



Accidents at Work

When accidents occur in the workplace do most people look for someone to blame?

Yes, of course victims, their families and those involved in one way or another typically look for someone to be accountable, but assigning blame/accountability is not always easy. Safety in the work place is not the sole responsibility of the employer.

When an accident occurs it can be through negligence on the part of the employer, or on the part of the employee, or both may have contributed and in some cases – freak accidents can also occur where a set of circumstances collide which were unforeseeable and often these are described as ‘acts of god’.

In what cases can the employer be considered negligent?

An employer is required by law to take reasonable care for employees’ safety, however, the employer’s duty is not an unlimited one. The law does not require an employer to ensure, in all circumstances, the safety of employees, rather s/he will have discharged his duty of care if s/he does what a ‘reasonable and prudent’ employer would have done in the circumstances. Even where a certain precaution is obvious, in the interest of safety of the employee, there may be countervailing factors which would justify the employer not taking that precaution. It is also not enough for an employee to simply suggest his employer was negligent, s/he must actually prove s/he was negligent in order to receive compensation.

There are two main elements to proving negligence:

- That the act complained off was reasonably foreseeable; and
- That reasonable care was not taken to prevent the accident.

Is the term ‘reasonable care’ defined so that employers and employees know what is meant by it?

The courts have been very slow to set down any specific definition of ‘duty of care’ and they have seen it as one which varies with the nature of the employment and the relationship involved between the employer and employee. In other words an employer might have to take more care to protect a young inexperienced worker than he would have to take with an experienced employee. Reported cases have laid down some general guidelines which are useful but which are not exhaustive:

