Simpkins & Co
SOLICITORS
Employment Law | Personal Injury | Clinical Negligence | Business Advice
…when it's a case of personal injury, clinical negligence, employment or business advice
Newsletter no.28 February 2016

Welcome to Simpkins and Co's monthly e-newsletter

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This is a printable A4 version of our newsletter

Keeping you up-to-date with the changes in legislation, interesting cases and issues that arise in the following areas of the law; Personal Injury, Clinical Negligence and Employment. We hope you will find it interesting and useful.

We've listened to your feedback and have produced an A4 version of our newsletter which we hope you will find more user friendly if you wish to print it.

Steve Simpkins of Simpkins & Co interviewed on the UK's premier business radio programme for entrepreneurs

Steve Simpkins of Simpkins & Co Solicitors was recently interviewed on the 'Let's Talk Business' radio show, which is the UK's premier business radio programme for entrepreneurs.

As there are now 2 million Poles living and working in the UK, Steve has set up a Polish division within Simpkins & Co to cope with the growing number of enquiries from the Polish community in the UK and also Polish entrepreneurs wanting to set up businesses in this country. These range from high-grade technological services to construction businesses.

Setting up a business in the UK involves less bureaucracy than in Eastern Europe and there are many more trading opportunities in the UK. This is an attractive proposition for Polish (and indeed other Eastern European) entrepreneurs.

Simpkins & Co Solicitors can advise on all aspects of setting up a company, including general business advice, employment contracts, contract disputes etc. We have a Polish solicitor heading up our Polish division, supported by a Polish Litigation Executive who also speaks fluent Russian and Czech.

Contact us on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk** for a **FREE** initial consultation.

Listen to Steve's interview through this link: -https://www.dropbox.com/s/dwse6xg25bqdmjm/LTB%20ELEMENTS%20-%20STEVE%20SIMPKINS%20-%20POLISH%20COMPANIES%20SETTING%20UP%20IN%20THE%20UK.mp3?dl=0

Association of Personal Injury Lawyers

What is APIL?

The Association of Personal Injury Lawyers (APIL) has been fighting for the rights of injured people for over 25 years. A not-for-profit campaign organisation, APIL's 3,800 member lawyers (mainly solicitors, barristers and legal executives) are dedicated to changing the law, protecting and enhancing access to justice, and improving the services provided for victims of personal injury. Over the years APIL has grown to become the leading, most respected organisation in this field, constantly working to promote and develop expertise in the practise of personal injury law, for the benefit of injured people.

The Association of Personal Injury Lawyers:

- Believes passionately that victims deserve committed, well trained lawyers to support their fight for justice;
- Understands that injured people can often be the most vulnerable in society and need help;
- Campaigns to make a tangible difference to the lives of injured people and society as a whole;
- Reassures victims and acts fairly with honesty and integrity;
- Drives up standards in personal injury law and process, encouraging innovation and efficiency;
- Is 'not for profit' organisation;
- Treats law as a rewarding vocation, not a job, and encourages its members to thrive in their work.

APIL's head office is the base for 30 dedicated full and part time staff who are responsible for running the day-to-day activities of the organisation, including campaigns, press and media work, and the development of training and conference programmes.

They have always had a policy of working with like-minded people and organisations in their campaigns on behalf of injured people. Some of their most rewarding work has involved liaisons with the charities who look after people trying to re-build their lives after injury or bereavement. These charities work incredibly hard, to great effect and with very limited resources, to persuade the Government and parliamentarians that injured people deserve proper access to justice to help re-build their lives.

Steve Simpkins and Kevin Blake of Simpkins & Co Solicitors are accredited members of the Association of Personal Injury Lawyers, specialising in personal injury compensation claims for over 20 years.

Have you been affected by personal injury through no fault of your own? Contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**.

What do I do if I've had an accident at work?

