Victory for businesses over claims involving accidents on site

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PRESS INFORMATION - media enquiries to Sam Dabbs on 07711 672893

Businesses are in a stronger position to defeat compensation claims from contractors injured while working on their premises following two recent court cases, according to law firm DWF.

Both cases were brought under the Provision and Use of Work Equipment Regulations (PUWER), 1998. In the case of Mason v Satelcom Ltd and East Potential Ltd, a field service engineer working for Satelcom fell off a ladder while attempting to repair a machine located at the premises of East Potential but owned by a third company.

The machine was in a server room, in a cabinet 8ft from the floor. The engineer used a ladder which he found below the machine but which was too short for him to reach the machine properly. On attempting the repair, he lost his balance and fell. He claimed damages against his employer which in turn claimed a contribution from East.

A trial judge ordered East to pay 25 per cent of the compensation, ruling that it was liable in the same way employers were under PUWER.

The Court of Appeal overturned the decision. It found that although East had the key to the room, it did not have control over what the Claimant was doing.

The court said that although PUWER imposed a large number of regulations on organisations regarding the use of work equipment, it would be absurd to impose these on East in this context simply because the ladder happened to be on its premises. Therefore it was not in breach of the regulations.

In the second case, Jennings v Forestry Commission, the claimant – an independent contractor who was delivering fencing materials under a service contract with the Forestry Commission – was injured when his Land Rover rolled over.

Under the terms of the contract he was responsible for ensuring vehicles were roadworthy and suitable for the terrain. The contract also stated that the Commission would arrange for delivery of materials by helicopter or all-terrain vehicle. Despite this, he had used his own Land Rover which it was agreed was unsuitable for use where the accident occurred.

A trial judge found the Forestry Commission liable under the PUWER but found that there had been 35 per cent contributory negligence on the part of the contractor.

As in the previous case, the Court of Appeal allowed an appeal. Again, control was the central issue and the court decided it was the claimant who had control over the way the work was to be carried out.

Tom Higson, associate with DWF's Catastrophic Injury team said: "In the East case the Court of Appeal stressed the need to interpret 'workplace' health and safety regulations in accordance with what

happens in the ‘real world’. It is an important decision which can be seen as a victory for common sense.

“In both cases the ‘test’ as to whether the PUWER regulations applied was who had control over the work being carried out, and in both of them it was found that it was not the defendant. These rulings have provided a welcome break from the all too familiar approach of tests in a health and safety context being applied in favour of claimants, without regard to the reality of the situation on the ground.

“Following these cases organisations are in a stronger position to defeat claims brought under PUWER. Businesses facing such claims, involving Claimants who are not their employees, should scrutinise the factual circumstances with a view to demonstrating that they did not exercise sufficient control over the work in question to be liable under the regulations.”

ENDS

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