management of Health and Safety at Work Regulations 1999 also place specific requirements on employers to protect employees from exposure to reasonably foreseeable violence at work - both physical attacks and verbal abuse.

To reduce instances which may give rise to violence at work, you should ensure appropriate preventative measures and procedures are built in to your risk management process. In addition, be sure to check you have adequate employers' liability insurance in place - as an employer you could be held liable for the actions of your employees, including any sub-contractors you may employ.

For more guidance on how to protect your business from the risk of workplace violence go to [www.hse.gov.uk](http://www.hse.gov.uk) or contact us.



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