Your employer has a duty to protect you and tell you about employment law health and safety issues that affect you. They also have a legal obligation to report certain accidents in the workplace and to pay you sick pay if you are entitled to it.

Reporting an accident in the workplace

Your employer must report serious work-related accidents, diseases and dangerous incidents to the Health and Safety Executive (HSE). All incidents can be reported online. Employers can phone the Incident Contact Centre but only to report fatal and major injuries.

Your employer must report:

- major injuries, eg. a broken arm or ribs
- dangerous incidents, eg. the collapse of scaffolding, people overcome by gas
- any other injury that stops an employee from doing their normal work for more than seven days
- disease
- death

The reporting must be done by your employer, but if you are involved it's a good idea to make sure it's been reported.

Who is responsible for health and safety at work?

Your employer has to carry out a risk assessment and do what's needed to take care of the health and safety of employees and visitors. This includes deciding how many first-aiders are needed, and what kind of first-aid equipment and facilities should be provided. First-aiders have no statutory right to extra pay, but some employers do offer this.

Employees must also take reasonable care over their own health and safety under employment law.

Recording accidents in the workplace

Any injury at work - including minor injuries - should be recorded in your employer's 'accident book'. All employers (except for very small companies) must keep an accident book. It's mainly for the benefit of employees, as it provides a useful record of what happened in case you need time off work or need to claim compensation later on. But recording accidents also helps your employer to see what's going wrong and take action to stop workplace accidents in future.

Sick pay

In most cases, if you need time off because of an accident at work, you will only have the right to statutory sick pay. Your employer may have a scheme for paying more for time off caused by accidents, or may decide to pay extra depending on what has happened.

Making a workplace injury claim

If you have been injured in an accident at work and you think your employer is at fault, you may want to make a claim for compensation under employment law. Any claim must be made within three years of the date of the accident, and you will normally need a lawyer to represent you. If you belong to a trade union, you may be able to use their legal services. Otherwise, you should speak to a specialist personal injury lawyer.

Under employment law, your employer must be insured to cover a successful claim. Your employer should place a certificate with the name of their employer's insurance company where it can be seen at work. If not, they must give you the details if you need them.

If you are considering suing your employer, remember that the aim of legal damages is to put you in the position you would be in had the accident not happened.

What to do next if you have an accident at work

- make sure you record any injury in the 'accident book'
- if need be, make sure your employer has reported it to the HSE online
- check your contract or written statement of employment for information about sick or accident pay
- if there's a dispute, try to sort it out with your employer
- if there are employment law health and safety problems at work, point them out to your employer or the employee safety representative, and ask for them to be dealt with.

If you need advice on these areas of the law, whether as an employee or an employer, then contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

Simpkins & Co Solicitors are accredited members of the Association of Personal Injury Lawyers and the Employment Lawyers Association, and are specialists in these areas of the law.

North Warwickshire has the highest rate of workplace injuries in England and Wales, according to latest figures

National not-for-profit campaign group for injured people, the Association of Personal Lawyers (APIL) is highlighting the reality behind the figures for workers in the area.

"In many cases, workplace injuries happen when someone did not take proper care to protect employees and colleagues," said APIL president Jonathan Wheeler. *"Suffering lies behind these figures. An injury can often have a knock-on effect on family members too, particularly if an injured person is unable to work or care for children whilst recovering, or if they need help with day-to-day living".*

In North Warwickshire, 1,390 workplace injuries were reported to the Health and Safety Executive (HSE) for every 100,000 employees in the area for the year 2014-15. The overall workplace injury rate for England and Wales is just 288.

