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## WHEN 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. They will have discharged the duty of care if they do 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 factors which would justify the employer not taking that precaution.

It is also not enough for an employee to simply suggest their employer was negligent, they must actually prove they were negligent to receive compensation.

There are two main elements to proving negligence:

- That the act complained was reasonably foreseeable
- That reasonable care was not taken to prevent the accident

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## IS THE TERM 'REASONABLE CARE' DEFINED?

The courts have been very slow to set down any specific definition of 'duty of care'. they have seen it as one which varies with the nature of the employment and the relationship between the employer and employee.

For example, 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:

- The employer cannot foresee every risk that may possibly occur

- An employer may be negligent by omission if he has forgotten to do something which a reasonable person would have done in the circumstances.

The courts have tended to look at the duty of care under four basic headings:

- The provision of competent co-workers.
- The provision of a safe place of work.
- The provision of proper equipment.
- The provision of a safe system of work.

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## ARE THERE ANY TIME LIMITS TO BRING A CLAIM?

As a general rule, you have 2 years from the date of the accident to make a claim.

This time can be extended to 2 years from the date that you knew or ought to have known that you suffered an injury caused by your employer.

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## MUST YOU REPORT AN ACCIDENT?

Accidents in the workplace should be reported to the employer. The employer should record the details of the incident.

Reporting the accident will help to safeguard social welfare and other rights which may arise as a result of an occupational accident.

An employer is obliged to report any accident that results in an employee missing 3 consecutive days at work (not including the day of the accident) to the Health and Safety Authority.

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## WHAT ARE THE EMPLOYERS RESPONSIBILITIES UNDER HEALTH AND SAFETY LAW?

The employer has a duty to ensure the employees' safety, health and welfare at work as far as is reasonably practicable.

To prevent workplace injuries the employer is required, among other things, to:

- Provide and maintain a safe workplace which uses safe plant and equipment
- Prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration
- Prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk
- Provide instruction and training to employees on health and safety
- Provide protective clothing and equipment to employees
- Appointing a competent person as the organisation's Safety Officer
- A risk assessment and to implement measures to protect workers from those risks
- Emergency plans
- Cooperate with their employer
- Not do anything to place themselves or others at risk

Under the Act the employer must do what is "reasonably practicable". This is defined as meaning "that an employer has exercised all due care by putting in place the necessary and protective measures, having identified the hazards and assessed the risk to safety and health likely to result in accidents or injury to health at the place of work concerned and where putting place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work".

Therefore, the standard of care is very high on the employer.

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## WHAT ARE AN EMPLOYEE'S RESPONSIBILITIES?

- To take reasonable care to protect the health and safety of themselves and of other people in the workplace
- Not to engage in improper behaviour that will endanger themselves or others
- Not to be under the influence of drink or drugs in the workplace
- To undergo any reasonable medical or other assessment if requested to do so by the employer
- To report any defects in the place of work or equipment which might be a danger to health and safety

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## TYPES OF ACCIDENTS AT WORK

Although commonly associated with construction industry injuries, accidents can occur at all types of workplaces and may include slips, trips and falls caused through negligence on behalf of the employer.

Over the past number of years, we have dealt with numerous accidents at work ranging from a Client losing a finger at a woodworking premises, a Client suffering a head injury at a meat factory, a client suffering a leg injury after being hit by a forklift at some agricultural premises, a client losing a finger at a garage.

### **Other examples would include:**

- Injuries involving lifting or manual handling
  - Exposure to harmful and dangerous substances
  - Tinnitus, deafness and other hearing problems caused by noise at work
- These are just some of the numerous cases that we have dealt with over the past few years.

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## RISK ASSESSMENTS AND SAFETY STATEMENTS

Under the Safety, Health and Welfare at Work Act 2005 every employer is required to carry out a risk assessment for the workplace which should identify any hazards present in the workplace, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks.

The employer must also prepare a safety statement which is based on the risk assessment. The statement should also contain the details of people in the workforce who are responsible for safety issues. Employees should be given access to this statement and employers should review it on a regular basis.

