

## **WHY IS PPE SO IMPORTANT FROM A LEGAL POINT OF VIEW?\***

We have heard a lot about PPE, or personal protective equipment, in the news headlines over the last number of weeks in light of the current COVID19 pandemic. We all know that it is a measure which is used to keep workers safe while carrying out their work in accordance with their employment. In the current circumstances with COVID19, using PPE will save lives. While there are lots of employers who will regard the provision of PPE as an absolute priority, there are also employers who have an extremely relaxed attitude to the provision of PPE and, as we move through the economic aftermath of COVID19, there will be employers who will view PPE as an expensive outlay and cut the cost of providing same. This will end up being the most expensive cost saving measure ever implemented by those businesses.

The reason why the provision of PPE is so important from a legal point of view is because employers have a duty of care to employees. While an employer is not an insurer for its employees, it is well settled law that an employer must take reasonable care for the safety of its employees. In addition to this common law duty of care, an employer also has a statutory duty of care under the Safety, Health and Welfare at Work Act 2005 to ensure the safety, health and welfare of its workers so far as is reasonably practicable. Section 2 (6) of the Safety, Health and Welfare at Work Act 2005 sets out the definition of “reasonably practicable”. This is an important definition as this is the standard of care to which an employer will be held:

*“For the purposes of the relevant statutory provisions, “reasonably practicable”, in relation to the duties of an employer, means that an employer has exercised all due care by putting in place the necessary protective and preventative measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work.”*

So how does an employer take reasonable care for its employees and ensure their safety, health and welfare so far as is reasonably practicable? It can provide a safe place of work, a safe system of work, competent staff and proper equipment. Providing PPE can help

achieve a safe place of work and a safe system of work. However, the provision of PPE and simply leaving it in the workplace will not be sufficient. All employees must be instructed to use the PPE and employers must ensure so far as is reasonably practicable that all employees are following these instructions.

An employer also has a statutory duty under Section 19 of the Safety, Health and Welfare at Work Act 2005 in relation to hazard identification and risk assessment. A risk assessment will identify the risks of COVID19 in the workplace, the protective and preventative measures taken and the resources provided for protecting the safety, health and welfare of workers at the place of the work. All of this information should then be recorded in a safety statement pursuant to Section 20 of the Safety, Health and Welfare at Work Act 2005. Again, this is where the provision of PPE and instruction in relation to the usage of same will arise.

While reading the above, an employer may think that this is just lawyers being overzealous about health and safety law. However, if an employee becomes sick or injured at work and subsequently brings a personal injury claim or the employee's family bring a claim for fatal injuries, a court will analyse whether proper equipment, a safe place of work and a safe system of work were implemented. In addition, a court will also examine whether the employer complied with its statutory obligations under the Safety, Health and Welfare at Work Act 2005. If an employer has not been compliant, it will have a difficult time successfully defending such an action. There may even be issues with insurers providing indemnity in extreme cases as a result. Accordingly, it is in an employer's best interests to be compliant in an effort to keep injury and illness among employees at a minimum at work. This will also result in happier employees which contributes to good productivity and revenue for business, which will be needed as our economy navigates its way out of the aftermath of COVID19.

**\*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.**