"Some areas are more likely to have more injuries because of the nature of the local industry. Agriculture, forestry, and fishing are the most dangerous industries for workers. Agriculture has the most workplace injuries and fatalities by far," said Mr Wheeler, *"but every worker in every industry should be able to expect to turn up for a day's work and return home unharmed."*

"Health and safety are often considered to be 'red tape' and cutting red tape is high on the Government's agenda," Mr Wheeler went on. *"The safety of our workforces, however, is more important than anything else."*

If you have been injured at work or you are an employer needing advice on how to protect your employees, then contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

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Employment Law Rights

Elsevier Ltd v Munro

The Claimant (Elsevier Ltd) was seeking an injunction against the Defendant (Munro) to prevent him from working for a competitor for a period of 12 months in accordance with his contract of employment.

Injunction granted.

The employee Defendant was a highly paid Chief Financial Officer with the Claimant, with access to highly confidential information. His contract of employment specified that 12 months' notice must be given by either side to terminate the contract. The Defendant was offered a more attractive job with a competitor and he decided to resign, citing constructive dismissal as the reason for not working his notice. The Claimant sought an injunction to prevent the defendant from taking up employment with the competitor for 12 months.

The court concluded: -

1) The Defendant was not constructively dismissed by the Claimant
2) The Claimant did not repudiate the Defendant's contract of employment
3) The Defendant decided that he wanted to leave the Claimant's employment because he found the new job on offer was more attractive
4) For the Defendant to take the job with the competitor during the period of his notice, would be a breach of his contract of employment.

The issue was whether the Court should exercise its discretion to grant the injunction to prevent such a breach. The fact that the Defendant was not presently working did not affect the Court's approach to the exercise of that discretion, as was submitted on his behalf. If the Defendant worked for the competitor during his notice period, the Claimant would suffer damage for which money compensation would not be an adequate remedy. That was enough to justify an injunction to prevent the Defendant working for the competitor for the duration of the notice period.

If you need advice on Employment Law, whether as an employee or an employer, then contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

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New figures show the rate of deaths from asbestos-related cancer mesothelioma in England is climbing.

Local Authority Deaths per 100,000 population

Barrow-in-Furness	14.3
South Tyneside	11.1
North Tyneside	10.9
Fareham	10
Hartlepool	8.7
Medway	8.4
Newcastle Upon Tyne	8.3
Portsmouth	7.9
Southampton	7.8
Castle Point	7.8

The Association of Personal Injury Lawyers (APIL) has also compiled the ten areas with the highest mortality rates for asbestos-related cancer mesothelioma. Barrow-in-Furness tops the list with a mortality rate three times the average for England, with Fareham, Portsmouth and Southampton high up on the list.

"Mesothelioma is a legacy of Britain's industrial heritage," said Jonathan Wheeler, president of not-for-profit group APIL, which is campaigning for more help for sick and dying workers. "Thankfully, employers nowadays are more aware of the dangers of exposing workers to asbestos, but those who were exposed 30 or 40 years ago are now facing death sentences for simply turning up to work."

For the period 2008-2012 the average rate of deaths from mesothelioma in England was 2.6, according to the Office of National Statistics. Currently, it is 4.5 deaths per 100,000 people.

Mr Wheeler continued: *"Our members are lawyers and many of them see former dock workers, factory workers, tradesmen and even teachers, who have never worked in heavy industry but have been exposed in schools, seeking compensation to make them comfortable in their final months, and to ensure their families will be secure financially. Because records have been lost or destroyed over time, it is not always possible to track down the former employers' insurers, which is what you really need to do to be able to claim compensation".*

"There is now a Government fund of last resort for them to turn to in that eventuality, but it doesn't quite go far enough. It needs to be extended to include other asbestos-related diseases, such as asbestosis, so that other suffering workers can get the justice they need and deserve."

Simpkins & Co Solicitors are accredited members of the Association of Personal Injury Lawyers. If you have suffered injury through no fault of your own, then contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

Monitoring at work

Employers have the right to monitor your activities in many situations at work

What is workplace monitoring?

