

# The 7 Immediate Steps I must take if I'm involved in a Workplace Accident

- 1. Identify all relevant information there and then
- 2. Visit your Doctor immediately
- 3. Instruct your Solicitor without delay
- 4. Do not make a formal Accident Report without first talking to your solicitor
- 5. Don't be afraid to sue your Employer
- 6. Keep a diary of all ongoing symptoms
- 7. Be honest



# **Preface**

Where I refer to Workplace Accidents, such as an accident where you suffer physical injury, I am also referring to Workplace Incidents, where for instance you have sustained psychological injury as a result of ongoing incidents at the Workplace, such as Bullying or Occupational Stress. In both situations you may need to consider commencing a personal injury claim\* as a result of injury suffered by you, whether physical or mental.

In some situations your injury will be acute, such as a fractured arm. In other situations it may be chronic – developing over a period of time, such as psychiatric illness arising from constant bullying by a Line Manager or Work Colleague. Throughout this Guide I will refer to Workplace "Accidents", but in most instances I am generally referring to all Workplace injuries, whether acute or chronic.

Making a personal injury claim, especially after a Workplace accident, can be very stressful and difficult, particularly when you are at your most vulnerable. This Guide provides you with the 7 immediate steps you must take following your accident.

# If you've just had an accident, you may be facing the following problems...

You may have sustained serious injury and may not feel capable of attending to the steps outlined in this Guide. If you cannot do so, then ask a Workplace Colleague, a loved one or a friend to assist you. These immediate steps are very important and will affect your Civil Claim for compensation in the long term.

You may have been obliged to cease work. You could be struggling to meet your financial, employment, and family responsibilities. You may be feeling overwhelmed at the thought of processing a Claim against your employer, or completing an Injuries Board claim on your own to get the compensation to which you are entitled.

You may have been unable to access the appropriate medical care for your injuries, or experiencing anxiety and guilt about taking a Claim. You could be worried that it will take you years to get your compensation.

A lot of vital evidence can be lost within a very short period following an accident. The factory location may be changed after your accident. You will require experienced professional help to assist you in preserving this evidence and advising you on how to protect your interests. This can make all the difference later on.

Bear in mind that a claim arising out of an accident may take months or even years to be resolved. Unless the evidence is recorded carefully, facts that seemed as clear as a bell to you at the time of the accident may be muddied by the passage of time. And remember also that not everyone involved in the accident will be interested in highlighting those aspects of the facts that may support your case.

That is why you need to consult a solicitor, who can take immediate action to protect your rights. Again, if you, because of the severity of your injuries, cannot make immediate contact with your solicitor, then ask your loved one or friend to make immediate contact: your solicitor will be happy to visit you if required.



#### **Some Definitions:**

Sorry to get legalistic, but it is best to get these terms out of the way before you start on this Guide:

"Claimant": that is you – the Employee / the Accident Victim (sometimes also referred to as the "Plaintiff");

"Respondent": that is your Employer, whom you will be suing (sometimes also referred to as the "Defendant");

"Liability": that is, who was responsible for the accident – remember, you can only recover compensation against your Employer if you can prove your Employer was either fully or partly responsible for the accident;

"Vicarious Liability": Generally, an employer will be held responsible for any wrongdoing committed while an employee is conducting their duties. Therefore, while the employer may not have personally caused your accident, he will be responsible if one of your Work Colleagues caused the accident. Your Employer will also be responsible for the Bullying caused by your Line Manager if the Employer did not have proper procedures in place to ensure that Bullying did not occur.

"Court Pleadings": Before your case gets to a Court Hearing or settlement, it will be necessary for your Solicitor to deliver a number of Court Pleadings. To start the Court Proceedings, it is necessary to issue a Personal Injury Summons. Subsequently, a Reply to Particulars will be delivered where the Respondent's solicitors seek further particulars of your Claim, and at various time Notices of Further Injuries are delivered as updated Medical Reports are received.



