

COVID-19 Personal Injury Claims

Although the first lockdown was now more than 18 months ago, in litigation terms, it is still early days. At Thompsons Solicitors, we have already seen a number of enquiries from people wanting information about how to bring a personal injury claim against their employer.

In assessing whether or not these claims will have any merit, the normal principles of personal injury apply. The burden of proof rests with the claimant to prove that their employer (or some other third party who owes them a duty of care) has breached their duty of care towards them in some substantive way AND that, on the balance of probabilities, their infection was caused by this breach of duty.

Breach of duty

In general terms, the employer will need to show that they have prepared COVID-19 specific risk assessments and that these were followed. These must consider:

- Protecting people who are at higher risk
- Social distancing
- Handwashing/cleaning/hygiene
- PPE and face coverings
- Remote working.

With all COVID-19 related personal injury claims, the member will have a stronger case where one or more the following apply:

- The employer has failed to provide any or any adequate PPE
- The employer has written a sensible risk assessment but then failed to follow their own policy
- There has been an outbreak of cases in the same establishment and the employers have failed to adapt the regime or take other steps to keep the workplace reasonably safe.

Medical causation

At the very least, a member will need to be able to prove that they have had a positive test for COVID-19.

Thereafter, we would need to prove, on the balance of probabilities, that they would have avoided infection had the defendant not breached their duty of care. This is likely to prove a key battleground, given the state of medical knowledge as to the mechanism of transmission.

What should I do now if I am considering bringing a case against my employer?

The key thing anyone can do, who believes that they, or a colleague, have contracted COVID-19 at work, is to make sure that it is reported.

As specialists in personal injury, we are here to provide advice on COVID-19 related claims for any individual who thinks they may have caught the disease at work and believes that their employer is liable.

If a member is considering making a claim, the following areas are likely to prove important:

- The nature of their work
- PPE and other risk control measures taken by employers
- Any relevant policies introduced by the employers and whether those policies have been followed
- Their whereabouts during the incubation period (i.e. the 14 days before onset of symptoms, but concentrate on the last four to seven days before onset of symptoms) while both at work and outside of work (i.e. other places visited such as supermarkets etc.)
- What care they took whilst undertaking such activities (i.e. did they wear PPE, use disinfectant etc.)
- Whether colleagues doing similar work have contracted COVID-19
- Other individuals who have come into contact with the claimant such as friends and neighbours
- Whether those individuals had themselves become infected
- When and whether those contacts were a likely source of infection.