The Health and Safety Authority has published guidelines on risk assessments and safety statements.

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## DOES AN EMPLOYER HAVE TO PROVIDE ANY NECESSARY PROTECTIVE EQUIPMENT?

The employer should tell employees about any risks that require the wearing of protective equipment. The employer should provide protective equipment (such as protective clothing, headgear, footwear, eyewear, gloves) together with training on how to use it, where necessary.

An employee is under a duty to take reasonable care for his/her own safety and to use any protective equipment supplied. The protective equipment should be provided free of charge to employees if it is intended for use at the workplace only.

Usually, employees should be provided with their own personal equipment.

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## WHAT SHOULD YOU DO IF YOU ARE INJURED AT WORK?

### 1. Seek medical assistance

It stands to reason that the most important thing is your physical well-being and this takes immediate priority over any considerations for financial compensation down the line.

That said, by immediately getting medical attention from your GP or hospital Accident & Emergency, this may provide evidence which will help prove your injury claim down the line.

## 2. Report the incident

If your accident is very serious or you have been significantly traumatised, it may not always be possible to follow procedures but it is recommended that you inform your immediate superior of the nature of incident as soon as possible.

Your employer is legally required to keep an accident book with a record of all work-related accidents both in case of a compensation claim and to help avoid future workplace accidents.

## 3. Take Photographs

At the very earliest opportunity following an accident, you should take photographs of the scene if at all possible.

Again, these may be vital evidence for any future claim which may be taken.

## 4. Get Details of All Witnesses

If there were any witnesses to the accident, be sure to obtain their names, addresses and telephone numbers.

## 5. Do A Detailed Statement Of How The Accident Happened

It is most important that you write down in the fullest detail how the accident happened and what injuries you suffered.

You should set out the time, date and mechanics of the accident and who you believe is responsible and why you feel they are at fault.

It is important that you complete this statement at the earliest date to avoid the possibility of forgetting details over time and include as much detail as you can remember, no matter how trivial.

You have no way of knowing at an early stage what will prove to be important as your case progresses.

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## IF YOU SUE YOUR EMPLOYER DOES IT FOLLOW THAT YOU CAN LOSE YOUR JOB?

People are often apprehensive about making work injury claims due to the fear of losing their jobs or because they might upset an existing working relationship with their employer.

Although the law protects people who are injured at work from being penalised or threatened with dismissal for making work injury claims, it does not always alleviate the fear of an awkward workplace confrontation on their return, or the potential for being jobless when employment is hard to find.

It is worth remembering that any work injury claims settlement is paid by your employer's public liability insurance company, so you should not be concerned about your fellow employees suffering financially due to making a work injury claim.

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## WHAT RESPONSIBILITIES DO EMPLOYERS HAVE UNDER COMMON LAW?

Employers have a duty to:

- Provide a safe place of work
- Provide competent co-workers so that employees are not at risk
- Provide a safe system of work which is planned and organised
- Maintain the procedures which are in place.
- Provide instructions, training, equipment and support to employees- many cases arise because employees do not receive adequate training for their jobs

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## RSI - A COMMON WORKPLACE INJURY?

A common workplace injury can be repetitive strain injury, or RSI, it is an umbrella term used to describe work related musculoskeletal (muscles,

tendons, ligaments, cartilage, bone) disorders affecting the neck, shoulder, arm, wrist and hand.

It is often used very loosely to include conditions that are not necessarily related to repetitive strain such as carpal tunnel syndrome or tendonitis (inflamed tendons).

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## WHAT CAUSES RSI?

The most obvious cause of RSI is repetitive movements, which can cause inflammation of the tendons (the tough tissue that attaches a muscle to bone) of the hand or forearm.

This is particularly true if the movements are carried out in an awkward posture and without suitable rest periods.

If your work involves prolonged periods of handwriting, typing, microscope or other bench work or other repetitive movements of the fingers, hand or arm you are at risk of developing RSI.