Monitoring in the workplace includes:

- recording on CCTV cameras
- opening mail or e-mail
- use of automated software to check e-mail
- checking phone logs or recording of phone calls
- checking logs of websites visited
- videoing outside the workplace
- getting information from credit reference agencies
- collecting information through 'point of sale' terminals, such as supermarket checkouts, to check the performance of individual operators.

All of these forms of monitoring are covered by data protection law. Data protection law doesn't prevent monitoring in the workplace. However, it does set down rules about the circumstances and the way in which monitoring should be carried out.

Before deciding whether to introduce monitoring, your employer should: -

- be clear about the reasons for monitoring staff and the benefits that this will bring
- identify any negative effects the monitoring may have on staff. This is called an impact assessment
- consider whether there are any, less intrusive, alternatives to monitoring
- work out whether the monitoring is justified, taking into account all of the above.

Except in extremely limited circumstances, employers must take reasonable steps to let staff know that monitoring is happening, what is being monitored and why it is necessary.

Employers who can justify monitoring once they have carried out a proper impact assessment will usually not need the consent of individual members of staff.

Monitoring electronic communications at work

Your employer can legally monitor your use of the phone, internet, e-mail or fax in the workplace if: -

- the monitoring relates to the business
- the equipment being monitored is provided partly or wholly for work
- your employer has made all reasonable efforts to inform you that your communications will be monitored.

continued overleaf

Monitoring at work continued

You should bear in mind that these circumstances cover almost every situation where your employer might want to monitor your electronic communications, except where the monitoring is for purely private or spiteful reasons.

As long as your employer sticks to these rules, they don't need to get your consent before they monitor your electronic communications, but only if it is for one of the following reasons: -

- to establish facts which are relevant to the business, to check that procedures are being followed, or to check standards, for example, listening in to phone-calls to assess the quality of your work
- to prevent or detect crime
- to check for unauthorised use of telecommunications systems, such as whether you are using the internet or email for personal use
- to make sure electronic systems are operating effectively, for example, to prevent computer viruses entering the system
- to check whether a communication you have received, such as an email or phone-call is relevant to the business. In this case, your employer can open up your emails or listen to voice-mails but is not allowed to record your calls
- to check calls to confidential help lines. In this case, your employer can listen in, but is not allowed to record these calls
  - in the interests of national security.

Secret monitoring

Some employers monitor their workers without informing them that this is happening, for example, by use of hidden cameras or audio devices. This is very rarely legal. Guidance under data protection law says that secret monitoring should not be allowed in private areas at work, such as staff toilets, unless there is serious crime involved, such as drug dealing.

Employer's policy on monitoring

Ideally, an employer should have a code of conduct or policy that covers workplace monitoring. If a code or policy has been agreed, it will usually form part of your contract of employment. This means that where an employer is allowed to monitor your activities, these activities could be the subject of disciplinary action if you are using workplace equipment in ways that are not permitted in your contract of employment.

What to do if you are unhappy with monitoring at work

If you think that your employer has been monitoring you in a way which is not allowed, you will need expert advice.

You may be able to: -

- talk to your employer about the monitoring and try to persuade them to stop. If you're still working for your employer, you will need to think about whether raising this issue will put your job at risk
- take out a grievance against your employer
- check your contract of employment, staff handbook or anywhere else where your employer might have a policy about monitoring to see what it says
- ask your trade union to help you, if you are a member
- contact **Simpkins & Co Solicitors**, whether as an employee or an employer, for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

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See the case study on the next page Bărbulescu v Romania.

Private messages at work can be read by employers

In Bărbulescu v Romania, the European Court of Human Rights (ECHR) has held that there was no violation of an employee's right under Article 8 of the European Convention on Human Rights (the right to respect for private and family life, the home and correspondence) in circumstances where an employee had been dismissed for using the company's internet for personal purposes during working hours. While the employee's Article 8 right had been engaged, the employer's monitoring of his communications pursuant to workplace rules and regulations had been reasonable in the context of disciplinary proceedings, and the Romanian courts had acted appropriately in balancing the employee's rights against the interests of his employer.

