Welcome

Why are you receiving this newsletter, you might ask? It is our way of keeping in touch with you. We want you to know that we have not forgotten about you and we certainly do not want you to forget about us! Your commitment to our company and the services we provide is the only reason why we even exist. We are most thankful to you for your custom. We want to continue our special relationship with you for many years to come.

We hope you enjoy the articles in this newsletter and remember if you, your family or friends are in need of expert legal advice, all you need to do is click on our website, www.feltonmcknight.ie , and contact us and we will be there for you."

From left to right:
Geraldine Arthur-Dunne - Solicitor
Paul McKnight - Solicitor
Mark Felton - Solicitor
Mary Redmond - legal executive

IN THIS ISSUE

Employment Law

Employees ignore their training and procedures at their peril

The Court of Appeal has overturned an award of nearly €70,000 to a plaintiff who sued her employer when she was injured at work while lifting a bag of potatoes.

Under the Safety, Health and Welfare at Work Act, an employer is required to take reasonable care for the safety of their employees and provide them with adequate training and a safe system of work.

If an employer carries out these duties adequately, they will not be liable for injuries that arise when an employee ignores the procedures in place and any training they had been provided with.

In the case of Martin v Dunnes Stores [2016] IECA 85, the plaintiff had alleged negligence against her employer when she injured herself while assisting a customer and pulling out a bag of potatoes wedged between two others. The action resulted in her sustaining a partial tear to her bicep.

Although she admitted at the trial before the High Court that there was a system in place for dealing with such customer requests the Court found that the store was short staffed on the day in question and she had not been given adequate assistance.

However the Court of Appeal disagreed; the store had a tannoy system in place and the plaintiff had ignored her training in failing to utilise the tannoy to seek assistance from her colleagues.

The plaintiff had also failed to follow her training in "yanking" the bag of potatoes from the stock pallet.

Despite the Court expressing sympathy to the plight of the plaintiff, Judge Irvine decided that the law was clear and there was no negligence on the part of the employer which could result in an award of damages.

The employer had taken all reasonable precautions and implemented all reasonable procedures to protect the plaintiff from injuring herself in such circumstances.

Parents find themselves as inadvertent employers of au pairs after WRC decision

The Workplace Relations Commission has ruled that au pairs are entitled to all the same rights afforded to employees under legislation in a decision likely to have huge repercussions for families and childcare practice throughout the country.

The ruling has left many families fearful that they too will be liable for thousands in back payments to their au pairs.

The WRC awarded nearly €10,000 to a Spanish au pair who worked for a family and provided childcare services. She had previously been paid €100 per week as well as being provided with board and accommodation.

The WRC decided that the relationship between the parents and the au pair was the same as that of employer and employee and as such the au pair was entitled to an array of rights under employment legislation including annual leave and a minimum hourly wage.

They also ruled that the parents had breached the Organisation of Working Time Act in failing to provide the au pair with annual leave amounting to €5,000. An employee is also entitled to a written contract which was not provided and a further award of €400 was made against the parents for this breach.

As a result of the ruling it would seem now that any au pair is entitled to be paid at least €8.65 an hour with a cap on working more than 48 hours per week. They should also be provided with a written contract covering the terms of employment, be provided with pay slips and also be entitled to take breaks and annual leave in the same manner as any ordinary employee working for a company.

The law awaits further clarity on this point; in the meantime many believe that this decision could spell the end for the au pair system in Ireland.

DEFAMATION

Ireland's continued use of juries for defamation cases comes under criticism

Ireland is a better country than most to be a plaintiff in a defamation case. Our courts have awarded some of the highest pay-outs in the whole of Europe.

One of the main reasons for these high levels of compensation is related to the continued use of juries in High Court defamation actions. Many of these colossal awards, which in some cases have been in the millions, have been criticised by the courts and the media alike.

Such high awards of damages run the risk of creating a 'chilling effect' on the right to freedom of expression.

The use of the jury system for defamation actions has come under considerable criticism by News Brands Ireland, the body for the national newspaper industry, as being outdated and creating a serious challenge to the media's role as a watchdog.

These criticisms come in the wake of the decision of the Court of Appeal to overrule a decision in which a jury awarded Martin McDonagh €900,000 against the Sunday World which had published an article describing his as a "Traveller drug king".

The Court of Appeal found that the allegation of drug dealing was in fact true and the newspaper had a right to publish it. The jury had failed to consider the evidence objectively and the award given by it was described in the circumstances as "perverse".

It is necessary for courts and juries alike in all actions for defamation to appropriately balance the right to a person's good name with freedom of expression. The media has a responsibility to report on issues of public importance which must be taken into account.

The jury system however reinforces uncertainty for publishers. As a consequence, many newspapers will err on the side of caution and simply refuse to publish an article rather than risk the judgment of a jury.

PROPERTY - HILLWALKERS

Decision in Hillwalker case puts Landowners and parks on 'red alert'

You might think that by engaging in certain outdoor activities such as hillwalking there will be inherent risks to the recreation which you accept once you set out. Accidents after all can happen in which there is no-one to blame.

This was the argument put before the Court by the National Parks & Wildlife Service (NPWS) in defending a personal injuries action by a hillwalker who injured herself on a boardwalk over one of their lands.

