

DATA PROTECTION LAW AND INJURED* AT WORK CASES

When an employee has suffered an injury at work due to an accident or an assault, he / she may be entitled to compensation for the injury. In order to determine the strength or weakness of a case, an employee's solicitor will have to carry out certain investigations at the very beginning of a case. The Data Protection Act 2018 is a very useful piece of legislation to assist in these investigations.

An employee will have to prove that he / she was injured in the accident or incident. Accordingly, medical records will form a very important part of the personal injuries* case in proving the injury. Employees are entitled to access their medical records from their doctors / hospitals by using the Data Protection Act 2018. A request for medical records should be made in writing. The request should be clear and provide the appropriate information, e.g. the name and address of the patient, his / her date of birth and the time period of medical records being requested. The hospitals / doctors generally cannot charge for furnishing the requested medical records unless of the cost of complying with the request is excessive. The hospitals / doctors have a period of 30 days within which to furnish the requested medical records but this time period can be extended in certain circumstances.

An employee will also have to prove that his / her injuries were caused by the negligence of the employer. Again, the Data Protection Act 2018 can be used to assist in these investigations at a very early stage of a case. Pursuant to data protection legislation, a data subject (the employee) can request a copy of personal data held by a data controller (the employer). When an employee has suffered injuries due to an accident / incident at work, a request for the employee's personnel file or certain documentation and information should be made to the employer by the employee pursuant to data protection legislation. The information requested will depend on the type of accident / incident but will mostly include the accident / incident report form, training records for the employee, risk assessments for the task in question given to the employee and any CCTV footage of the accident / incident. The employee will only be entitled to his / her personal information. Accordingly, the documentation and information received will have information that relates to other employees redacted. Again, the request for this information should be in writing and the appropriate information should be furnished to help the employer identify the data being sought, e.g. the name of the

employee, employee number, duration of employment, the items being sought, etc. The employer will have 30 days within which to respond with the requested information but this period of time can be extended. If the requested information is not forthcoming, a complaint can be submitted to the Office of the Data Protection Commissioner. The information is usually provided free of charge unless the cost of complying with the request is excessive.

Using the data protection legislation to obtain a copy of any CCTV footage of the accident / incident at a very early stage of a case is extremely beneficial. CCTV footage will show the precise manner in how an accident / incident occurred and will trump any oral evidence at the hearing of an action. It will allow the employee's solicitor to have essentially an independent view of how the accident / incident occurred and to carry out an assessment of the case at the very beginning rather than waiting until discovery has been furnished when pleadings have closed. Employees sometimes forget that CCTV footage of him / her is personal information to which they as the data subject are entitled to from the data controller. The data controller in these cases may not always be the employer as the recording of footage of an accident / incident is now very sophisticated. It can include a video on a colleague's phone, a body camera on security personnel of a security company that work in the organisation or a dash cam on a vehicle. In order to obtain the footage, a request should be made in writing to the relevant data controller. The request should set out the date, time & location of the accident / incident so that it can be easily located by the data controller. If the footage is incapable of being copied, stills / photographs of the footage should be provided. Again, the footage should be furnished within 30 days at no cost. However, employees need to remember that when requesting CCTV footage, time is of the essence as most footage is deleted or overridden within a short period of time. In addition, any other persons in the footage will be redacted.

****Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.***

*****In contentious cases, a solicitor may not charge fees as a proportion or percentage of any award or settlement.***