B, a Romanian national, was employed by a private company as an engineer in charge of sales. At his employer's request, he created a Yahoo Messenger account for the purpose of responding to clients' enquiries. On 13 July 2007 the employer informed B that his Yahoo Messenger communications had been monitored from 5 to 13 July 2007 and that the records showed that he had used the internet for personal purposes, contrary to internal regulations. When B denied this, he was presented with a transcript of messages he had exchanged with, among others, his fiancée and his brother, some of which related to personal matters such as his health and sex life. B's employment was terminated on 1 August 2007 for breach of the company's regulations.

B contended that his employer had violated his right to correspondence protected by the Romanian Constitution and had breached the Criminal Code. The Romanian County Court dismissed his complaint on the grounds that his employer had complied with the Labour Code* provisions on disciplinary proceedings and that B had been duly informed of the employer's regulations prohibiting use of company resources for personal purposes. Following an unsuccessful appeal, B applied to the European Court of Human Rights contending that the employer's conduct had disproportionately infringed his Article 8 rights.

The Court accepted that Article 8 was engaged on the facts of the case, the employer having accessed B's messenger account and used the transcripts of his communications as evidence in the domestic litigation. However, it held – by a majority – that there had been no violation of Article 8. It stated that although the purpose of Article 8 is essentially to protect an individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. The Court had to examine whether Romania, in the context of its positive obligations under Article 8, had struck a fair balance between B's right to respect for his private life and correspondence and his employer's interests. In the Court's view, it was not unreasonable for B's employer to seek to verify that employees were completing their professional tasks during working hours. Furthermore, B's employer had accessed his messaging account in the belief that it contained client-related communications only. B had been able to raise his arguments relating to the alleged breach of his Article 8 right before the domestic courts, which had duly examined his arguments and found that his employer had acted in accordance with the Romanian Labour Code's provisions on disciplinary proceedings. B's disciplinary breach – namely, his use of company resources for personal purposes – had been established, and it was clear from the domestic court judgments that they had used the transcript of B's communications only to the extent that it proved that breach. The ECHR accordingly concluded that the domestic courts had struck a fair balance between B's rights under Article 8 and the interests of the employer.

If you need advice relating to employment law, as an employee or employer, then contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

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* The Romanian Labour Code
All employers in Romania must comply with Romanian labour law, whether they employ Romanian citizens or foreign nationals, and regardless of the size of business. The Romanian Labour Code governs the relationship between employers and employees, and covers local employees working for Romanian employers in Romania and abroad, as well as foreign citizens working in Romania.

To Tweet or not to Tweet?

Offensive Tweets on personal Twitter accounts may now be a cause for fair dismissal according to the Employment Appeal Tribunal (EAT)

The Employment Appeal Tribunal (EAT) faced its first unfair dismissal case recently where an employee's Tweets were the cause for his dismissal from work.

The Claimant, Mr Laws, was a Risk & Loss Prevention Investigator for Game Retail, and had responsibility for approximately 100 of Game's 300 retail stores. Each store had its own Twitter account which was used to publicise and promote each individual store.

The Claimant followed each of the individual Twitter accounts to monitor inappropriate and/or fraudulent activity, and used his personal Twitter account to do this. About 65 of the stores 'followed' Mr Laws in return.

Mr Laws posted various offensive Tweets from his account using foul and abusive terms. One of the Store Managers (who followed him) noticed the Tweets and alerted Mr Laws' manager, which lead to his suspension and eventual dismissal for gross misconduct.

Mr Laws issued an unfair dismissal claim in the Employment Tribunal (ET). He was successful and the Judge deemed he had been unfairly dismissed because his dismissal was not a 'reasonable response' for an employer to take.

The Judge held this for various reasons. Namely because Mr Laws mainly used Twitter for private use, he used his personal mobile phone, the content of his Tweets were not work related, and he posted the Tweets in his own time.

