



# UNIONLINE NEWS

Legal Services Newsletter  
for GMB and CWU Members  
and their Families

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## CIVIL LIABILITY ACT THREATENS TO CUT OFF MORE WORKERS FROM JUSTICE FOR PERSONAL INJURIES



The passing into law of the Civil Liability Bill for England & Wales, will further cut off the ability of workers to obtain justice for work related injuries. The legislation is allegedly aimed at reducing vexatious whiplash claims against insurance companies but the ambit of this legislation stretches far wider.

Under a statutory instrument, linked to the Bill, anyone with a whiplash claim under £5,000 or a personal injury claim under £2,000 must go down the small claims court route for justice.

The new legislation changed the thresholds for personal injuries from £1,000 to £2,000, which will see many workplace disputes forced down the small claims route, where legal fees are not covered, so in a number of complex cases, this may

deter workers from making a claim.

The passing of the Civil Liability Act follows on from the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2013, which sort to reduce unnecessary litigation at public expense; target legal aid at those who most need it; make significant cost savings in running the scheme and make savings for the taxpayer. The act has cut off legal aid for personal injuries, employer liability and some civil cases. Legal aid support has been cut for housing cases, which has come up in the Grenfell Tower inquiry, and also for relatives seeking representation at inquests, where a loved one has been involved in a fatal accident at work.

**Dave Parr, policy and technical services director at the British Safety Council said;** "Restricting

access to justice is unjust and unfair. Whilst it is fair for the state to implement processes that are designed to deter and prevent false civil claims, this should never be at the expense of the facility for civil redress for individuals who have suffered injury, ill health or loss through the neglectful acts of others," said Dave, who called on the wider responsibility of government to protect those injured at work.

"It may reasonably be assumed that the measure of any civilised society is the ability to protect the health, safety and well-being of the population at all times, but particularly when they are carrying out the work-based activities that benefit society as a whole, whether directly or indirectly. The civil and criminal statute framework in the UK has traditionally ensured just such a course of redress, enabling those who have suffered loss, injury or ill health through no fault of their own to be suitably compensated."

**Tony Rupa, CWU Head of Legal Services said:**

"The Government's Civil Liability Bill is designed to tackle bogus whiplash claims, but hidden within is a £1.3bn bonus to the fat cat insurers. The very same companies who have constantly alluded to falling premiums when in fact between 2007 & 2016 whiplash claims fell by 17% and premiums rose by 71%. Clearly, this is a further example of this Tory Government kowtowing to the insurance lobby at the expense of hundreds of thousands of people seeking access to justice."

"By using a backdoor Parliamentary procedure (statutory instrument), the government have introduced the doubling of the small claims limit, below which injured people don't get their legal fees paid. The government is using these bogus whiplash claims to mask an attack on Injured workers. Increasingly, the best way to ensure working women and men have access to justice is by joining a Trade Union."

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## WHAT'S COMING UP IN 2019

### Use of NDAs in employment disputes

The Government has announced that it will bring forward a planned consultation on the use of non-disclosure agreements in employment disputes. It intends to improve the regulation around such agreements and make it explicit to employees when a non-disclosure agreement does not apply and cannot be enforced. The announcement follows the high profile Court of Appeal decision to stop a newspaper from naming a British businessman accused of the sexual and racial harassment of staff.

### Executive pay ratio reporting requirements

Regulations on executive pay ratio reporting requirements are to be introduced on 1 January 2019 for quoted companies with more than 250 UK employees, applying to financial years beginning on or after that date. First reports will therefore be made in 2020. They will be required to include certain pay ratios for the relevant financial year in the directors' remuneration report. The pay ratios compare

the total annual remuneration of the CEO to UK employees whose pay and benefits are on the 25th, 50th and 75th percentiles. These companies will also have to report how share price changes impact on shares receivable by directors under long-term incentive schemes during the relevant financial year and which corporate governance code or corporate governance arrangements they applied in the financial year. Other requirements are for a statement on how the directors have engaged with employees and had regard to their interests when making business decisions, and how directors have dealt with the duty to promote the success of the business.

### Ethnicity pay gap

A consultation has begun on the introduction of mandatory ethnicity pay gap reporting for large employers, closing on 11 January 2019. The government is asking for views on what information should be reported to prevent undue burdens on business.

## TUC CALLS ON GOVERNMENT TO MAKE EMPLOYERS REPORT THEIR DISABILITY PAY GAPS

The TUC is calling on the Government to make it compulsory for employers to publish their disability pay gaps.

The call comes as new TUC analysis shows that the average pay gap for disabled workers has hit 15.2% – the equivalent of £2,821 a year.

However, for people with mental illnesses (29.8%) and depression (26.3%) the pay gap is even worse.

Last week ministers published a voluntary code to encourage employers to disclose the number of disabled people they employ, their career progression and pay.

But the TUC says that without a legally binding requirement on companies to publish their pay gaps (and set out what action they are taking to address them), progress will be too slow.

### Disability employment gap

The TUC says far more needs to be done to remove the barriers facing disabled people in the workplace.

Just half (50.5%) of working-age disabled people in the UK currently have a job, compared to four-fifths (81.1%) of non-disabled people.

For some disabled people the problem is even worse. Only 3 in 10 (30.4%) people with a mental health disability are in work.

The TUC is calling on the government to introduce a statutory requirement for employers to report on their disability pay gaps and employment rates, and to publish action plans setting out how they will address them.



## Government considering re-introducing Employment Tribunal Fees



It is being reported the government is considering reintroducing tribunal fees. Whilst no detail is given, the Ministry of Justice has said it is confident that a fee system can be found which does not deny Claimants access to justice, for which the government was criticised in the Unison Supreme Court case. This follows on from a written answer in Hansard during the summer, where the Ministry of Justice said it was reviewing how (not whether) it would reintroduce fees.

## Video hearings

Sir Ernest Ryder, the senior President of Tribunals, has given a speech in which he says the Courts & Tribunals Service is considering testing video hearings for case management and simple cases in employment tribunals, together with new sophisticated booking arrangements for judges, hearing rooms and cases.

The national employment tribunal's user group noted that the most recent statistics indicate a 165% increase in single claims (it would take a 200% increase to return to pre-fee levels). Also that at least one tribunal is listing longer cases as far away as 2020, and it is being reported that Croydon and Manchester tribunals are listing longer hearings in 2021. These delays will be alleviated, at least in part, as new salaried and fee-paid employment judges are appointed over the next year or so.

## HMCTS defends intrusive security after 5,000 knives seized



Her Majesty's Courts & Tribunals Service (HMCTS) has defended what some say are overzealous security measures at courts in England and Wales.

**Susan Acland-Hood chief executive** revealed that 8,000 knives were confiscated in 2017 and 5,000 had been seized so far this year from people entering court buildings said she recognised there had been instances where security measures were intrusive, but stressed security staff could not pick and choose who to search.

The fast-track entry scheme, by which solicitors will use ID cards and barristers a smartphone app to bypass security, could be extended to all courts

pending a successful pilot, Acland-Hood said.

*"However, even under the new measures one in ten ID holders (lawyers) will still be searched," she added.*

*"Since August five courts have been piloting the system and last week, the scheme was extended to courts in Chester, Nottingham, Portsmouth, St Albans and Swansea."*

Acland Hood also defended the decision to pilot flexible court operating hours in family and civil courts. Participation in the scheme will be voluntary.

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