

## **Assault at Work - Part of the Job?**

There are many jobs that carry an exposure to a risk of injury. Some examples include An Garda Síochána dealing with violence, prison officers dealing with criminals, nurses, midwives, psychiatric nurses and healthcare workers dealing with patients or residents who can be volatile. We frequently meet with these type of employees who have suffered either physical or psychological injuries, or sometimes a combination of both, as a result of an assault during the course of employment.

Simply because an employee's work exposes him/her to a risk on a daily basis or because there is a high level of risk associated with the job does not mean that they cannot recover compensation for injuries and financial losses if assaulted while carrying out their duties of employment.

An example of such a case is *Donal Cronin -v- Minister for Finance and Public Expenditure [2019] IEHC 396*. In this case, the sum of €286,630.00 was awarded to the applicant following his application to the High Court for compensation pursuant to the Garda (Compensation) Acts 1941 – 1945, being €95,000.00 for pain and suffering to date and €25,000.00 for pain and suffering going into the future. In addition, the sum of €166,630.00 was agreed between the parties in respect of pecuniary loss. The pecuniary loss was broken down as follows: -

- (i) €129,224 in respect of past and future loss of earnings as a sergeant;
- (ii) €26,894 in respect of the claim for medical costs associated with knee replacements; and
- (iii) €10,512.00 for other expenses.

The Plaintiff in this case was injured during the course of his work as a Garda while he was attending Limerick Circuit Court and attempted to restrain a prisoner who was trying to escape the execution of a bench warrant. The prisoner struck the Plaintiff a number of blows and tripped him, causing him to fall awkwardly on his left knee with the prisoner and a colleague falling on top of him.

The applicant's injuries included a depressed fracture of the lateral tibia plateau. He was obliged to have surgery and after a number of outpatient appointments, it became apparent that he would never again be medically fit to undertake full policing duties. He subsequently developed cellulitis on the left shin and was experiencing a lot of pain in his injured knee joint. This resulted in him being admitted to hospital on two occasions for intravenous

anti-biotics before ultimately having to undergo further surgery for the removal of the plate which had been used to fix the knee fracture. He had physiotherapy treatment and continued to be symptomatic. He developed post traumatic osteoarthritis of the left knee which is likely to progress to a requirement for a total knee replacement. In addition to his physical injuries, he also developed psychological injuries in the form of flash backs, sleep disturbance, irritability, social withdrawal and anxiety.

An employer has a legal duty to ensure the safety, health and welfare of employees and is obliged to limit, in so far as is reasonably practicable, an employee's exposure to a risk of injury. This includes injuries to both an employee's physical and mental health. If the employer has failed to take appropriate steps to comply with these responsibilities which would have prevented the assault from taking place, this will result in an employee being successful with a personal injuries claim for compensation and financial losses. There may also be certain employment law cases for breaches of employment rights legislation.

Examples of steps to minimise exposure to injury to employees in a high risk environment or steps to limit the severity of an assault on employees in a high risk environment include the following:

- Implementing appropriate policies and procedures in the workplace dealing with exposure to violence and communicating these policies to employees. For example, tasks which should involve two or more employees.
- Providing task specific training to employees so that they can deal with an incident of violence in such a manner that will minimise their exposure to injury or limit the severity of the assault. Such training should be updated at appropriate intervals during employment.
- Providing functioning panic buttons so that employees can seek help quickly, when required;
- Installing security screens where appropriate.

An employee will have 2 years from the date of the assault or 2 years from the date of knowledge of the injury within which to bring a claim for compensation and financial loss. If there are any associated employment law claims for breaches of employment rights legislation, these claims must be brought within 6 months of the breach occurring. A case for assault and battery can be brought within a period of 6 years from the date of the assault. A solicitor

with experience in both employment law and personal injuries litigation can assist you with the appropriate legal avenues. A solicitor will also help you obtain a medical report setting out your injuries, treatment and prognosis. It will then be necessary to lodge your medical report and completed application form with the Personal Injuries Assessment Board (PIAB). PIAB is a State body and all cases for injuries must be submitted to PIAB before they can go to court. Sometimes cases will finalise in PIAB. Other cases will have to go through the court process. A solicitor will advise you at each stage of the process.

Alternatively, there are certain workplace schemes for An Garda Síochána and psychiatric nurses to compensate these employees if they have been injured while carrying out their duties. A solicitor can advise you about any appropriate scheme.

If you have been involved in an assault in the workplace and suffered injuries as a result, you should: -

- Speak to your GP and discuss the incident and the impact which it has had on both your physical and mental health. Follow all medical advice given to you, including attending for counselling sessions or any referral to the mental health services.
- Report the incident and details of your symptoms to your direct line manager. Ensure that you comply with any company reporting requirements such as recording details in an incident report form or incident book.
- Record the names of all witnesses. Obtain a copy of the CCTV footage, if possible. You, or your solicitor, can obtain a copy of the CCTV footage pursuant to data protection legislation.
- If your GP is certifying you as unfit for work, submit all medical certificates to the employer.
- Speak to a solicitor with experience in both employment law and personal injury litigation and obtain advice about bringing a claim for compensation and your financial losses.

When an employee has suffered injuries at work, either physical or psychological or both, it may result in having to take some time off work to recover. In the absence of a sick pay policy at work, this can have a big financial impact on a household. Loss of income is a financial loss and can be included in the personal injury claim. Provided certain requirements are met, employees may be able to receive their public holiday payments if the sick leave falls on a public holiday.

If you have suffered injuries as a result of an assault in the workplace and would like to enquire about bringing a case for personal injuries, contact our office and schedule an appointment to meet with Michelle Loughnane, Partner.

**\*Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

**\*\*In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**