

CIVIL LITIGATION (EXPENSES AND GROUP PROCEEDINGS (SCOTLAND) ACT 2018 – QOCS



The above is a rather lengthy title for a piece of legislation which will have a wide ranging impact on the litigation landscape in Scotland.

What does it mean for a union member? The aim of the legislation is to increase access to justice through the civil court system. It can be daunting for an individual to make a claim against a large company that often has much deeper pockets. This is especially so when we consider that under the current system “expenses usually follow success” i.e. if you lose you pay the other sides legal costs. So, not only can you lose your case you could be hit with a hefty legal bill.

Under the new legislation this imbalance is somewhat redressed, principally through Qualified One Way Cost Shifting (QOCS). QOCS applies to civil proceedings in relation

to personal injury, or the death of a person from personal injuries. Providing the person bringing the claim conducts themselves in an appropriate manner the court “must not make an award of expenses against that person”. What this means for you is that you are now afforded a degree of certainty that at the end of your case, should you be unsuccessful, you will not be landed with a large legal bill from the defender. Whilst members may have the benefit of having their court action funded by the Union and are not personally liable for legal costs the Union would benefit from the protection of QOCS.

QOCS protection is not absolute and can be lost in three circumstances: where a person or their solicitor makes a fraudulent claim, where they behaved extremely unreasonably or where there is an abuse of process. It is important to note that exaggeration of injuries may not mean fraud however, there is uncertainty as to how the courts will view an exaggeration and at what point does

exaggeration become fraud. The conduct of the case in general from the member or solicitor has to be reasonable and so, any extremely unreasonable behaviour could see the protection of no costs to the member being removed. Finally, QOCS protection could be removed for an abuse of process but again, behaving properly and following all reasonable instructions and advice for both the member and solicitor should remove or limit potential risk of QOCS being removed.

A point of concern for members should be if you think you have a claim and you approach a solicitor that is not via your Union, you could fall foul of Damages-Based Agreement (DBA). A DBA is where you agree that the person representing you, either solicitors or claims management companies, can charge a percentage fee from damages you receive. This would mean the larger the sum of compensation the greater the sum you would pay. Members should be extremely wary of organisations who want to assist with claims as the amount of money that members get could be significantly impacted by a DBA. It is extremely important to remember that if you approach UnionLine Scotland, you retain 100% of your damages if you are successful.

If members have any concerns regarding an injury suffered or require legal advice then they should contact UnionLine on 0300 333 0303

To register a new claim or for any legal advice call UnionLine on:

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GMB urges 12 month extension of maternity rights protections

GMB has called for a comprehensive extension of employee protection relating to maternity and paternity rights, including for those employed on zero hours contracts and agency workers.

The call comes in response to a government consultation that proposes legal protection from redundancy for pregnant women and new mothers on maternity leave being extended to six months after they return to work. There is also to be consideration as to whether the protections should be extended to other groups such as those taking adoption and shared parental leave.

The move comes in response to alarming research showing that over three quarters of women (77%) reported suffering discrimination or disadvantage as a result of pregnancy, maternity leave and/or on return from maternity leave.

This is equivalent to 390,000 mothers a year.

The research by the department for Business, Energy and Industrial Strategy found 54,000

women a year losing their jobs due to pregnancy or maternity. It was found women were better protected if in a trade union.

GMB are calling for an extension of protection from dismissal from the moment the pregnancy begins – to include those on zero hours contracts and agency workers. This would stop unscrupulous employers seeking to make employees redundant before the maternity leave begins. In addition, it argues, that there should also be a right to return to work on flexible working terms, with dismissal only permitted in exceptional circumstances.

They also argue that there should be protection for the period of 12 months from the date of return to work to ensure protection for women who are breastfeeding and those who may be on temporary flexible working following maternity leave.

There are clear benefits in such an approach.

“This would reduce the costs to women of losing their jobs- both in litigation costs and societal costs of the difficulties of obtaining fresh employment as a new mother. A simple ban on dismissing pregnant women would ensure women were perfectly clear about their legal rights,” said Susan Harris, GMB Legal Director. “Employers would see a reduction in the costs incurred for them in understanding, and then explaining clearer legal provisions as opposed to the existing more complicated provisions; more importantly it would reduce the costs to business of losing qualified and experienced women workers by having a more effective provision.”

GMB want the government to extend protections being proposed and for much more of the burden to be placed on employers to explain why pregnant women have left their employment.

The union also supports the recommendation that the Government should implement a system similar to that used in Germany under which pregnant women and for a period after giving birth could only be made redundant in specified circumstances.

The consultation ended on 5 April 2019.



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