"Respondent's Insurers": Most Employees assume that if they are suing over a Workplace Accident they will be dealing directly with their Employer. In most, if not all, instances your employer will have been insured under an Employer's Liability Insurance Policy and your solicitor will be dealing exclusively with the Employer's Insurance Company. You may get the impression from this Guide that your Employer's Insurers are on the "dark side" but they are representing your Employer's interests and it is in their interests to minimize your Claim and even at times suggest that you are exaggerating your Claim. It's just business; so don't take it personally – but, so that we can keep you right, do please take note of these very important **7 Steps** ......



# 1. Identify all relevant information there and then

#### Important matters to be recorded

For instance, you work on a factory floor and have been knocked down by a Forklift Driver. Maybe the Forklift Driver did not drive within the Safety Lanes? Maybe there were no Safety Lanes? You have been put sitting on a chair near to where your accident occurred and you are waiting for Management to come to your assistance. While you are there take out your iPhone and take photos of the scene of the accident. These should include photos of the Forklift before it was moved after the accident. Examples of photographs which will be of assistance include:

- The position of the Forklift relative to any Safety Lanes in which it should have been travelling.
- Any dents or other signs of damage to the vehicle or indeed to any other workplace machine with which it may also have collided.
- Any skid marks or other markings on the factory floor.

Get the names, addresses and telephone numbers of any witnesses as these may be required if there is a question of liability. While you will know your Workplace Colleagues, perhaps there was a visitor, such as an independent Contractor or Inspector, who may been in the vicinity of the accident and may be better placed to give independent evidence.

## Do not rely on your Employer to record these incidents

No one is saying that your Employer won't properly record these incidents, but this may not be a priority for your Employer or his Safety Officer on the day. Furthermore, the Safety Officer is gathering information for the purpose of a report to your Employer's Insurance Company and sometimes to attempt to explain why your Employer was not to blame for the accident. You need to take photographs to support your account of how the accident occurred.

# Write your account of the accident as soon as possible

You should write down an account of all relevant facts connected to the accident as soon as possible afterwards. You can do this while waiting for treatment in hospital: after all, you are likely to be waiting there a long time! You should sign and date it (including the time) when it is completed. This is for your Solicitor (reasons explained later in this Guide!).

# But my injuries are too severe for this!

If, due to the severity of your injuries – particularly where you have been taken to hospital by ambulance – it is not possible for you to attend personally to all of the above, then get someone else at the accident scene, such as a Work Colleague, to attend to this. This person may note important details at the scene which you may have overlooked due to your shock.



Should I admit responsibility or accept that I was partly responsible?

Never: see Section 4 of this Guide - Do not make a formal Accident

Report without first talking to your solicitor - below for further

information.

But what if my injury was not so sudden or acute?

What if your injury was not sudden, but sustained over a period of

time; for example, bullying by a Line Manager? "You can't

photograph that!" I hear you say. No you can't, but you can keep

contemporaneous records. For instance, if you are getting nasty

emails, forward them to your Gmail address for future reference. Get

a Diary and make daily records of the treatment to which you have

been subjected. If this misconduct continues, file a Grievance under

the Company's Grievance Procedure or a Bullying Complaint under

the Bullying & Harassment Procedure.

Report the matter in writing (preferably by email) to your Employer:

that way, a contemporaneous record of your situation is recorded

and nobody can deny it at a later date.

MORGAN MCMANUS SOLICITORS If you become ill consult your GP immediately. Don't be afraid to admit that you are being stressed out at work. If you are suffering from Occupational Stress and are obliged to go on Sick Leave, then that it what your Medical Certificate should record; not simply that you are suffering from a "Medical Condition". If you want your Employer to take remedial action on your return to work, how can he be prompted to do so if your Medical Certificate merely records that you are suffering from a "Medical Condition"!!

# 2. Visit your Doctor immediately

If you feel any pain or stiffness subsequent to the accident then you should definitely visit to your GP as soon as possible after the accident. You may have sustained shock in the accident. Shock can often mask the gravity of what are in fact significant physical injuries requiring medical attention. If you don't get the appropriate treatment early enough this could exacerbate your injuries. Furthermore, it is important that someone who is a professional and is impartial, like your GP, takes an immediate record of your symptoms.

