UNIONLINE NEWS | SCOTLAND
Legal Services Newsletter for GMB and CWU Members and their Families
FEBRUARY 2020

Section 1 of the Employment Rights Act 1996 requires employers to provide employees with a written statement of employment particulars including certain basic information about their employment. From 6 April 2020 this right will extend to all workers, with further important changes coming into effect, impacting all employers.

Following recommendations from the Taylor Review and the Government's subsequent Good Work Plan, a number of changes are coming into effect on 6 April 2020: -The written statement must be provided on day one of employment (rather than within the first two months of employment).-Additional information must be included within the written statement (please see below). -The statement must be given to workers, not just employees

What additional information must be included?

Hours of work - What days of the week the worker is required to work and whether or not such hours or days may be variable and, if they may be, how they vary or how that variation is to be determined.

Other paid leave - Excluding holiday and sick leave (which are already covered), details of other terms and conditions relating to paid leave. For example, maternity leave, paternity leave and paid bereavement leave. The statement may refer the employee to another reasonably accessible document for the full details of the paid leave.

Other benefits - Details of other benefits provided to the employee. Full details of the benefits should be provided within the written statement, however this may prove difficult for employers when a number of fluctuating benefits are provided. A pragmatic approach may have to be taken as to how the details of the benefits are documented. Care should be taken to make it clear what is contractual and what is non-contractual. Probationary period - Including any conditions and its duration.

Training - Details of any training entitlement – whether paid for by the employer or not and whether compulsory or not.

What about existing employees and workers?

Existing employees - In brief anyone already working on 6 April 2020* can request an updated written statement and the employer must comply within one month of the request. If there is a change to an employee's particulars after 6 April 2020 the employer must provide the employee with a statement of the relevant changes at the earliest opportunity and in any event within one month.

Existing workers - Broadly, workers already engaged as at 6 April 2020 do not have the right to request a written statement. The right for workers to receive a written statement applies to workers engaged on or after 6 April 2020. It is important to remember that where a contract is terminated on or after 6 April 2020 and the worker is re-engaged, the worker would have the right to a written statement.

** Please note different arrangements apply to employees employed before 30 November 1993.*

To register a new claim or for any legal advice call UnionLine on: 0300 333 0303

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GONE ARE THE DAYS OF "trust me I'm a doctor"

Recent news articles have shone a spotlight on the ever increasing cost of medical negligence claims made against the NHS. Recent figures have put new claims intimated to the NHS at 10,000 per year.

Making a claim for compensation can often come at the most difficult of times, for example suffering a bereavement, traumatic birth or unexpected complications following a medical procedure. Steps have been made by the NHS to try and be more open to providing answers in these difficult times. However, patients or their loved ones are often left feeling betrayed and lacking answers.

Medical Negligence claims can often be the most difficult to prove. The test to establish negligence is set out in the Scottish case of Hunter v Hanley and comprises 3 stages: -

1. **It must be proved that there is a usual and normal practice;**
2. **It must be proved that the defender has not adopted that practice; and**
3. **Crucially, it must be established that the course the doctor adopted is on which no professional man of ordinary skill would have taken if he had been acting with ordinary care.**

The above sets a high bar. It is not sufficient for the pursuer to be able to prove 1 or even 2 of the above; all 3 must be proved for the pursuer to be successful.

It can often be difficult for clients to understand why their claims for clinical negligence are not successful when a procedure hasn't gone to plan or when sadly, someone has lost their life. Like in every job, people make mistakes and unfortunately in the medical profession, the cost of a mistake being made can be the loss of a life, which of course, is extremely serious. The test for clinical negligence is so high in order to afford protection to clinicians from being pursued for every mistake made, otherwise, there would likely be a reduction in the number of individuals who would want to take on medical roles. In the same vein, this ensures that only cases of real negligence are pursued i.e. not just a mistake made but a serious departure from good clinical judgement on the part of the clinician.

One of the fastest growing areas within medical negligence is that of "consent" and more crucially "informed consent". The basic tenant being that the patient has the right to be fully informed about a procedure or the alternatives to that procedure, as well as being made aware of the risks associated with each treatment option. The main case in this area is another Scottish case, *Montgomery v Lanarkshire Health Board.* After this case, it was thought that clinicians required to explain every possible risk of and alternative to a procedure to a patient. Since this decision, the Courts have made clear that clinicians require to make patients aware of each of these within reason, for example, a patient should be made aware of reasonable alternatives to a procedure and real risks of each treatment option.

If for example, a complication occurs and a patient develops condition X, which they have not been advised of, then it still needs to be proven that the condition developed because of the actions of the clinician and that had the patient been aware of the possibility that they could develop condition X, then they would have elected not to go ahead with the procedure.

It is important to keep in mind that a clinician has a duty to go through a consent form with a patient and to take the time to have an informed discussion with the individual about the risks and alternatives to the procedure. The clinician should note down which risks and alternatives they have discussed with the patient and should not simply write that the patient was made aware of all risks and alternatives.

The NHS recommends that patients with concerns first speak to the member of staff involved in their care. If this is not something that can be done then a complaint can be made to the Feedback and Complaints Officer for the NHS organisation involved. This can be a hospital or other NHS provider. A complaint should be made no later than 12 months after the event itself. If patients remain dissatisfied with the response then a complaint can be made to the Scottish Public Services Ombudsman. The ombudsman will investigate the complaint only after assessing whether the complaint is within the SPSO's remit, if the complaint has gone through the relevant complaints procedure with the organisation, if the complaint arrived within 12 months and if there is enough detail for them to carry out investigations. The SPSO will then gather all relevant information from complainers and organisations to make their final decision on whether to uphold the complaint. The SPSO can actually instruct an expert in the same field as the clinician you are complaining about to prepare a medical report on whether or not the standard of care provided by that clinician meets the test for clinical negligence, which is very helpful. If the SPSO uphold a complaint they can make recommendations to the organisation to provide a written apology, review a decision, change a process, comply with their complaints procedure or put in place a new procedure they should have put in place.

Making a complaint to the NHS in the first instance is a helpful precursor to investigating a claim for clinical negligence. It allows your Solicitor access to information and enables them to gain insight into the position of the NHS in respect of your case and thereafter, to advise you accordingly as to whether or not you have a clinical negligence claim.

The message then to members is to call UnionLine Scotland as soon as you think you may have a claim to allow time for a proper investigation.

UnionLine are here to help you – call us on: 0300 333 0303

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