ENTERPRISE ACT 2013 – ABOLITION OF CLAIMS FOR BREACH OF STATUTORY DUTY

WHAT DOES THIS MEAN FOR EMPLOYERS?

As part of our commitment to bring you the latest news on the Enterprise Act, we have put together a briefing note to provide you with an update on the changes taking place on the 1st of October 2013.

What is this all about?

The Enterprise and Regulatory Reform Act received Royal Assent in April 2013 and Section 69 will come into force on 1st October. This will have the effect, in respect of workplace accidents after that date, of removing the right of the injured person to claim damages from their employer based on breach of statutory duty. Instead, in order to succeed, claimants will have to show that there was negligence – a breach of common law duty on the part of the employer. Previously, some statutory regulations imposed a ‘strict liability’ on the employer, who could be liable to pay damages even though there was nothing they could have done to prevent the accident.

Why is it happening?

The Government has said that it wishes to: ‘...address the unfairness which results when an employer, due to a strict liability duty, is found liable to pay damages to an employee despite having taken all reasonable steps to protect them. The aim is to redress the balance whilst ensuring that employees continue to have the opportunity to claim for damages where an employer is shown to be at fault.’

The perceived unfairness of strict liability in this context was highlighted by the Lofstedt Report into Health and Safety Legislation in 2011.

What is strict liability?

The best known example of strict liability is the case of Stark v Post Office in 2000. Mr Stark was working as a postman when part of the front brake mechanism of his bicycle failed, causing an accident in which he was injured. The defect was not ‘discoverable on any routine inspection’ so there was no negligence, but his employers were held liable due to their strict liability under s5(1) of the Work Equipment Regulations to ‘maintain’ the cycle, which they had provided as work equipment.
What are an employer’s common law duties?

Even without strict liability, there are onerous common law duties on employers which have been developed by the Courts over many years. These make it very difficult to successfully defend most Employer’s Liability accident claims. They are conventionally summarised as a duty to:

- Provide a safe system of work (including training and supervision)
- Provide a safe place of work, and access and egress thereto
- Provide safe plant and equipment
- Provide competent fellow employees (the employer is vicariously liable for the negligence of fellow employees)

Are all the regulations scrapped?

No, all the Regulations and other health and safety legislation remain in force, and employers and others will still be subject to prosecution or other enforcement action if they break the rules. It is just the right of the injured person to claim civil damages for any breach that is being removed. Claimants will also still be able to refer to regulatory breaches as evidence of a breach of the common law duty of care.

Will there be fewer claims?

Possibly, but very few claims are settled only because of a breach of a strict liability. In most situations that lead to a successful claim there will also be a breach of a common law duty, for example a failure to provide safe equipment or adequate training, or the employer may be liable for the actions of a fellow employee (vicarious liability).

In a few scenarios, claimant lawyers may take the view that it will be too difficult or uncertain to establish negligence without the clarity offered by a strict liability duty, and so they may not take the claim on. There may also be a short-term increase in claims based on accidents before the implementation date, where claimants can rely on strict liabilities.

Will we be able to defend more claims in future?

Similarly, there may be a few situations where we are able to make out a defence which would not have been available to us if there was a strict duty in place. Against this, there will be more claims that are disputed and some of these will result in litigation or go to Court. Many more claims will need to be investigated in greater detail by both sides. All of this will tend to increase legal costs. That is likely to offset much of the savings that may accrue through there being fewer claims and more opportunities to defend some of those that are made.

Will premiums go down?

The net effect of this change on the overall cost of claims is likely to be minimal. However the abolition of claims for breach of statutory duty is one of a number of reforms introduced by the Government and Judiciary, including the introduction of the EL/PL Portal for most Fast-track injury claims and the effective abolition of many ‘no-win, no-fee’ legal costs deals. Taken together, these reforms should create a more favourable climate for liability insurers in the coming years.