I know, you may think: "I'll get over this", but what if you don't? What if you are involved in a subsequent accident (sounds incredible, but it has happened!): how are you going to prove that this first accident was responsible for your symptoms: what independent medical evidence will you have? What if you don't report the accident (for example, a lifting accident) to your Employer immediately and your symptoms only become obvious 24 hours? Your employer could reasonably suggest that you might have sustained your injury outside the workplace!

If you suffer a back injury there may be no difficulty in relating your back injury to this accident, but what if you have always suffered from a bad back? How will you be able to prove that the aggravation of the back injury symptoms was due to this accident? Sometimes it will be very important that an MRI Scan is undertaken as soon as

possible after an accident, so that the soft tissue injury signs identified in that MRI Scan can be related to that recent accident.

Need I say more?



# 3. Instruct your Solicitor

I know, you're thinking: "He would say that; wouldn't he!"- here is a Solicitor telling you to immediately instruct a Solicitor! ... but there are very good reasons why you should do so.

Remember too that your Employer will be required to report your accident to their Insurers (remember those ones on the "dark side") who will appoint their panel solicitors to represent his interests ..... so, why should you leave yourself at a disadvantage?

For God's sake, do not try to take on an Injuries Board (PIAB) Application yourself; despite any assurances you may read on the Injuries Board website that you do not need a Solicitor to file your Injuries Board Claim (for more information, read our Guide "Do I need a Solicitor when filing an Injuries Board Claim?")

Your Solicitor will advise you on immediate action you should take to strengthen your case in the long term. He will advise you as to the manner in which you should complete your formal Accident Report (see Section 4 below).

He may advise and assist you in delivering a *Subject Access Request* to your Employer, demanding documents to which you are entitled under the Data Protection Acts. Documents obtained under the Data Protection Acts can include essential information, such as Employment Contracts, Safety Statements, Risk Assessments,

Accident Reports, Occupational Assessments and other Reports which could be vital ultimately in proving liability against your Employer where your Employer might otherwise have disputed liability.

If liability is going to be disputed, he may advise the immediate retainer of an Engineer to visit the factory accident scene while there is still forensic evidence available to support your version of the how the accident occurred.

There are circumstances where, even if you've taken down all the relevant facts, drawn an accurate sketch, and taken plenty of photographs, an engineer will nevertheless be able to inspect the scene with cold detachment relying on a trained eye that may well spot relevant details that you could easily have missed. They know the tell-tale signs to look out for and will also be in a position to take relevant measurements which could turn out to be critical ultimately at the Hearing of your Civil Claim from an evidential point of view. Evidence can be lost from a scene. It may be appropriate to ensure that the engineer attends and inspects the scene as soon as possible. Your solicitor will know when to take appropriate action on this. Time is of the essence.

You will be advised on what immediate actions you should take to ensure that you do not do anything to prejudice your Claim.

And don't delay .....

Seriously, there are a number of good reasons why you should not delay in instructing a Solicitor. For instance, under Section 8 of the *Courts and Civil Liability Act 2004* you are required to issue a written notice providing details of the nature of the wrong alleged to a Respondent (in this instance, your Employer) within two months of the date of the cause of action (the accident date) or as soon as practicable thereafter. If you fail to do so a Court can subsequently make adverse comment on this failure and this could affect the Judge's decision on whether you are compensated. I have had cases where my client has waited for over a year to instruct me; the Claim Letter is obviously therefore way out of time and the Respondent's Insurers have tried to raise issue with this delay.

There are many cases where some employees will not consider issuing a Civil Claim as they believe that their symptoms will resolve with time and only subsequently consult a solicitor because they then realize that their symptoms are getting worse. While this is understandable, it can also be dangerous.

#### The Statute of Limitations ....

In Ireland a Claimant has only 2 years within which to issue a Civil Claim. If you don't issue Court Proceedings within that time your Claim becomes *Statute-Barred*: that is, you can no longer issue a Claim. Two years may seem like a long time, but remember that, before your Court Proceedings can be issued, your Solicitor must first get Medical Reports from GP's and Consultants. Consultants particularly are very busy people and it can often take months to



get appointments and then Reports. Sometimes it is necessary to get Reports from a number of Consultants and this can therefore give rise to further delays. Two years can pass very quickly!