The boardwalk had been made up of second-hand wooden railway sleepers which had become badly rotted over time and had not been maintained.

The NPWS argued that the plaintiff had set out hillwalking of her own volition and as such the responsibility of the accident fell on her.

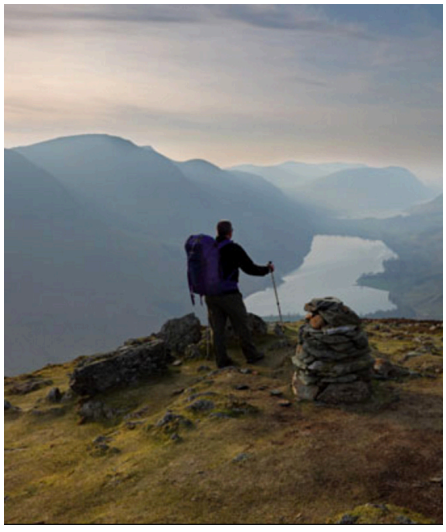
Under the Occupiers Liability Act 1995, when you visit a property or land that is not your own, you are classified as a visitor, recreational user or trespasser. Each of these classifications imposes a different standard of care on the occupier of the premises.

The legislation recognises that there is an inherent risk involved in recreational activity, though an occupier is under a duty to the recreational user not to intentionally injure them or act in reckless disregard of their safety.

However in this case, the Court held that where the structure had been provided by the defendant, and the defendant had erected signage directing walkers to use the structure, they owed a duty to take reasonable care to maintain the structure in a safe condition.

The decision has been appealed to the High Court.

If the decision is upheld on appeal, it will have huge repercussions for the country's national parks. It could severely restrict the access of hillwalkers to lands as landowners will become wary of leaving themselves vulnerable to a claim of damages for injuries occurring on their property.



WARDS OF COURT – NEW PROVISIONS

Law relating to capacity completely overhauled under new Act

The Assisted Decision-Making (Capacity) Act 2015 has revolutionised the law and idea of what it means for a vulnerable person to have 'capacity' to make their own decisions.

Prior to this year, the law adopted an 'all or nothing' approach which categorised people as either having capacity to make decisions on their own or not.

The Act changes this to a far more flexible definition of capacity.

Whether a person has capacity to make a decision will now be assessed in relation to the matter in question and at that particular time. If a person is found to be lacking decision making capacity in one situation, this will not necessarily mean that they will lack it in another. The Act recognises that capacity can fluctuate.

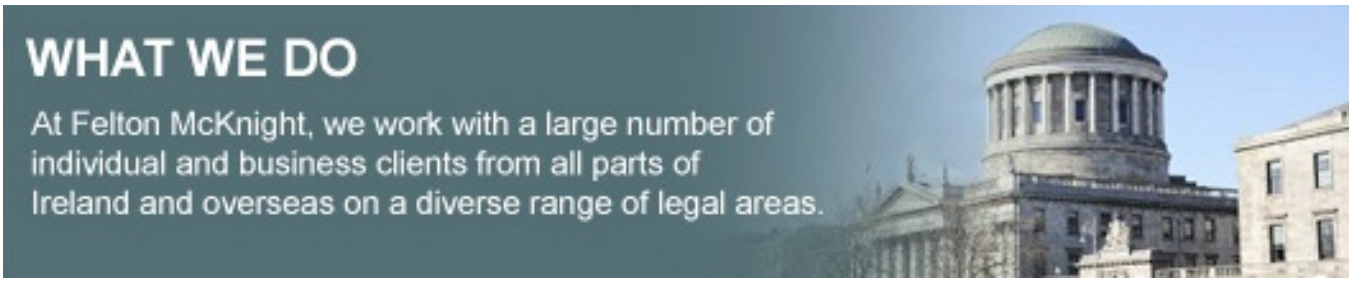
The Act proposes three different types of decision-making support options. These include:

1. Assisted decision-making: this is where a person appoints a decision-making assistant (usually a family member or carer) to assist them with accessing information, understanding and making decisions. The decision remains with the person and the assistant is supervised by the newly set-up Decision Support Service which has the power to investigate complaints made against decision makers.

2. Co-decision-making: a person appoints a trusted family member or friend to make decisions jointly with them. The decision-making responsibility is shared and likewise the assistant is supervised by the Decision Support Service.

3. Decision-making representative: If a person is unable to make a decision even with help, the Circuit Court may appoint a decision-making representative. They will make decisions on their behalf but these decisions must reflect the person's will and preferences where possible.

As regards the current wards of court, each ward is to be reviewed in accordance with the new system. If a ward is deemed to have capacity, they will be discharged from wardship and offered the support system most appropriate to their needs.



Felton McKnight
Church Road, Greystones
Co. Wicklow, A63 P089, Ireland

DX 205001 Greystones
Tel: 012874341 / Fax: 012874073

Office Mobile: 0876862139
Office Email: info@feltonmcknight.ie
Paul McKnight Email: paul@feltonmcknight.ie
Mark Felton Email: mark@feltonmcknight.ie
Geraldine Arthur-Dunne Email.: Geraldine@feltonmcknight.ie
Mary Redmond Email: mary@feltonmcknight.ie
Adrienne Noonan Email: Adrienne@feltonmcknight.ie

www.feltonmcknight.ie