

Workers' health and safety

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Please note: the information contained in this legal update is correct as of the original date of publication.

The coronavirus pandemic has shone a large spotlight on issues of health and safety at work, and the steps that individuals can take if they believe their employer is not providing a safe workplace. It has also highlighted a discrepancy in wording in the UK legislation as to the protection offered to workers, compared to employees.

In a case brought by the Independent Workers' Union of Great Britain against the Secretary of State for Work and Pensions and the Secretary of State for Business, Energy and Industrial Strategy, the Union argued that European health and safety provisions, and associated provisions relating to PPE, had not been correctly implemented into UK law as the protections were not wide enough to cover workers.

The High Court considered the various definitions of "worker" and "employee" under EU and national law and concluded that the European Directives relating to health and safety and the provision of PPE apply to all workers, save for domestic servants, and not just employees.

The secondary argument run on behalf of the Secretaries of State was that although some UK provisions referred to employees only, there were other applicable provisions within UK law which provided comparable protection to workers, and that those alternative provisions were sufficient to implement the Directives.

In respect of the Health and Safety at Work Act 1974, whilst there are provisions which are specific to employees, there are also separate provisions which relate to anyone who is not an employee but who may be affected by the way in which the employer runs his undertaking. This would therefore include workers. The main difference between the two sets of provisions is that, in respect of employees, the duty relates to health, safety and welfare, whereas for non-employees, the duty relates to health and safety only - welfare is not mentioned. However, given that welfare is not a requirement of the European Directives, the High Court felt that the protection offered to workers was comparable.

Under s.44 of the Employment Rights Act 1996, employees have a right not to be subjected to a detriment for certain health and safety reasons (see our previous update on health and safety issues [here](#) for further information). Counsel for the Secretaries of State argued that the "whistleblower" provisions provided comparable protection for workers as protected disclosures can include disclosures about health and safety issues. This argument was not accepted by the High Court – the Directives required workers to be protected regardless of whether they made a disclosure. There was therefore a finding that UK law had not correctly implemented EU law in respect of workers.

By contrast, s.100 of the Employment Rights Act 1996 (which protects employees from dismissal), did not need to be extended to workers – workers do not enjoy protection from unfair dismissal within the UK and so there was no obligation to confer protection specifically for health and safety reasons.

Lastly, the High Court considered the issue of the provision of PPE. It is worth highlighting that the Court was not considering any individual circumstances – and in particular, was not considering whether any specific individual should have been provided with PPE to protect against Covid-related risks. Instead, it was simply considering whether the European Directive in respect of PPE had been

correctly implemented into UK law. It held that it had not – whilst a failure to provide PPE may also constitute a breach of the Health and Safety at Work Act 1974, the general obligations under that Act were not deemed to be sufficient to comply with the specific PPE obligations under European law.

This decision will have important ramifications for a significant number of workers, particularly those within the gig economy (such as taxi drivers, or those dealing with deliveries) on whom heavy reliance has been placed during the coronavirus pandemic.

A full copy of the judgment can be found [here](#).

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