

## **Assault at Work - Robberies / Burglaries\***

At Richard Grogan & Associates, we often meet employees who have suffered psychological injuries and/or physical injuries, or sometimes a combination of both, following an assault in the workplace during a robbery or burglary. Such incidents can be very traumatic which occur very suddenly and unexpectedly without any warning. In such incidents involving psychological symptoms, it can take a while for the symptoms to manifest. This adds to the distress and upset.

Simply because an employee's injuries were caused by a robber / burglar does not mean that you will not be entitled to compensation for the injuries. The assailant will most likely not have any assets worth pursuing. Accordingly, any case for compensation will usually be against the employer or sometimes both the employer and the assailant. If a security company had personnel on site who were not carrying out their duties properly, the case for compensation will also be against the security company.

An employer has legal responsibilities to ensure the safety, health and welfare of its employees and to prevent exposure to the risk of injury to its employees. 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.

An example of a case is *Sabrina Douglas –v- Michael Guiney Limited and Rogerio Joao [2019] IEHC 301*. This personal injuries case involved the assault of Ms. Douglas during the course of her employment with Michael Guiney Limited on 21<sup>st</sup> September 2011. While at work, Ms. Douglas was verbally abused by Mr. Joao and then assaulted with a bicycle locking chain. She was struck on the right hand and the right side of her face.

The case against Mr. Joao involved trespass to the person but he did not appear in court and Ms. Douglas did not proceed against him. The case against Ms. Douglas' employer, Michael Guiney Limited, was for negligence and breach of statutory duty pursuant to the Safety, Health and Welfare at Work Act and the regulations applicable thereunder. A full Defence was filed.

Mr. Justice Barton of the High Court found that Ms. Douglas had in fact discharged the burden which the law places on her to establish the case made against Michael Guiney Limited on the balance of probabilities. Barton J indicated that it follows that Ms. Douglas' employer is liable in negligence and for breach of statutory duty for what befell Ms. Douglas and the consequences thereof. Barton J addressed the issue of contributory negligence and breach of duty raised by Michael Guiney Limited. Barton J found that it would be wrong in law to find Ms. Douglas guilty of contributory negligence and breach of statutory duty in circumstances where she had received no training or instructions on how to deal with a confrontational situation such as the assault on her by Mr. Joao.

Mr. Justice Barton awarded Ms. Douglas the sum of €40,000.00 for pain and suffered to date, together with the sum of €10,000.00 for pain and suffering going into the future. He also awarded the sum of €18,636.14 in respect of loss of earnings and special damages. The total award amounted to €68,636.14.

If you have been assaulted during the course of a burglary / robbery 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 to the robbery / burglary. 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.

An employee will have 2 years from the date of the burglary / robbery or 2 years from the date of knowledge of the injury within which to bring a claim in negligence for compensation and financial loss. If there are any associated employment law claims for breach 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. Depending on the legal avenue pursued, it will 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.

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 case. 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 been injured during the course of a robbery / burglary in the workplace and would like to enquire about pursuing a case, 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.**