Therefore, don't delay: at least instruct your Solicitor today and we can get matters in motion for you!



# 4. Do not make a formal Accident Report without first talking to your solicitor

At the conclusion of Section 1 I stated that you should never admit responsibility at the scene of the accident. Likewise, you should never sign a formal Accident Report without talking first to your Solicitor. There are very good reasons for this advice.

## Not admitting responsibility ...

You must tell your Employer or Manager immediately on request how the accident occurred, but the scene of an accident is neither the time nor the place to get into an argument as to who was responsible for the accident. You might feel guilty that you have in some way contributed to the fact that there was an accident or, where other workers were injured, that you were somehow to blame – but that does not mean that you were responsible for the accident! Remember also that you could be suffering from shock or be overcome with emotion in the immediate aftermath of an accident – leave this discussion for a later date.

Also, bear in mind that, while you have certain obligations under legislation to take care of yourself at work and also not to injure other workers, your Employer has very onerous duties under the *Safety Health & Welfare at Work Act 2004* to ensure that you are not injured at your Workplace. This includes both physical and psychological injuries. There may therefore be instances where you might have assumed that you were responsible for the accident, but a more

careful (and sometimes professional) analysis will demonstrate that it was your employer who was in fact responsible.

Not making a formal Accident Report ...

Firstly, this is not to be confused with an Accident Report Book. There should be an Accident Report Book on every factory floor. All accidents, whether giving rise to an Accident Claim or not, are generally recorded on the day of the accident in the Accident Report Book. This is generally just a few lines recording that an accident took place, where it occurred and the parties involved.

You will however be asked by your Employer at a later date to complete an Accident Report. What I'm stating is that you should not co-operate in this <u>until you have taken advice from your Solicitor</u>. There are good reasons for this advice.

You may wrongly feel in some way responsible for the accident. Conversely, some victims feel the necessity to get down on paper their version of how the accident occurred, so that the world will know that they were not to blame. That's OK, but you don't need to give that first Statement to your Employer. Remember .... the Employer is coming to the case from a totally different perspective to you.

I'm sorry to tell you, but the Employer may not on your side. He is going to want to protect his business. Your accident may have been reported to the Health & Safety Authority and the Employer may be



trying to avoid Prosecution by the Authority. He may even believe that you were responsible for the accident! Is he really the best person to whom you should first relate your story?

Talk to your Solicitor first. Your Solicitor is in your corner and will look at your Statement from your perspective, making sure to point out all of the relevant data to show why you were not to blame.

Bear also in mind that the Statement which you make to your Employer (which will in turn be forwarded to his Insurers) may very well be the Statement on which you could be hanged in the subsequent Hearing of your Compensation Claim! (sometimes the Employer can be on the "dark side" also, but only because he is trying to protect his business).

Your Solicitor will give you the best advice on what to do, bearing in mind all of the circumstances of your case.



# 5. Don't be afraid to sue your Employer

Some employees are afraid to sue their Employer. A lot of employees believe that, if they sue their Employer, they could lose their job or suffer some form of prejudice. Before we go any further, let's get something straight: your Employer cannot exact any form of revenge on you simply because you have intimated the possibly of a Compensation Claim.

Put in a more legal basis, your Employer cannot take any illegal action against you because you have sought to establish your legal rights; and issuing a Civil Claim to recover Compensation for injuries sustained in the Workplace is a legal right!

# 6. Keep a diary of all ongoing symptoms

You'll be asking why you should need to keep a diary of your ongoing symptoms when you are going to be attending with GP's and Consultants who will record all of this for you? Well, I have a surprise for you: neither your GP nor your Consultant will record all of your symptoms, unless of course <u>you</u> relate your symptoms to them. This sounds simple, but it isn't. When you attend with your doctors, you won't remember all your symptoms: you'll only remember what is bothering you at that particular time! Bring your diary to your medical appointments; don't be afraid to take out your diary and recall all the symptoms which have been bothering you ..... in summary of course: your doctors are very busy people!

Here is another surprise: your Personal Injury Claim is only worth what is recorded in your doctor's Medical Reports. Don't start telling your Solicitor subsequently about other symptoms you are suffering which are not recorded in your Medical Reports. The Judge won't want to know about them. If they are not recorded in the Medical Reports; they didn't happen!