Game Retail appealed to the Employment Appeal Tribunal (EAT) and this decision has been overturned.

The EAT held that while Mr Laws had been using Twitter in his own time, on his own personal account (which didn't expressly affiliate him to Game) and from his own phone etc., his Tweets had been seen by members of Game staff and Game stores' Twitter accounts. Because of this, his Twitter feed couldn't properly be considered as private, especially on the basis that no privacy restrictions had been set on his account to limit the audience receiving the Tweets.

Therefore, the initial ET decision that Mr Law's Tweets amounted to private social media usage and were not work related, was wrong.

Interestingly, the EAT declined to provide any general advice. In all cases involving social media, the focus will remain on whether an employer's decision was within the range of reasonable responses open to a reasonable employer (this is the legal test of assessing fairness of a dismissal).

So it's important that you have clear policies in place that set out exactly what is and is not acceptable in terms of social media.

You should also take into account:

- What the Tweets say
- The employee's settings - have these been restricted?
- The relationship made between the employee and the employer (not just in the profile section, but throughout the Twitter feed)
- Use of separate accounts for personal and work purposes
- What your company policy says on social media misuse.

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National Minimum Wage offenders named and shamed

Employers who have failed to pay their workers the National Minimum Wage have been named and shamed.

Since the scheme was introduced in October 2013, 398 employers who have failed to pay their workers the National Minimum Wage (NMW), have been named and shamed, with total arrears of over £1,179,000 and total penalties of over £511,000. These employers span sectors including hairdressing, retail, education, catering and social care.

Business Minister Nick Boles said:

"Employers who fail to pay the minimum wage hurt the living standards of the lowest paid and their families.

As a one nation government on the side of working people, we are determined that everyone who is entitled to the NMW, receives it.

In April 2016 we will introduce a new National Living Wage which will mean a £900-a-year pay rise for someone working full time on the minimum wage and we will enforce this equally robustly".

On 1 October 2015, the NMW rose to £6.70. Employers should be aware of the different rates for the NMW depending on the circumstances of their workers.

To improve compliance in the hairdressing sector HM Revenue and Customs (HMRC) has launched a NMW campaign to drive voluntary behavioural change. The campaign is an opportunity for employers to check they are paying their employees correctly and ensure any outstanding arrears are paid back to employees.

The naming and shaming scheme was revised in October 2013 to make it simpler to name and shame employers that do not comply with minimum wage rules.

If you been affected by this issue, whether as an employee or an employer, then contact **Simpkins & Co Solicitors** for a **FREE** initial consultation on **01425 275555** or **FREEPHONE 0800 0832755**, email **info@simpkinsand.co.uk** or visit the website **www.simpkinsand.co.uk**

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Simpkins and Co Solicitors only deal in certain areas of the law, the ones we specialise in, which means you get the best advice from the right people. We are specialists in personal injury, employment law, clinical negligence and business advice claims.

We are always happy to take enquiries from Bureau advisors or clients. We operate a FREE initial consultation where we can also advise in relation to funding options as we appreciate that clients are often concerned in relation to potential legal costs.

Contact us to arrange an initial **FREE** consultation: **01425 275555** FREEPHONE: **0800 0832755** or from mobiles: **0333 7777 420**

The above information and the content of this e-newsletter should never be taken as specific legal advice. If you have a legal problem then please contact Simpkins and Co, Highcliffe, Dorset, on 01425 275555 to discuss your issue in detail.

Suite 4, Brearley House, 278 Lymington Road, Highcliffe, Christchurch, Dorset BH23 5ET
London office: 1 Northumberland Avenue, Trafalgar Square, London WC2N 5BW

t: 01425 275555 | 0207 872 5529 e: info@simpkinsand.co.uk www.simpkinsand.co.uk

FREEPHONE: 0800 0832755 or from mobiles: **0333 7777 420**

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