If you work with your hands at or above shoulder level, you are prone to developing rotator cuff tendonitis (inflammation of the muscles and tendons around the shoulder joint).

### **Other risk factors include:**

- Poor posture e.g. working with hands above shoulder level
- Handling loads
- Lack of variation in the task performed
- Heavy work load
- Poorly organised workstation
- Maladjusted chairs
- Stress
- Boredom



- Insufficient rest

The risk of RSI increases with age. Studies have also shown that women are more susceptible than men to repetitive strain injuries, as are those who are unfit.

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## HOW DO I KNOW IF I HAVE RSI?

RSI typically involves the arm, shoulder, neck and/or chest wall. Typical symptoms include:

- An underlying ache in the arm, shoulder or neck before onset of pain
- Pain or discomfort in the area affected (severity varies with emotion, activity and the weather)
- Tightness
- Stiffness
- Numbness Pins and needles
- Difficulty performing the activity that caused the problem
- Difficulty with other activities including housework and leisure pursuits
- Generalised fatigue is common
- Poor sleep patterns

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## WHAT IS THE LAW ON RSI?

RSI's are preventable workplace injuries. They happen usually for a combination of reasons and because the employer has:

- Failed to organise the task to make sure that the employee has a variety of positions and movements – to mix it up.
- Failed to provide adequate rest periods. If the work is repetitive or involves a lack of variety in the workers posture, the statutory 30-minute meal break and 20-minute rest period may not be adequate.
- Failed to analyse the workspace with an ergonomist.
- Failed to implement or stick to an ergonomics plan.

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## EXAMPLE

A local brewery had a machine for putting lids on cans. It had to be loaded manually with stacks of lids. This procedure was carried out by the employee who had to reach up to near full extension with his arm to load each stack.

This procedure was repeated every minute or so, all day long and the employee was not rotated off that machine for several months. He developed a rotator cuff injury to his shoulder.

Through our medical and engineering expert witnesses, Lynch Solicitors were able to establish that the operator could have been spared an injury if he had been provided with a platform from which to load the machine. His case was successful and he received an award of compensation.

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## WORKPLACE HEALTH AND SAFETY

In 2016 the Health and Safety Authority (HSA) reported that 47 people died in Ireland as a result of workplace accidents; the majority of these fatal accidents occurred in the agricultural and construction industries.

These figures do not take into account the tens of thousands of people who are non-fatally injured in workplace each year.

Employers have a duty of care towards their employees' wellbeing under the Health and Safety Acts; this is what's called a statutory duty but they also have a Common Law Duty or what most people refer to as Employers Liability.

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## LYNCH SOLICITORS AND ACCIDENTS AT WORK

Over the years, we have built our reputation for strength in litigation by providing a sympathetic but objective assessment of clients' problems.

We undertake a wide variety of litigation work including:

- Road Traffic Accidents
- Slip, Trip and Fall Cases
- Accident at Work
- Accident on Private Property
- Accident in Public Places
- Medical Negligence
- Product Liability: Defective products
- Contract Disputes
- Property Disputes
- Private/Public Law Disputes
- PIAB Injuries Board Applications
- Defence
- Fatal Injuries
- Probate Litigation
- Workplace Bullying/Stress/RSI

Litigation can be time consuming, expensive and, sometimes, uneconomical. You need the services of an established legal practice with a strong litigation team.

We will give you an objective opinion on your legal query from the outset. We see no benefit to a client in allowing the case to go to trial without a full understanding of the risks and an indication of the likely outcome.

In our experience, many people are fearful of going to court. People may worry about the risk of losing, the possibility of publicity or the prospect of having to give evidence.

At Lynch Solicitors, we will guide you through the court experience of litigation and prepare you for all aspects of your case.

It is important to note that the vast majority of cases are settled amicably before they get to court.

We will advise you fully on the settlement process and will always strive to spare you the trauma of going to court while ensuring that your compensation or damages are maximized.

Our Litigation Partners are John M. Lynch and Gillian O'Mahony.

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