There is another reason for keeping this diary. The vast majority of Claims (in fact about 99%) settle without a Court Hearing. However, if it is necessary for your case to go to a Court Hearing this could be 3 or more years subsequent to your accident (by the way, this is not because your solicitor has been slow – but because it has simply taken that long for you to get a long term medical prognosis). Are you going to remember 3 or more years later just how bad your symptoms were? **No.** 

The mind has a tendency to shut out the bad memories. 3 years later you'll think that it was a breeze! When you are being cross-examined by the Employer's Barrister (who may also be on the "dark side") who is putting it to you that things weren't that bad, you are quite entitled to open your diary in Court (because you made a contemporaneous note at the time!) and put that Barrister right as to just how bad things were. You will only get one chance at a Court Hearing. You don't get to go back a second day to correct your mistakes!

Make sure you have all the necessary documentation to back up your case.



# 7. Be honest

I know what you're thinking: how dare my solicitor suggest that I'm anything but honest. Well, nobody is stating that you are a liar, but it is very easy to lose perspective on your case. It is important that you are straight with your solicitor and ultimately with everyone as to how the accident occurred and as to the extent of your injuries.

#### As to how the accident occurred ...

In your initial recount to your solicitor as to how the accident occured you might think that your solicitor only wants to hear the good points. That couldn't be further from the truth: we want to know the unfavourable points about your case also. That way, we can take appropriate steps to ensure that corrective action is taken; e.g., by sending out an Engineer to the scene of the factory accident – just in case you have incorrectly misinterpreted the circumstances of the accident. Remember, we are in your corner! Don't hide relevant facts from us.

More importantly, if you hide back relevant facts, do you think that these will get by your Employer's forensic Engineer ("dark side")? Do you think that they will get by a Judge (never on the "dark side", but always very astute), who has many years of experience of these Claims? All you will do is damage your credibility and your case. Start your case right and you can't go too wrong.

## As to the extent of your injuries ...

Judges can now dismiss a Personal Injury Claim where they believe that the Claimant has been dishonest about or exaggerated the extent of their injuries. This can occur, even where liability has been admitted by your Employer and you might have thought that your Court Hearing was going to be a slam dunk (if you don't believe me, read my blog "Dishonest Personal Injury Claims get dismissed" on the Morgan McManus website). What's more: if the Judge believes that you really egged your symptoms and that you misled the Court, he can even recommend that your file is delivered to the DPP for consideration of a Criminal Prosecution against you. Imagine the ignominy of suffering severe injury and ending up in prison. This is all serious.

During the course of your Proceedings you will be required to swear *Verifying Affidavits*, swearing as to the correctness of the facts which you have recorded in your Court Pleadings. Extreme care is required in the completion of Pleadings and the swearing of these Affidavits. Honesty is required, not just at the Court Hearing, but throughout the course of your Proceedings. Your Employer's Barrister can and will cross-examine you strongly if he believes that you have exaggerated any symptoms.

This is where it is important that you start your case correctly from the very first Pleading. This is why I have highlighted this as the 7<sup>th</sup> "immediate" step you must take at the start of your case, even though its consequences may not become relevant until the end of your case!



CONCLUSION

The author, Benjamin Franklin, once stated: "A slip of the foot you

may soon recover, but a slip of the tongue you may never get over".

In many ways this statement applies very aptly to how an Employee

may seriously prejudice their Claim for Compensation. In this Guide

I have detailed 7 Immediate steps you must take if you have been

involved in a Workplace accident; but they all come around to one

theme: starting your Claim on the correct road. Ensuring that how

the accident occurred is properly recorded. Ensuring that your

injuries are properly recorded. Ensuring that you and your case are

properly represented.

Take these 7 immediate steps and you won't go too wrong.

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\* In contentious business a solicitor may not calculate fees or other charges as

a percentage or proportion of any award or settlement.

This booklet is intended to give an overview of the law only and is not intended as full legal advice. As such you should always take full legal advice before you

take any decisions that may impact on matters referred to in this booklet.

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