

Working at Height Injuries*

It is a sad fact that falls from heights remain the leading cause of deaths and serious injury including catastrophic injury particularly as regards construction workers.

The annual review of workplace injury, illness and fatality statistics for the year 2018-2019 was published in December of 2020.

There were 47 fatal work related accidents reported to the HSA in 2019. One quarter of these or one in four happened in the construction sector. 23% of all fatal accidents, in workplaces, happened due to a fall from a height. To put these figures in numbers it means that 11 out of the 47 fatal accidents were a result of a fall.

You might think that falling from a height means falling from a great height such as from scaffolding or from the top of a roof. The issue of working from heights is covered in the Health and Safety Legislation and the Regulations made as a result of it. The relevant Regulations are the Safety, Health and Welfare at Work (General Application) Regulations 2007 and the Safety, Health and Welfare at Work (General Application) Regulations 2007-2020. The Regulations define working from height as being from any height. This could be just a foot or a metre off the ground.

The Regulations set out that an employer must in any place where gaining access to or from a place of work that an employer must put in place appropriate health and safety policies and planning as an employee might fall which could result in a personal injury. This would also include, for example, employees who are required to store boxes or anything else like that where they have to use a step ladder.

A number of accidents in workplaces, especially offices, are caused when somebody uses a chair rather than a proper step ladder.

Employers have a significant role to play in relation to health and safety. Employers need to ensure that work is not carried out at a height when it is reasonably practicable to carry out the work safely otherwise than at a height. This may mean looking at storage in offices or workplaces to see is it absolutely necessary for individuals to have to put matters up at a height or work at a height.

One of the major causes of accidents is ladders. The Health and Safety Authority says that it will look closely at the use of ladders in any workplaces. This includes construction sites. The law on this is that a ladder may only be used in very limited circumstances and even then only for the shortest possible period of time. Instead of ladders employers are expected to look at alternatives such as towers, mobile platform, scaffolds or temporary stairs.

The Legislation dictates that ladders should be the exception rather than the rule when it comes to working at heights. A ladder should only be used where the risk assessment has been undertaken by the employer and has shown that the use of more suitable work equipment such as, for example, scaffolds or platforms is not justified where there is a very low level of risk. It could be that there is a short duration of time or that the workplace cannot be changed to use a different method of safe working. It is important to note that a ladder should not be in the same place for more than 30 minutes.

So what are employers supposed to do and what rights do employees have?

These are as follows;

1. An employer must carry out a risk assessment as regards the use of ladders in the workplace and that includes construction sites.
2. The surface on which a ladder rests must be firm. It must be stable.
3. The ladder must be put in a position to make sure that it is stable at all times during its use; and
4. The ladder must have a secure handhold and secure support always available so as to ensure that an employee can maintain a safe handhold even when carrying a load.

There are significant risks for an employer not complying with the Regulations. In a number of recent cases significant awards have been made by Courts.

For example, in a case of Jonas Poska and DCI Energy Control Limited Ms. Justice O Hanlon pointed out that the employee had not received sufficient training. In this case the employee lost his footing and swung to the left and his hand became trapped between the wall and the ladder and he suffered a displaced fracture to his hand as a

result. He claimed that he continued to have a permanent restriction of movement of his ring finger. Ms. Justice O Hanlon pointed out that it was reasonably foreseeable that the injury would happen. She pointed out that the injury was serious and that the employee continued to suffer from it five years on although his extensive intensive efforts with hand therapy had done a lot to mitigate the loss.

In this case an award of €62,000 was made.

For employers it is important that appropriate planning is put in place. For employees if appropriate training and planning is not put in place and an employee suffers an injury then in those circumstances the employee may have a claim for a workplace accident by way of a personal injury claim against the employer. Where an employee has not suffered an injury but is concerned about safe working then in those circumstances the employee can raise a concern with their employer under the Safety Health and Welfare at Work Act, 2005. If the employee does so and there is any penalisation of the employee, for doing so, then in those circumstances the employee has a claim equally against the employer under that Act which can be brought to the WRC.

Workplace accidents do cause deaths. Falling from heights are the main cause of fatal injuries. Employers and employees need to be aware of their rights and duties.

***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 proportion or percentage of any award or settlement.**