

GOVERNMENT WHIPLASH INJURY CHANGES

WILL PROVIDE A
BONANZA FOR THE
INSURANCE INDUSTRY,
WHILST HITTING
WORKING PEOPLE HARD

The Labour Party looks set to vote against the government's whiplash injury reforms, when they return for third reading, as part of the Civil Liability Bill, after MPs return to Parliament following the conference season.

The reforms have trod a long and tortuous path that began some three years ago, with proposals from then Chancellor George Osborne to slash payments for whiplash injuries whilst expanding the limits for damages in road traffic accidents to £5,000.

The latest proposals see new tariffs introduced for whiplash injuries ranging from £225 for injuries lasting less than three months to £3,725, where the victim had suffered for up to two years.

Labour had sought to cut the tariff restrictions applying from two to one year.

The Opposition also wanted judges rather than the Lord Chancellor to determine compensation levels, and for judges to have the scope to intervene where they decide the amount of damages payable is too low.

Section 1 (1) of the Bill states that "whiplash injury" means "an injury, or set of injuries, of soft tissue in the neck, back or shoulder that is of a description specified in regulations made by the Lord Chancellor."



Shadow Justice Secretary Richard Burgon said:

"Very disappointed the gov't voted down all of Labour's amendments to the Civil Liability Bill. This bill will line the insurance industry's pockets. Working class people will lose out if government doesn't accept Labour's radical changes and we'll vote against this bill at 3rd reading."

The changes mean that the big winners, should the legislation pass into law, will be the insurers, who stand to make major savings, in the realm of £1.1 billion. The savings are supposed to be passed onto the consumer in the form of reduced premiums but critics doubt this will happen.

Justice Minister Rory Stewart said: *"I remain confident that, if insurance companies are compelled to produce such a degree of detail and information to the Financial Conduct Authority and the Treasury, they will pass on those savings to consumers because, were they not to, they would be taking a considerable legal risk. The industry initially resisted this move, and understands that it is a serious obligation."*

The government will stipulate that firms report details about premium levels before and after reforms to the Financial Conduct Authority, although the results of this are not expected to be published until 2024 at the earliest.

UnionLine will continue to fight for our members and Trade Union membership is still the best way for working women and men to gain access to justice.

TRANSFER OF UNDERTAKING CAN OCCUR DESPITE A FIVE MONTH CESSATION OF ACTIVITIES

The Court of Justice of the European Union (CJEU) has held that a transfer of an undertaking could occur under the Acquired Rights Directive (2001/23/EC) where a contract to provide services was terminated and the service resumed by another contractor some five months later.

The claimant worked as a music teacher at a school in Spain. The local authority had outsourced the running of the school to a small private company. In April 2013, due to declining student numbers, the company running the school ceased its activities and dismissed the entire staff body. The local authority duly terminated its contract with the company and, following a new tender process, awarded a new contract to another private company to run the school. That new contract started in September 2013 at the start of the new academic year. The company that took over the running of the school used the same premises, instruments and resources to provide the services, but appointed a new staff body.

The employees that had been dismissed brought proceedings for unfair dismissal in the Spanish courts. As part of those proceedings, the Spanish court held that there was no transfer of an undertaking because the activities were only resumed after a gap of five months. On appeal, the Spanish court referred the case to the CJEU to determine whether there could be a transfer of an undertaking under the Directive. The CJEU, departing from the Advocate General's opinion, held that there could in principle be a transfer within the scope of the Directive. Central to the CJEU's decision was the fact that the economic activity was asset reliant and the new contractor used the same premises, instruments and resources, as well as the fact that the school would have been closed in any event for a three month period over the summer holidays.

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BETTER PROTECTION FOR EMERGENCY WORKERS



Unions have welcomed a new law that will make it a criminal offence to assault emergency workers including police, paramedics, firefighters, prison officers, search and rescue personnel and custody officers.

The current six-month maximum sentence for common assault will be doubled to a year for the new crime created by the Assaults on Emergency Workers (Offences) Act, which will also enable judges to increase terms given to people committed for a range of other crimes where the involvement of emergency services was an "aggravating factor".

Chris Bryant MP, the Labour MP who introduced the Bill, said: *"The growing tide of attacks on emergency workers – including ambulance workers, NHS staff, fire officers, prison officers and police – is a national scandal. All too often attackers get away with little more than a slap on the wrist."*

Kevin Brandstatter, GMB National Officer, added *"It is difficult to put into words what this will mean for the hundreds of thousands of emergency service workers who have been assaulted in the line of duty. Action is long overdue. At least eight ambulance workers are attacked every day, and the threat of violence is forcing many experienced professionals out of the NHS."*

Ambulance technician and **GMB member Sarah Kelly**, who played a critical role in securing a change to the law after she was assaulted while on duty, said: *"The work must start now with the Government recognising the situation and actively working with ambulance employers and trade unions to better understand what resources are required to prevent these attacks. The law change is long overdue but I hope we rarely need to use it."*

Home Office figures show there were more than **26,000 assaults against police officers** in England and Wales during 2017-18 and more than **17,000 on NHS staff**, although there is a lot of underreporting. There has also been an **18 per cent increase in assaults against firefighters** in the past two years.

TRIBUNAL STATISTICS FOR APRIL & JUNE

THE MOJ HAS PUBLISHED THE TRIBUNAL STATISTICS FOR APRIL TO JUNE 2018

The number of single claims lodged increased by **165%** compared with the same quarter last year. Tribunal fees were abolished in July 2017, so this is a reliable figure as April to June 2017 was the last full quarter when fees were in force.

The number of single claims outstanding rose by **130%** compared with the same quarter last year. HM Courts & Tribunal Service is in the process of recruiting more employment judges, which will help reduce the backlog in the medium to longer term.

There have been **12,400 fee refund payments** made since the fee refund scheme was introduced, totalling just over **£10m**. Disability discrimination cases had the largest average award (**£30,700**). Religious discrimination claims had the lowest average award (**£5,100**). The average award for unfair dismissal awards was **£15,007**.

BEREAVED PARENTS TO RECEIVE TWO WEEKS PAID LEAVE UNDER THE NEW PARENTAL (LEAVE AND PAY) ACT

The Parental (Leave and Pay) Act will give all employed parents statutory right to two weeks of leave if they lose a child under the age of 18, or suffer a stillbirth from 24 weeks of pregnancy.

Parents will be entitled to this leave from day one irrespective of their length of service with their employer and the entitlement will apply in respect of each child lost. Employees with a minimum of 26 weeks' continuous service will

be eligible for statutory parental bereavement pay, for which employers will be able to reclaim some or all of the cost.

The leave has to be taken beginning in the period of 56 days since the child's death.

The statutory right is expected to come into force in 2020.

The government-backed bill was introduced to parliament in July 2017 as a private member's bill, after campaigning by families who had been denied such leave following bereavements.

Bill sponsor Kevin Hollinrake, MP for Thirsk and Malton, said: *"Losing a child is the most dreadful and unimaginable experience that any parent could suffer and it is right that grieving parents will now be given time to start to come*

to terms with their loss."

Business Minister Kelly Tolhurst, said: *"This law makes Parental Bereavement Leave a legal right for the first time in the UK's history."*

"Losing a child is an unimaginable trauma. I am delighted we have reached this important milestone which so many have campaigned for."

Lucy Herd from Jack's Rainbow said: *"When I started the campaign eight years ago after the death of my son Jack, I always hoped that a change would happen in his memory."*

"Knowing that 8 years of campaigning has helped create legislation to ensure bereaved parents are protected in the future is such a wonderful feeling and I am so grateful to all those involved."

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