Browne Jacobson

Health and safety successes at trial highlighting need for engaging staff compliance training

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As well as learning from those cases, there is a wider point about the importance of high-quality staff compliance training and the evidence you can provide at trial to show staff have an understanding of their health and safety responsibilities.

In this article, Associate Katherine Langley takes us through the cases and highlights some learning points that other schools and trusts should be aware of.

Cleaning regimes and contractual indemnities

A teacher claimed that she had slipped on a wet floor when returning to her classroom during a parents' evening. Proceedings were issued against the school (as the occupier of the premises and employer) and the cleaning contractors (who were responsible for mopping the floor and placing wet floor signs).

It was alleged by the claimant that there were insufficient wet floor signs and so the claimant was not provided with knowledge of the risk.

The contract with the cleaners included an indemnity clause which was relied upon. In light of the contractual indemnity we requested that the cleaning company take over conduct of the claim at an early stage in the litigation, but they refused. Their position was that employees of the school might have been responsible for removing the signs and they had not been advised that the parents evening was taking place.

At trial the claimant successfully established liability, albeit with a significant deduction for contributory negligence. This reflected the fact that she was aware that cleaning was taking place and there was signage nearby, although not where she fell. The claim was therefore reduced by 40%.

The court went on to find that there was no negligence on the part of the school and that they had the full benefit of the indemnity clause in the contract with the cleaners. Therefore, the cleaning company were ordered to pay the claimant's damages and costs, plus the school's costs of pursuing the indemnity point. Importantly, the school was not ordered to any contribution to damages or costs.

This case demonstrates the value of having a robust indemnity clause in place where services such as cleaning, catering, facilities management or sports teaching are contracted out.
Where services are outsourced to a third party, it is essential that contractors are managed to the extent that you can be confident they are providing a safe and competent service. It is vital that any failures to provide services or adherence to health and safety measures are addressed via the appropriate channels. It is also important to communicate with contractors and to retain a record of that communication.

Equally, if you are overly prescriptive with contractors, this can also lead to liability attaching itself to you too and so a pragmatic approach is required.

In this case it was the cleaner's responsibility to provide and place the signage and to decide where and when they should be removed. Fortunately, there was evidence of this, and a significant degree of 'control' rested with them. Had the situation been different, the school could have been considered liable in relation to the deficiencies in signage.

Not every defect constitutes a danger

In another recent case, a teacher brought a claim for compensation for personal injuries sustained from tripping on the school stairs. It was alleged that the metal nosing on the stairs protruded and caused the claimant to catch their foot and trip up the stairs.

During the investigation, it was noted that the claimant had reported the defect some time prior to the accident which resulted in the area being assessed by the school caretaker and the nosing pushed as flat as possible.

A defence was maintained on the premise that although it was accepted there was a very slight protruding edge to the nosing on the stairs (around 3-4mm), this was so insignificant that it was not considered to present a foreseeable risk of injury to those using the staircase. This was particularly so by virtue of its location which was close to the edge of the step rather than the middle, which is where footfall would be expected.

The claim was dismissed at trial with the judge accepting that such a trivial defect could not be considered a reasonably foreseeable source of danger.

As demonstrated in this example, not all accidents that occur in a school setting are as a result of a breach of duty on the part of the school. Unfortunately though, accidents can and will happen and where the accident arises out of a difference in levels or defect in flooring, there must be an element of realism applied when assessing if there is "fault".

Why staff training matters in health and safety cases

Alongside staff actions and inactions, health and safety training and knowledge often feature in claims for alleged health and safety failings against schools. Being able to evidence staff knowledge through data that shows training outcomes strengthens your defence at trial and goes to evidencing a strong compliance regime in your setting.

To get the best out of compliance training, follow these three basic rules:

1. Make it engaging
2. Make it accessible
3. Ensure outcomes can be evidenced

EduCompli, our own staff training platform offers health and safety training for all staff that ticks these crucial boxes.

Written by our expert health and safety practitioners, the course is fun and engaging (starting with a myth busting round to get staff in the right mood!) and can be played on multiple devices including phones and tablets which make it more accessible to staff. Importantly, staff outcome reporting – which includes highlighting knowledge gaps – is instantly available so you can evidence staff understanding and plan how to plug those knowledge gaps.

To arrange a complimentary trial of EduCompli please complete the form on this webpage.

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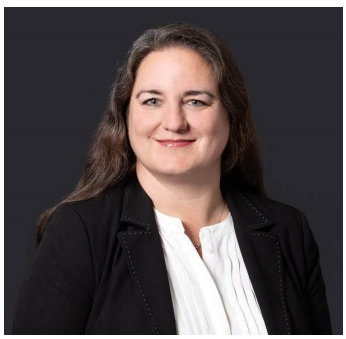

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