

# Keeping your employees in work – a legal view

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I'm speaking at...

## TALENT IN LOGISTICS CONFERENCE

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Thursday 27th June 2019  
Marshall Arena, Milton Keynes



# Wellbeing of employees

- Imperative to the relationship of mutual trust and confidence
- Contributes to employee retention and attendance at work
- Commitment to worker safety contributes to employee satisfaction
- Compliance with daily and weekly rest regulations is vital for the health and safety of employees and the general public
- Health promotion should be a continuous and ongoing process



# Health and Safety at Work Act (HSWA)

- Section 2 HSWA 1974 – **duty to protect own employees**
- Section 3 HSWA 1974 – **duty to protect others**
- Section 7 HSWA 1974 – **duty of employees to others**





# How to approach...

- Particular issues for driver roles = medical conditions impacting on ability to do the role safely
- Employers are (understandably) cautious about approaching private medical matters with employees



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# Investigation

- Ensure compliance with Company policy
  - Sickness absence policy
  - Capability policy
- Balancing employees' rights to privacy and safety of public
- Duty to protect the public in a safety critical role – if you lack confidence in the employee's ability to safely perform their role, you can initiate an investigation
- Obtain medical records
- Identify any reasonable adjustments e.g. change to shift pattern
- Cooperate with the DVLA investigation – if appropriate





# Obtaining medical reports

- In general, an employer will not have acted reasonably unless it has taken steps to discover the current medical position – Schenker Rail (UK) Ltd v Doolan
- Obligation to report to DVLA in certain circumstances for investigation and assessment
  - E.g. diagnosis of narcolepsy where there is no cure
  - Legal requirement for medical practitioners to tell patient to do this
  - If doctor finds out that the patient is still driving, they are required to inform DVLA
  - A driver who fails to notify the DVLA can be fined £1,000, or prosecuted for failing to do so



# Case examples

## Mrs T Cappello v Nottingham Trams Limited

- No disability discrimination or unfair dismissal
- Tram driver case
- Sleep disorder
- Duty to the safety of the public - safety critical role
- Obtain medical reports

## Glasgow bin lorry crash

- Driver had previous occurrences of black outs
- Failed to notify DVLA of black outs even though he was under an obligation to do so
- Failure to inform Company of medical history
- Failure by Company doctor and independent GP to identify that Mr Clarke had changed his story





# Transport and Employment Retainer Service

## Benefits:

- Telephone and email support from the transport team and the employment team
- Driver handbook review
- Staff handbook and employment contract review
- Step by step guides on conducting disciplinaries, redundancies and sickness absence cases etc.
- Drafting of employee relations letters
- First 10 hours of an Employment Tribunal claim included – thereafter fees reduced by 10%

